

THE INDIGENOUS WORLD 2009

Copenhagen 2009

THE INDIGENOUS WORLD 2009

Compilation and editing: Kathrin Wessendorf

Regional editors:

The Circumpolar North & North America: Kathrin Wessendorf

Central and South America: Alejandro Parellada

Australia and the Pacific: Kathrin Wessendorf and Diana Vinding

Asia: Christian Erni

The Middle East: Kathrin Wessendorf and Diana Vinding

Africa: Marianne Wiben Jensen and Geneviève Rose

International Processes: Lola García-Alix and Kathrin Wessendorf

Cover and typesetting: Jorge Monrás

Maps: Mette Hvidberg and Jorge Monrás

English translation and proof reading: Elaine Bolton

Russian translation: Jennifer Castner

Prepress and Print: Eks-Skolens Trykkeri, Copenhagen, Denmark

© The authors and The International Work Group for Indigenous Affairs (IWGIA), 2009 - All Rights Reserved

The reproduction and distribution of information contained in *The Indigenous World* is welcome as long as the source is cited. However, the translation of articles into other languages and the reproduction of the whole BOOK is not allowed without the consent of IWGIA. The articles in *The Indigenous World* reflect the authors' own views and opinions and not necessarily those of IWGIA itself, nor can IWGIA be held responsible for the accuracy of their content.

The Indigenous World is published annually in English and Spanish.

Director: Lola García-Alix

Administrator: Anni Hammerlund

HURRIDOCS CIP DATA

Title: The Indigenous World 2009

Edited by: Kathrin Wessendorf

Pages: 578

ISSN: 1024-0217

ISBN: 978-87-91563-57-7

Language: English

Index: 1. Indigenous Peoples – 2. Yearbook – 3. International Processes

Geographical area: World

Publication date: April 2009



Distribution in North America:
Transaction Publishers
390 Campus Drive / Somerset,
New Jersey 08873
www.transactionpub.com

This book has been produced with financial support from the Danish Ministry of Foreign Affairs, NORAD, Sida and the Ministry for Foreign Affairs of Finland.



INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

Classensgade 11 E, DK 2100 - Copenhagen, Denmark

Tel: (45) 35 27 05 00 - Fax: (45) 35 27 05 07

E-mail: iwgia@iwgia.org - Web: www.iwgia.org

CONTENTS

Editorial	10
------------------------	----

PART I – COUNTRY REPORTS

The Circumpolar North

Greenland.....	22
Sápmi	
Sweden.....	29
Finland.....	35
Russian Federation.....	41
Northern Canada - The Northwest Territory.....	52

North America

Canada.....	58
United States of America.....	71

Mexico and Central America

Mexico.....	82
Guatemala.....	92
Nicaragua.....	104
Honduras.....	116

South America

Colombia.....	124
Venezuela.....	135
Ecuador.....	148
Peru.....	161
Bolivia.....	174
Brazil.....	184
Paraguay.....	197
Argentina.....	208
Chile.....	218

Australia, New Zealand and the Pacific

Australia.....	232
Aotearoa (New Zealand).....	242

Guam.....	249
West Papua.....	259
Tuvalu.....	266
Kiribati.....	273
East and South East Asia	
Japan.....	278
China.....	286
Tibet.....	294
Taiwan.....	301
Philippines.....	309
Indonesia.....	319
Malaysia.....	327
Thailand.....	335
Cambodia.....	343
Viet Nam.....	351
Laos.....	359
Burma.....	367
South Asia	
Bangladesh.....	376
Nepal.....	385
India.....	398
Nagaland.....	415
Middle East	
The Palestinian Bedouin in Israel.....	422
North and West Africa	
Morocco.....	430
Algeria.....	437
Niger.....	443
Burkina Faso.....	449
Mali.....	455
The Horn of Africa and East Africa	
Ethiopia.....	464
Kenya.....	473

Uganda	483
Tanzania.....	490

Central Africa

Rwanda.....	500
Burundi.....	504
The Democratic Republic of Congo (DRC)	510
The Republic of Congo.....	518
Gabon.....	526
Cameroon.....	535
Chad.....	541

Southern Africa

Angola.....	550
Namibia	556
Botswana	565
Southern Africa.....	574

PART II - INTERNATIONAL PROCESSES

The UN Declaration on the Rights of Indigenous Peoples:	
Its first year	584
The UN Permanent Forum on Indigenous Issues.....	592
The Expert Mechanism on the Rights of Indigenous Peoples	603
The Special Rapporteur	611
The UN Human Right Council - UPR.....	620
The Convention on Biological Diversity.....	626
The African Commission on Human and Peoples' Rights.....	636
The Arctic Council	642

PART III - GENERAL INFORMATION

About IWGIA.....	648
Becoming a member	649
IWGIA publications 2008.....	650
Subscription rates 2009.....	653

EDITORIAL

EDITORIAL

In 2008, IWGIA celebrated its 40th anniversary. Looking back over the past 40 years, we believe that we have been able to contribute to advancing the rights of indigenous peoples and improving their situation, not least by documenting events and raising awareness of indigenous issues in different fora. Yet we are constantly reminded, by the contributions to *The Indigenous World*, that we still face many challenges.¹

A number of positive developments have taken place over the last 40 years, many of them documented in *The Indigenous World*, but, unfortunately, the vast majority of articles in our yearbook continue to report on gross abuses of human rights across the world and we are still witnessing the intimidation, disappearance and murder of indigenous representatives and advocates of indigenous rights. *The Indigenous World 2009*, for example, tells of the continued disappearance of James Balao, indigenous activist of Kankana'ey and Ibaloi descent, in the Philippines.

But let us first look at some of the more positive developments. In Africa, 2008 saw a gradual recognition of indigenous peoples' rights in some countries. In Burundi, for example, the Batwa celebrated the international day of indigenous peoples with a workshop on their situation. The workshop was inaugurated by the Minister for National Solidarity, Human Rights and Gender. A survey on the land situation of the Batwa was completed in November. While the overall human rights situation in Burundi, and particularly that of the Batwa, is still precarious, this does show an opportunity for indigenous issues to be taken seriously. Burundi also demonstrated its increased focus on the Batwa population by stating, during its presentation at the 3rd session of the Universal Periodic Review (UPR) in Geneva in December 2008 that: "...the Constitution grants the Batwa ethnic group three seats in the National Assembly, as well as in the Senate, and a vast governmen-

tal programme, supported by NGOs and the churches, is under way to effectively integrate the Batwa into Burundian society."² In Cameroon, a draft law on marginal populations is favourable to the indigenous peoples of the country and touches upon such sensitive issues as land ownership, culture and social rights. The government has also officially undertaken to celebrate the Day of the World's Indigenous Peoples for the first time, and was represented at the celebrations by its Minister of Social Affairs.

In Japan, indigenous peoples finally gained acknowledgement when the House of Representatives passed a resolution calling for the recognition of the Ainu as an indigenous people of Japan. Even though many challenges still remain (see article, this volume), this can be seen as a logical consequence of Japan's vote in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007. One would expect many other countries to follow suit but, unfortunately, Asia and Africa still remain continents where indigenous peoples are fighting to be recognized as distinct peoples, despite most of their countries voting in favour of the UNDRIP. In fact, only two countries in Asia, besides Japan, officially recognise indigenous peoples within their boundaries, namely the Philippines and Taiwan.³

Whereas some countries are finally recognising their indigenous peoples, others have taken steps to come to terms with their colonialist past. On February 13, Australia, under its new government, gave the long awaited apology for past atrocities and injustices to its Aboriginal people. This is an important step in Australia's history as it opens the path for further moves towards reconciliation. In Paraguay, the newly elected government has begun to take some positive steps to respond to indigenous peoples' land claims, although much more still needs to be done to secure indigenous peoples' rights in the country. During a public hearing on "Indigenous Peoples and Dictatorship", organised by the Truth and Justice Commission (CVJ) and the Coordinating Body of Human Rights in Paraguay, almost 50 witness statements were heard from different indigenous peoples, reporting on the serious human rights violations, including genocide, murders, forced labour, etc, committed over more than 60 years.⁴ As both articles on these countries stress, only time will tell as to whether their governments build

on the experiences of (and reconciliation with) the past and have serious intentions of translating these into concrete actions and the implementation of indigenous rights.

Despite the good news, it is still shocking to read about the serious human rights abuses indigenous peoples are experiencing all over the world. Every year, the article on India in *The Indigenous World* reports on gross violations of the human rights of indigenous peoples (or so-called scheduled tribes) in the country. This year, the article also tells us of the killings of innocent men, women and children, victims of the security forces and opposition armed groups, suffering extensively from internal armed conflicts. In addition, the government continues to forcibly displace tribals from their land without providing them with any alternative plots to settle on and survive. Displacement happens in the name of development, or within the broader sphere of forest protection and management, but it can also be conflict-induced.

In the Chittagong Hill Tracts (CHT) of Bangladesh, Bengali settlers, with support from the military and police force, continue to conduct large-scale attacks on indigenous Jumma villages in order to evict them from their traditional lands. The CHT are recognised as a “tribal inhabited” region, with certain rights to self-governance in the 1997 Peace Accord, signed by the government of Bangladesh and the indigenous political movement, Parbattya Chattagram Jana Sanghati Samiti (PCJSS) after two decades of civil war and years of peace talks. Unfortunately, the failure to fully implement all provisions of the Peace Accord means that the region remains heavily militarized and the influx of settlers continues, allegedly under the active patronization of the civil-military and political bureaucracy. Indigenous peoples in the CHT thus continue to be severely marginalized, dispossessed and subjected to serious human rights violations, such as extrajudicial killings, arbitrary arrests, rape, torture, etc. Human rights defenders and indigenous activists in the CHT are facing particular difficulties, with several being targeted for arrest and questioning.⁵ In this context, the re-establishment of the international *Chittagong Hill Tracts Commission* in June 2008 was undoubtedly a much needed and timely initiative to promote respect for human rights, democracy, participatory develop-

ment and the peaceful resolution of issues related to land rights in the CHT.

Pastoralists in many African countries are still confronted by a generally negative attitude and discrimination from the mainstream population and African governments. In Burkina Faso, for example, pastoralist Peul are killed simply because of their ethnic belonging and so-called "Peul hunts" (referring to manhunts) are becoming more common. Several massacres of Peul took place in 2008, the victims being both men, women and children. The state is turning its back on the matter, and refusing to recognise the ethnic nature of the problem. Killings of pastoralist Peul by the sedentary population are also taking place with impunity in Niger. Additionally, the civilian pastoralist Tuareg population is suffering from impoverishment and insecurity due to a conflict between the state and a Tuareg rebellion in northern Niger. In Tanzania, evictions of pastoralists continued in 2008. Pastoralists are removed from their lands to make space for wheat cultivation, or in order to lease the land to private investors. The evicted Maasai, Barabaig and Akiye are not compensated for the loss of their grazing lands, nor are they given other areas where they can graze their cattle, and many are consequently now completely destitute. The forceful evictions take place in a context of overall anti-pastoralist government policies in which the permanent settlement of nomadic pastoralists is emphasized. Conflicts over land and other natural resources are increasing at an alarming rate in Tanzania and an increasing number of people are being killed for this reason. The serious human rights violations that took place in relation to earlier evictions have still not been addressed and the findings of a Commission of Inquiry have not been released. Unfortunately, IWGIA has already received news of further evictions of pastoralists in 2009.⁶

Another case of forced displacement is described in the article on Israel. Many Palestinian Bedouin still resist the Israeli government's urbanization programme, a programme to resettle the Bedouin into semi-urban towns, making them completely dependent upon integration into the wider Israeli economy for their livelihood. Those Bedouin who can afford it prefer to live in unrecognised villages that are denied any kind of service and where all forms of houses, except for tents, are illegal. During the past two years, the demolition of houses built by the

Palestinian Bedouin in those villages by the paramilitary "Green Patrol" unit has escalated. In addition, during such actions, all their belongings are confiscated, including school books, medicine, food, etc. The situation of the Palestinian Bedouin in Israel has further worsened against the backdrop of the conflict between Israel and Palestine.

In Peru, the neoliberal policies of President Alan García have led to strong protests from the indigenous movement, which organised a protest action on the International Day of Indigenous Peoples (9 August). The peaceful demonstration involved thousands of indigenous people from different regions of the Amazon and was well supported by the public. Peru's attitude is a good example of the ever-increasing pressure from oil, gas, mining and other companies on indigenous lands and the ruthlessness with which some governments support the interests of these companies. Alan García's regime has become aggressive towards social organisations and the government's intolerance has been expressed in an increasing number of arbitrary detentions and police abuses, threats to freedom of expression and association, monitoring and indictment of environmental leaders and the use of violence against civilians. Similarly, Bolivia experienced a particularly violent year in 2008. Here, however, the aggressive behaviour comes from the opposition (dominated by the business sector), which embarked on a violent and racist campaign against indigenous peoples, including assaults and humiliations of indigenous individuals, along with the seizure and serious mistreatment of a journalist and cameraman who tried to document the situation of the Guaraní, who live in a kind of modern-day slavery on large estates in the area of Alto Parapetí. In September, a peaceful demonstration in Pando of indigenous community members and peasant farmers against the violence of the opposition, ended in a massacre, leaving 20 people dead and many wounded, including children. The president announced a state of emergency and the government condemned the violence.

In the context of the reports compiled in *The Indigenous World*, one can but hope that, on an international level, the newly-established Universal Periodic Review (UPR) working group under the United Nations Human Rights Council (HRC) will seriously consider the human rights records of the countries reviewed and that states will not shy away

from asking critical questions and making strong recommendations. Indigenous rights issues need to be included more consistently in reviews of states' human rights performance and the United Nations Declaration on the Rights of Indigenous Peoples must be seen as a framework document for these reviews. Human rights abuses as described above must be condemned, and indigenous peoples should not become the victims of diplomacy or bilateral and multilateral interests.

IWGIA particularly welcomes the establishment of the Expert Mechanism on the Rights of Indigenous Peoples under the Human Rights Council. The Expert Mechanism's mandate provides unprecedented opportunities for UN member states and indigenous peoples to work together to operationalise the UN Declaration on the Rights of Indigenous Peoples and mainstream indigenous peoples' rights within the framework of the Human Rights Council. This will only be possible, however, if there is political will on the part of the states themselves to protect indigenous rights and cooperate with indigenous peoples.

With the UNDRIP as part of its normative framework, the whole UN Human Rights system, but particularly the three existing mechanisms dealing with indigenous peoples' rights, namely the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, will have new opportunities to advance the promotion and protection of indigenous peoples' rights.

Article 42 of the UNDRIP establishes an obligation for all relevant UN bodies and specialised agencies to promote respect for and full application of the provisions of the UNDRIP. Unfortunately, a lack of will on the part of states to implement the UN Declaration on the Rights of Indigenous Peoples was again demonstrated during the 14th Conference of Parties of the UN Framework Convention on Climate Change (UNFCCC) in Poznan, Poland, in December 2008 when Australia, New Zealand, Canada and the United States wanted to delete all reference to the Declaration from the final COP document and use the term "indigenous people" without an "s" instead of "indigenous peoples". With this small change, they managed to remove the implicit reference

to international law on all peoples' right to self-determination, and not least to indigenous peoples' collective rights as provided for in international human rights law, and further reinforced by the UNDRIP. Canada further claimed that the UN Declaration had nothing whatsoever to do with climate change. Issues such as the eviction of indigenous peoples from their lands due to the expansion of biofuel plantations prove the contrary – climate change has serious impacts on indigenous peoples' human rights situation. This was also recognised by the UN Human Rights Council (HRC) when it decided to consider the issue of human rights and climate change at its tenth session (March 2009).⁷ The report produced by the Office of the High Commissioner for Human Rights⁸ recognises indigenous peoples' special vulnerability with regard to the effects of climate change on their lands, territories and resources, and the consequences of the climate change mitigation measures which violate their rights when, for example, biofuel plantations and large hydroelectric dams are approved without their involvement and when their free, prior and informed consent is not obtained for activities on their land. Another great area of concern is the move towards conserving large tracts of tropical and sub-tropical forest in the name of climate change, i.e. as a carbon sink, thus limiting the need for emissions reductions. These conservation plans are known as Reduced Emissions from Deforestation and Forest Degradation (REDD) programmes and, throughout 2008, indigenous peoples fought fiercely for these programmes to be designed in such a way that their right to control and manage their traditional forest territories, and to participate in any important decision-making affecting them, was recognized and respected. As the example from Indonesia shows, it is yet another uphill struggle – in the context of REDD programmes too, the rights provided for in the UN Declaration are not being implemented.

Unfortunately, many states still consider the UNDRIP to be a non-binding instrument, thereby denying it normative force. However, the declaration is deeply grounded in the authority of the United Nations Charter, as it has been adopted by a resolution of the General Assembly. It also has strong legitimate powers:

The Declaration is legitimate in three senses: it is a result of procedurally legitimate processes; its content is substantively fair and improves the

*coherence and determinacy of indigenous peoples' rights; and, finally, there has been substantial engagement with the Declaration.*⁹

Additionally, the Declaration is being increasingly invoked in judicial decisions, such as in Belize where Maya were returned land following a decision of the Chief Justice. His decision referred to the UN Declaration, which affirms that indigenous peoples have the right to the lands, territories and resources which they traditionally owned, occupied, used or acquired. In Suriname, there was a similar case whereby the Saramaka peoples filed a case at the Inter-American Court of Human Rights. Again, a decision was passed in favour of the Saramaka people and the Declaration was invoked to justify this. Most certainly, the UNDRIP now forms a part of universal human rights law.

The UNDRIP and its implementation was also the main focus of Prof James Anaya's 1st report to the UN Human Rights Council as UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. In this important report, Prof. James Anaya provided an account of the different measures that states, international bodies, civil society and indigenous peoples themselves can take in order to contribute to the effective implementation of the human rights standards contained in the Declaration and other relevant international human rights instruments.

The year 2009 began, at least, with one positive development: Bolivia finally approved its new constitution in a referendum on 25 January 2009, granting many rights and self-determination to the indigenous peoples of the country. Let us hope that we will be able to report on more positive news by the end of 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-indig-

enous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA's network. They are identified by IWGIA's regional coordinators on the basis of their knowledge and network in the regions. All the contributions are offered on a voluntary basis and IWGIA does not pay for the articles to be written. This volume includes 63 country reports and 8 reports on international processes. The articles in the book express the views and visions of the authors and IWGIA cannot be held responsible for the opinions stated therein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is nonetheless our policy to allow those authors who wish to remain anonymous to do so, due to the sensitivity of some of the issues raised in their articles. We would like once again to take this opportunity to mention that we have in the past received comments from readers who find our geographical organization of the book's contents inappropriate. The aim of the book is to offer a space to indigenous writers and advocates to present developments and important events in 2008 as seen from an indigenous angle. A number of country reports presented here therefore take their point of departure as ethnographic regions rather than following strict state boundaries. This is in accordance with indigenous peoples' world-view and cultural identification which, in many cases, cuts 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 further information on indigenous issues worldwide. □

*Kathrin Wessendorf, editor and
Lola García-Alix, director
April 2009*

Notes

- 1 See also: 'IWGIA 40 years on', *Indigenous Affairs* 3-4 / 2008. Copenhagen: IWGIA; **Dahl, Jens. 2009.** IWGIA – a history. Copenhagen: IWGIA.
- 2 Report of the Working Group on the Universal Periodic Review, Burundi. A/HRC/10/71, 8 January 2009. http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/BI/A_HRC_10_71_Burundi_E.pdf
- 3 See also: **Erni, Christian (ed). 2008.** *The Concept of Indigenous Peoples in Asia. A Resource Book.* Thailand: IWGIA and AIPP.

- 4 On genocide in Paraguay see also: **Parellada, Alejandro and María de Lourdes Beldi de Alcántara (eds.). 2008:** *Los Aché del Paraguay: Discusión de un Genocidio*. Buenos Aires: IWGIA.
- 5 See also documents related to Bangladesh's review under the HRC UPR: <http://www.iwgia.org/sw33541.asp>
- 6 See IWGIA's Urgent Alert of 27 February 2009: <http://www.iwgia.org/graphics/offentlig/pdf/Kilosa%20evictions%20IWGIA%20web.pdf>
- 7 Resolution 7/23. Human rights and climate change. Adopted on 28 March 2008. http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf
- 8 Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights. A/HRC/10/61. 15 January 2009. <http://daccessdds.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>
- 9 **Charters, Claire. 2009:** The Legitimacy of the UN Declaration on the Rights of Indigenous Peoples, in: Charters, Claire and Rodolfo Stavenhagen, *Making the Declaration Work. The Significance of the United Nations Declaration on the Rights of Indigenous Peoples*. Copenhagen, IWGIA. (Forthcoming)



PART I

REGION AND
COUNTRY REPORTS

THE CIRCUMPOLAR NORTH

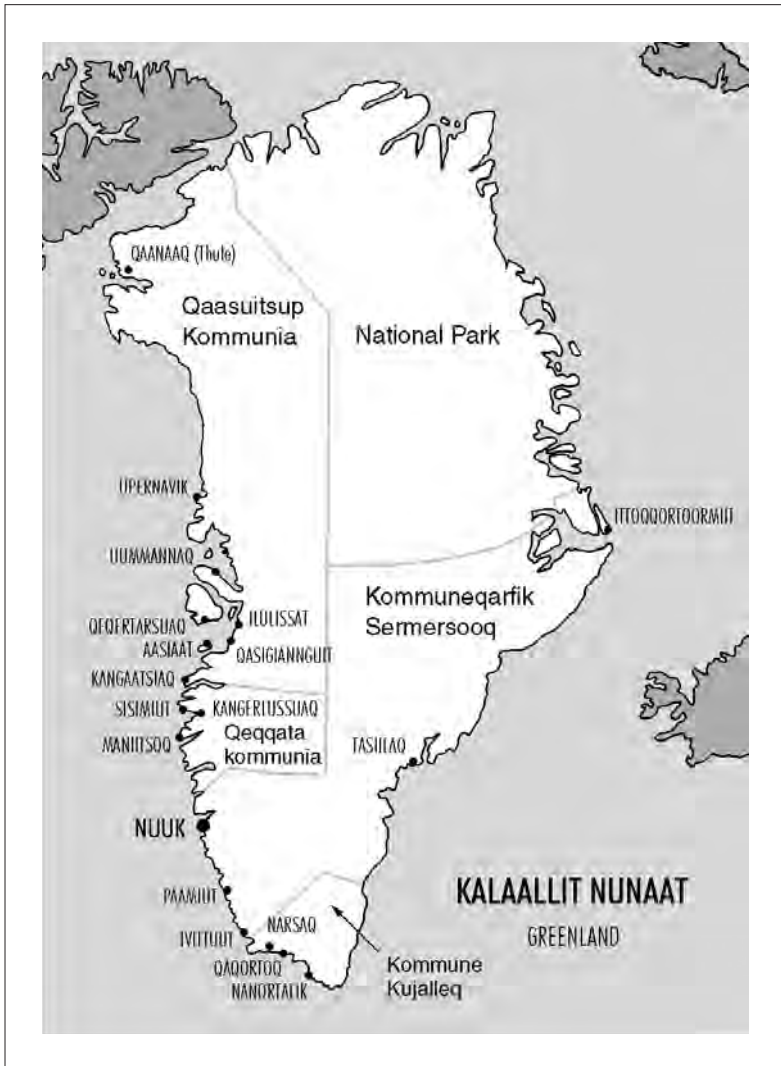
GREENLAND

The population inhabiting the vast east and west coast of the island of Greenland numbers 57,000, 88% of whom are ethnic Greenlanders (Inuit). Greenland has a very diverse culture, with sheep farming and agriculture in the south and traditional hunting in the far north and along the coastline. Fisheries and tourism are the most important means of income and Greenland is continuously searching for new ways to sustain the country, for example by developing the use of renewable resources such as hydroelectricity.

Greenland is a self-governing region within the Danish realm. The first Danish colonial settlement was established in 1721 close to the current capital, Nuuk, on the west coast. In 1953, Greenland became an integral part of Denmark by law and, in 1979, Home Rule was established following negotiations between Greenland and Denmark. Since then, Greenland has had its own parliament and government responsible for most internal matters. Greenland also has two representatives in the Danish parliament, elected in Greenland and representing Greenlandic political parties.

In 2008, legislative and structural changes set the political scene while a cultural movement developed among the younger generations of Greenlanders.

The Greenlandic-Danish Self-Government Commission had been drafting a report on a new status for the relationship between Greenland and Denmark since 2001. In the early summer of 2008 the commission finalized its work and, on 6 May, the report of the Greenlandic-Danish Commission on Self-Government was handed over to the Premier of Greenland and the Prime Minister of Denmark. Greenland



will now change its status from Home Rule Government to Self-Government, while remaining part of the Danish Realm.

Namminersorneq – Self-Government

Based on the report of the Commission, the Greenland Home Rule Government formulated the Draft Act on Greenland Self-Government. The Premier of Greenland, Hans Enoksen, had already announced that a referendum on self-government was to take place on 25 November 2008.

During the work of the commission on self-government, which consisted of eight Greenlandic and eight Danish parliamentarians, as well as experienced civil servants from both countries, there was a consensus among the Greenland delegation with regard to recommending self-government. Among the Danish delegation only one party, the Danish Peoples Party (*Dansk Folkeparti*), did not want to recommend self-government, the rest of the Danish delegation being in favor of the new draft act. However, the consensus among the Greenlandic parties did not last. During the summer of 2008 one Greenlandic party, Demokraatit, decided to recommend a “No” to self-government. The fact that there was now an opposition to the many Greenlandic parties in favor of self-government made the campaign period even more exciting and very dynamic. Many people in Greenland became active in the debate, and the Internet in particular was used for debates on the subject.

The Home Rule Government established a Self-Government office, which traveled, together with politicians of both the “Yes” and the “No” side, through Greenland convening information meetings on the Draft Act on Greenland Self-Government for the public. The ‘No’ party argued that the draft act was too weak and needed to be re-negotiated, while all the other Greenlandic parties stood by their support for self-government.

New Status – New challenges

On 25 November 2008, Greenlanders voted “Yes” to self-government, with 75.5% voting in favor of this new status and 23.5% against. The referendum brought almost 72% of the electorate to the polls, an historically high number. Only around 1% of the votes were invalid or blank. Greenland will declare its new status on 21 June 2009.

With self-government, Greenland will be legally strengthened. Furthermore, Greenland will have the right to secession, which means that whenever the people of Greenland decide to, Greenland can declare independence from the state of Denmark. The Draft Act on Greenland Self-Government also declares that Greenlandic is to be the official language of Greenland, while Greenlandic, English and Danish are to be taught in schools. According to the draft act, Greenland can take over new areas of responsibility, one of which is subsurface resources such as minerals and oil. However, the income from subsurface resources will still be shared with Denmark. Denmark will also still be responsible for giving Greenland a block grant, but the amount is now fixed at 3.2 billion Danish kroner (500 million USD), which will be adjusted each year according to the price index. Previously the block grant had to be re-negotiated each year. Only if or when Greenland's income exceeds double the amount of the block grant, 6.5 billion kroner, can Denmark end the block grant arrangement.

With the new status of self-government, Greenlanders will be recognized as "a people" according to international law, while still having a majority of "indigenous people", Inuit, among the population: these two different political categories position Greenland in a special way in the world's political arena. As a people with an indigenous culture, Greenlanders are part of the indigenous world, claiming the right to live according to the traditions of Inuit life. As a people, Greenlanders will have the right to self-determination and to define the status of their country on their own. The two categories will merge as the people of Greenland move into a new era with a modern culture and new traditions.

Still, with the European desire for a halt to sealskin imports and the reluctance of most of the Western world to accept Greenland's whaling, the Greenland government will continue to face challenges in the international arena for years to come.

Whenever Greenland decides to take over new areas of responsibility, it will have to find its own funding for these. During the Home Rule era, Denmark was responsible for providing the necessary funding for areas under Greenlandic responsibility. In years to come, Greenland will negotiate internally and with Denmark regarding the 32 areas which, according to the draft act on self-government, can be taken over. Self-government is thus a process that will take many years.

Four new municipalities

Internally in Greenland, 2008 was also a year of change. Following a decision by the Greenlandic Parliament in 2007, 18 municipalities were merged into four municipal administrations. The result of this decision is that there is now one large municipality in north Greenland, Qaasuitsup Kommunia, consisting of eight towns and many more settlements, one municipality in mid-Greenland, Qeqqata Kommunia, consisting of Sisimiut and Maniitsoq and the smaller settlements, one municipality, Kommuneqarfik Sermersooq, that spans the inland ice consisting of the capital of Greenland, Nuuk, Paamiut south of Nuuk and the towns and settlements in east Greenland, and one municipality in south Greenland, Kommune Kujalleq, consisting of three towns and many settlements and sheep farms there.

In April 2008, Greenlanders were called to the polls to vote for their new municipal boards. Each board has “geographical” members, which means that each town is represented on the new board. While the new structure is designed to ease the work and lessen the costs for the municipalities, many Greenlanders will have to adapt to new administrations far from their hometowns.

The re-structuring of the complex administration of such large municipalities took shape in the second half of the year and, on 1 January 2009, the new structure came into force.

Four new mayors now each have very large municipalities with diverse populations and environments to run. With its 660,000 square kilometers, Qaasuitsup Kommunia is the largest municipality in the world by area, followed by Kommuneqarfik Sermersooq, which has an area of 635,000 square kilometers.

Anersaarta – Let the spirit breathe

While all of these legislative changes were occupying the minds of most politicians and the Greenlandic press, a group of Greenlandic artists and “cultural activists” started a new movement called Anersaarta. The movement emerged as a result of the cancellation of plans to open

a Greenlandic Design School. The cultural activists wanted more attention to be paid to Greenlandic culture, and more government funding for cultural projects.

In the fall of 2007, Anersaarta arranged a demonstration in the form of a parade: a young Greenlandic actor was dressed as a minister in black dress with white collar, and a small coffin was placed outside Parliament Building to symbolize the death of Greenlandic culture. Around 300 people participated in the demonstration, many of them dressed in colorful costumes symbolizing the will of the people to be active in the cultural matters of Greenland. Inuk Silis Høeg, one of the artists behind the movement said that:

We think that the conditions in Greenland for art and culture are too poor, and that art and culture can be crucial to the strengthening of the self-identification of individuals as well as for a people. Art and culture are the inner mirrors of the society and can contribute to the prevention of social problems by dealing with people's emotions, souls and thoughts.

The demonstration took place while the Greenland Parliament was in session. Many parliamentary and government members met the demonstration outside Parliament Building and answered the people's protest. The Premier of Greenland immediately promised that one million Danish kroner would be put aside for an official day of culture, and declared 28 September as such. Later, the Greenland government added 3.5 million Danish kroner for artistic and cultural projects to the 2008 budget.

In 2008, at least two conferences on Greenlandic culture were thus held. Furthermore, some of the initiators of Anersaarta produced a series of TV talk shows on culture, which were shown on KNR, the national television station in Greenland. The popular shows, called Qapuk, "foam", dealt with Greenlandic culture, Greenlandic art and the importance of the Greenlandic language.

The cultural movement set the stage for Greenlanders to re-define Greenlandic culture, combining traditions with modern ways, and embracing the global while staying true to the local way of life.

References

Greenland Home Rule Government www.nanoq.gl

Greenland municipalities www.kanukoka.gl

Anersaarta cultural movement www.anersaarta.org

Kalaallit Nunaata Radioa, Greenland national broadcasting company www.knr.gl

Interview with cultural activist and artist Inuk Silis Høeg, February 2009

Sara Olsvig has an MSc in Anthropology. She is an Inuit from Greenland and currently works as secretary to one of the Greenlandic MPs in the Parliament of Denmark. She is also active in the Inuit Circumpolar Council, ICC Greenland.

SÁPMI SWEDEN

The Sámi people are the indigenous people of the northern part of the Scandinavian Peninsula and large parts of the Kola Peninsula. The Sámi people therefore live in the four countries of Sweden, Norway, Finland and Russia.

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

There is no reliable information as to how many Sámi people there are; it is, however, estimated that they number between 50,000 – 100,000 in all. Around 20,000 live in Sweden, which is approximately 0.22% of Sweden's total population of 9 million.

The north-west part of the Swedish territory is the Sámi people's traditional territory. These lands are traditionally used by the Sámi for reindeer herding, small farming, hunting, fishing and gathering. There are three specific laws governing Sámi rights in Sweden, namely the Sámi Parliament Act, the Sámi Language Act and the Reindeer Herding Act.

The Sámi Parliament

The Sámi Parliament in Sweden is elected by and represents the Sámi people in Sweden, and at the same time is also a governmental authority. It therefore works as an elected representative body that looks after Sámi interests, and as an authority that has to carry out the policies and decisions of the Swedish Parliament and Swedish Government. During 2008, the Sámi Parliament received the additional responsibility of reporting to the County Administrative Boards with

regard to which areas it considers to be of national (i.e. strong) interest for the reindeer herding communities.¹ In 2009 there will be elections to the Sámi Parliament.

Legal development or legal calm

In December 2008 a public investigation into changes in the Swedish Constitution (*Regeringsformen*) proposed that the Sámi people should get a special mention in the Constitution for the first time. It proposed stating that the possibilities for Sámi people and other ethnic, linguistic and religious minorities to keep and develop their own culture and society *shall* be promoted, instead of the earlier wording *should* be promoted. The reason behind this proposal was primarily the need to comply with obligations deriving from international conventions ratified and to achieve similar constitutional standards for the Sámi people as already obtained in Norway and Finland.² This proposal received a warm welcome from the Sámi Parliament and, if it passes through the Swedish Parliament (*Riksdagen*), will give the Sámi people a constitutional support that has not previously existed in Sweden.

The issue of whether Sweden will ratify ILO Convention No. 169 or not was not resolved during 2008. The main reason why Sweden has not yet ratified the Convention is that Swedish laws on Sámi land rights do not fit with Article 14 of the Convention regarding land rights. As a way of implementing the Convention, Sweden has therefore chosen to first adjust national legislation to the Convention before ratifying it, in order to prevent conflicts. Recent public investigations have therefore proposed legal changes to reindeer herding and membership of Sámi villages (*Sameby*) (2001), to Sámi people's rights to hunt and fish (2005), and regarding the territory the Sámi people traditionally occupy (2006). Some of these proposals have, however, been criticised by Sámi people as unacceptable. During 2008, the government worked on these three areas in order to be able to present a proposal to parliament (*Riksdagen*) but nothing has been submitted yet.

During 2008 (as well as during 2006 and 2007), the question of ratifying the draft Nordic Sámi Convention was discussed by the governments of Sweden, Norway and Finland but with no results so far. This



draft convention is considered to be a consolidation of applicable international law, consolidating the rights of the Sámi people and obligations of the states.

Reindeer grazing

Maintaining sustainable populations of big predators (wolverines bear, lynx etc.) is one of the main priorities of the public administration with

regard to nature in Sweden. The big predators live on reindeer, among other prey. The reindeer herders own the reindeer and they live from them as well. Every reindeer that is taken by a predator is therefore a loss to the herder, which leads to decreased income. This loss is supposed to be compensated by the state with an amount for each predator that is recorded. During 2008, the public inventories of populations of big predators found more than expected, which meant that not all Sámi villages could be compensated since there was not enough money to go round. After negotiations between the Sámi Parliament and the government, however, the necessary funds were granted so that everyone could be compensated.³ Some reindeer herders had to wait a long time to receive their share of the compensation money, however.

Due to periods of abnormally warm weather in an otherwise normally cold 2007/2008 winter, large parts of the reindeer pasturelands became covered in ice and the reindeer could not graze. This was quite similar to the winter of 2006/2007 (see also *The Indigenous World 2008*). In order to prevent disaster, the reindeer herders had to either buy fodder to feed the reindeer or move them to places with no ice on the ground. This put a real strain on the reindeer herding communities. After an investigation, the Sámi Parliament applied for disaster funding from the Swedish government to cover some of the reindeer herders' extra costs. The Swedish government granted subsidies and helped to avoid disaster.⁴

The conflict over reindeer grazing areas in Troms county (*fylke*), which was also described in *The Indigenous World 2008*, has not yet been settled. The Swedish and Norwegian governments worked on a draft of a new bilateral reindeer herding convention throughout 2008 but no results have been made public.

The Normaling case on the right to reindeer pasturelands, which was described in *The Indigenous World 2008* as a potentially decisive case, was with the Supreme Court throughout 2008 but this body has yet to decide whether it will try the case or not.

Non-discrimination

During 2008, the Ombudsman Against Ethnic Discrimination, or DO (*Diskrimineringsombudsmannen*) continued to run a campaign to make

the rights of minorities and indigenous peoples more visible. In July 2008, the DO published a report on Sámi people's rights from a perspective of discrimination. One conclusion was that when tensions have occurred within Sámi affairs then the problems and the solutions have been formed on the basis of the majority's values and notions of Sámi culture. Another conclusion was that this affects Sámi individuals and the Sámi people's opportunities in society today. One of the most important measures that needs to be taken is therefore to give Sámi people real participation and influence. The DO proposed, among other things: that Sweden should ratify ILO Convention 169; that the government should eliminate the legal indistinctness of Sámi rights; that the government should allocate money for research into Sámi affairs; that the government should take the initiative to establish an authority to supervise Sweden's obligations under international law; and that the government and the authorities concerned should secure Sámi participation and real influence in accordance with the international conventions regarding minorities. The DO also made a large number of specific proposals aimed at counteracting discrimination in the school system, opening up the public arena to the use of the Sámi language and stimulating education in Sámi language, thus eliminating structural obstacles to the development of the Sámi language. In an earlier case, as described in *The Indigenous World 2008*, the DO demanded that the municipality of Krokomb pay damages for discrimination of Sámi persons. The municipality did not comply with the DO's demand, and the DO therefore took the municipality to court in January 2008. The case has not yet been settled. □

Notes

- 1 <http://www.regeringen.se/sb/d/10506/a/104204> From the Government's website 12 February 2009.
- 2 Statens offentliga utredningar (SOU) 2008:125, En reformerad grundlag, utgiven 17 December 2008, Justitiedepartementet, Stockholm, page 454 ff.
- 3 <http://www.regeringen.se/sb/d/11204/a/117805> From the Government's website 12 February 2009.
- 4 <http://www.regeringen.se/sb/d/10351/a/101272> From the Government's website 12 February 2009.

Johan Strömgren is a Sámi lawyer who grew up in Ammarnäs on the Swedish side of Sápmi. He works as a researcher at the Sámi Research Institute in Guovdageaidnu, Norway, and is a Ph.D. candidate at the Faculty of Law at Uppsala University in Sweden.

SÁPMI - FINLAND

Finland still treats its approximately 7,000 Saami as a national linguistic minority rather than an indigenous people. For the Finnish state, equal citizenship means the *same* treatment for everyone. As such, the Finnish state refuses to acknowledge that indigenous peoples require culturally appropriate legislation for their rights to be secured. This is exemplified by the on-going refusal of Finland to ratify international covenants on indigenous rights and its failure to pass national legislation on Saami rights. These problems are highlighted by on-going disputes over Saami reindeer-herding territories in Finnish Sápmi and conflicts between Saami and the Finnish tourist industry over the exploitation of Saami culture.

In October 2008, the Saami Council held its four-yearly conference in Rovaniemi, Finnish Sápmi, where a special expert seminar was held on the Intellectual Property rights of Saami people, focussing on the Finnish tourist industry's misappropriation of Saami culture.

In this year's synopsis of Finnish Sápmi, we will focus on two issues of particular significance for 2008. We will primarily consider the issue of intellectual property rights and, to a lesser extent, address the status of the draft Nordic Sámi Convention.

Intellectual property rights – the case of the Finnish tourism industry

Tourism in Northern Finland has a turn-over of around 540 million Euro per year. To a large extent, it owes its success to its use – and misrepresentation of – the Saami culture. No compensation has ever been paid to

*the Saami and the Saami have never consented to the tourist industry's practices.*¹

Although increased control over their own cultural heritage would assist the Saami (like all indigenous peoples) to enhance their material situation considerably, the main motivation for seeking protection of cultural heritage is the quest for respect and understanding for indigenous societies, cultures and ways of life. While countries have generally abandoned deliberate assimilation programs, indigenous peoples still find themselves in a constant struggle to preserve their distinct cultures, and avoid being absorbed into the majority society. Halting culturally insensitive practices and the utilization of indigenous cultures, which fosters assimilation and/or harms their cultural identity is thus, for most indigenous peoples, much more important than achieving commercial gain from their cultures (Åhrén, Rovaniemi, 2008).

In order to address these concerns, the 19th Saami conference was held in Rovaniemi, October 2008, with the theme of cultural heritage. During this conference, an expert panel of indigenous peoples from around the world discussed indigenous peoples' rights to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their science, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games and visual and performing arts.

These rights are enshrined in various aspects of international law,² including the UN Declaration on the Rights of Indigenous Peoples (Article 31). While these rights may appear relatively straightforward in theory, in practice most governments do not respect the cultural rights of indigenous peoples and, here, Finland is no exception. This lack of respect is particularly apparent in the Finnish tourism industry and, as a part of the Saami Council's 19th four-yearly conference, the Saami Council contacted Finnish hotels and tourist services, questioning their (mis)use of Saami culture and symbols.³ The dialogue has begun, and it is a challenge for both Saami and the industry to build a sense of mutual respect and find a way to co-exist. However, the reac-



tion from the public and from state-owned tourist companies was less sympathetic to Saami critiques of the tourism industry. There were calls for a boycott of reindeer meat, Saami handicrafts and Saami services. The main reason for the anger was, ironically, public bewilderment as to why the Saami should want to restrict the use of such cultural elements now, when such elements have been a part of the tourism industry for decades. This call to defend the *status quo* is not uncommon in Finland, where Saami attempts to distinguish Saami culture from Finnish culture are often ignored with the claim that “we are all Finns, we all share the same culture”. But, for Saami people, there are important differences between Finnish culture and Saami culture, differences that need to be recognised, respected and protected.

The exploitation of Saami culture by the Finnish tourism industry is a decade-long phenomenon. This is a problem that does not exist – not to the same extent at least - in other parts of Sápmi (Russia, Sweden, Norway). Saami culture has been, and continues to be, portrayed and marketed by non-Saami in a highly derogatory fashion. For example, performers caricature dirty, drunken and simple-minded Saami in fake Saami villages, and “perform” falsely-labeled traditional Saami ceremonies. Sacred objects and Saami spiritual symbols are used to decorate furniture, buses, tissues, handkerchiefs and even lavatories. Traditional handicrafts are being copied and manufactured in China and sold as traditionally Saami.⁴ Saami lands and waters are being marketed as excellent fishing, hunting and hiking territories, without ever mentioning the Saami as the traditional owners of the land. Fishing and hunting rights over traditional Saami territories are sold to non-Saami with no regard for traditional Saami rights, and quotas are decided by the Finnish ministries. In addition, the demand for new snow-scooter tracks into reindeer herding areas is increasing, and the Finnish tourism industry is a powerful lobbyist for this.

The Finnish government’s response to Saami protests against the Finnish tourism industry is similar to its position on logging on Saami territories: it defers responsibility to “the market” and companies, claiming that the state has little or no role in influencing the practices of the tourism or logging industries. At the same time, however, several national state-regulated programs are funding a myriad of small-scale tourist businesses which are acting as sub-contractors for the international tourism industry, concentrated into two major tour operators.

While international covenants alone will never solve the complex challenges facing the Saami when trying to tackle the exploitation of their culture, it seems that Finland’s reluctance to deal with this issue is closely linked to its failure to adopt the Nordic Saami Convention.

The Nordic Saami Convention

In 2005, a draft Nordic Sámi Convention was presented to the governments of Finland, Norway and Sweden by an expert working group. All

three Saami Parliaments had previously endorsed the draft. Talks between the relevant Ministries responsible for Sami policy in the three countries have been underway ever since. Early on, the Finnish Ministry of Justice expressed enthusiasm at getting the Convention adopted by the Finnish Government. However, this enthusiasm has progressively waned since. In September 2008, the Finnish Minister of Justice announced to her colleagues in Sweden and Norway that Finland would instead prioritise the passing of national legislation concerning Saami rights, prior to the adoption of the Convention. This led to immediate protests from both the Saami Parliamentarian Council (representing the three Nordic Saami Parliaments) and the 19th Saami Conference held in Rovaniemi, October 2008. Attention not only from the Saami but also from the Swedish and Norwegian governments is now focussed on Finland, as it continues to lag behind in negotiations over the Nordic Saami Convention.

The Finnish government's claim that it first wishes to prioritise the adoption of national Saami legislation before the adoption of international covenants is a common one. Sweden has also argued that it cannot ratify ILO 169 until it passes national legislation. We could perhaps find some comfort in the aspirations of these governments to find national legislative solutions to the question of Saami rights if either of them had actually been forthcoming in producing any concrete legislative proposals. However, both Sweden and Finland have commissioned study upon study concerning the land rights of the Saami but still no national laws have been passed. This raises the question as to whether the claim to *prioritise* national legislation over the adoption of international covenants is a genuine one, or simply a political strategy to defer criticism and avoid responsibility.

Until international covenants are adopted, and the national laws of Finland are changed, disputes over cultural rights and land rights will continue. As reported in *The Indigenous World 2006* and *2007*, the Nellim case has been of major significance for Finnish Sápmi in recent years. In November 2005, the UN Human Rights Council called on Finland to halt logging in Nellim, the traditional reindeer-grazing areas of the Padaar brothers. During 2007 and 2008 this remained a key issue for the Finnish state and Saami society, as the conflict escalated once again. The Finnish state-owned logging company - Metsähallitus

- continues to seek permission from Saami reindeer herders in Nellim to log, in areas that are currently under dispute in the national court system *and* protected by a UN moratorium. When reindeer herders have denied Metsähallitus logging permission, Metsähallitus has publicly attacked the reindeer herders for being “against a peaceful solution”. It is in this political climate that the Saami in Finland continue to struggle for recognition of their cultural rights to their traditional lands. □

Notes

- 1 Mattias Åhrén, Saami Lawyer, Rovaniemi, October, 2008.
- 2 UNESCO Conventions on Natural and Cultural Heritage, Cultural Diversity and Traditional Cultural Expressions, WTO and WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore, Convention on Biological Diversity and Millennium Ecosystem Assessments. Thirteen UN agencies work on traditional knowledge.
- 3 The Saami Council had discussions with architects about the appropriate use of interior decoration and building design; with hotel managers about the use of Saami symbols in marketing materials; and with souvenir shops about the origin of the handicrafts on sale. The industry was cautiously responsive and willing to begin a dialogue.
- 4 Other examples include the use of fake Saami clothes by Finnish tourist guides, hotel workers and waitresses. This breaks the common law of *gákti* by ignorantly mixing elements from different regions, different marital statuses and genders into ill-sewn garments. Santa Claus’ “little helpers” are dressed as Saami, and huskies are presented to the public as traditional reindeer herding dogs.

Pauliina Feodoroff is an eastern Sámi and works with cultural heritage in several arenas. Her presidency of the Saami Council ends in March 2009. Rebecca Lawrence is currently completing her PhD at the Department of Sociology, Stockholm University, Sweden and the Department of Human Geography, Macquarie University, Australia. Her research has focussed on the impacts of logging on Saami rights in Finland. Rebecca also acts as advisor to the Saami Council and to Saami communities throughout Sápmi in their negotiations with the proponents of resource developments.

RUSSIAN FEDERATION

The Russian Federation is a multiethnic society and home to more than 100 peoples. Of these, 40 are legally recognised as “indigenous, small-numbered peoples of the North, Siberia and the Far East”; others are still striving to obtain this status. This status is conditional upon 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. Among the peoples recognised as such are the Evenks, the Saami, the Yupiq (Eskimo) and the Nenets. Other peoples of Asian and Northern Russia such as the Sakha (Yakuts), Buryat, Komi and Khakass do not hold this status because of their larger populations. A definition of “indigenous” without the numerical qualification does not exist in Russian legislation.

The small-numbered indigenous peoples number approximately 250,000 individuals in total and thus make up less than 0.2% of Russia’s population. If the aforementioned peoples were included, this population would increase to around 1%. Traditionally, they inhabit huge territories stretching from Kola peninsula in the west to the Bering Strait in the east, which make up about two-thirds of the Russian territory.

Traditionally they have been hunters, gatherers, fisherfolk and reindeer and horse breeders. For many of them, these activities still constitute vital parts of their livelihoods, even more so since the collapse of the Soviet economy and the disappearance of the services it provided. Their languages belong to many different families, such as Finno-Ugric, Manchu-Tungusic and Paleo-Siberian, and their cultures and world views are closely related to their environments: the tundras on the shores of the Arctic ocean, the vast boreal forests of Northern Eurasia, the Pa-

cific Coast or the magnificent mountains of the Altai and the volcanoes of Kamchatka.

While Russia's exports comprise almost exclusively resources such as oil and gas, the latter are, with few exceptions, extracted from soils inhabited and used by indigenous communities.

The indigenous small-numbered peoples are recognised and protected by the Constitution and three framework laws. However, these are declarative and their provisions have remained largely theoretical. This is true first and foremost for land rights which, for most indigenous communities, simply do not exist at this time.

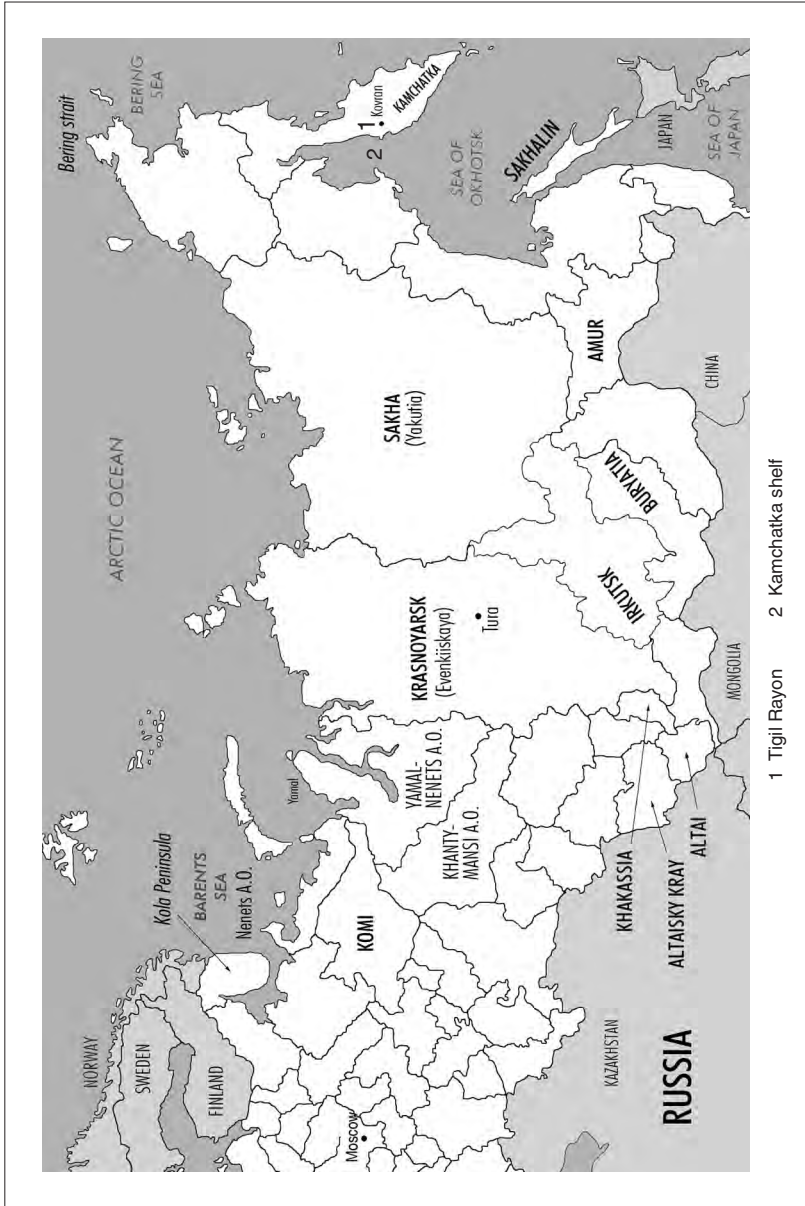
In 2008, the legal and socio-economic situation of the indigenous small-numbered peoples of Russia has continued to deteriorate.

A new map entitled "Places of Potential Conflicts Between Industrial Companies and Numerically Small Indigenous Peoples of the North, Siberia, and the Far East," published by the Center for Support of Indigenous Peoples of the North (www.csipn.ru) identifies 70 hotspots of potential conflict.

Land, life and law

Due to deficiencies in legislation and administrative practice, most indigenous communities still have no legal title over the land and resources that they depend on for their very survival. Many, if not most, are barred from legally accessing those resources, which would allow them to attain an adequate standard of living.

The government *de facto* owns all land and natural resources in the Russian North. Some of these lands – "lands for agricultural use" – are under the joint control of the Russian Federation and its federal subjects.¹ In the wake of economic liberalization, it has become possible for private businesses to obtain *de facto* ownership of such lands through long-term lease agreements, as stipulated by the reformed land, water and forest codices.



Having obtained the right to use land and resources through tenders, commercial companies are not legally obliged to obtain consent from the indigenous peoples for the realisation of projects. Nor are they obliged to assess the amount of damage to the indigenous peoples' territory and natural environment or to their traditional way of life resulting from their projects. Furthermore, they are not required to pay indigenous peoples due damages or to take into account the existence of sacred sites within those territories.

The tendency towards a further deterioration of the legal situation manifests itself in the government's resistance to a resolution of the main issue, the right to land and natural resources.

The federal draft law entitled "On the protection of the environment, traditional way of life, and traditional natural resource use of indigenous small-numbered peoples in the Russian Federation" is dedicated to the resolution of those issues and was developed by the Committee for Indigenous Affairs in the State Duma, at the initiative of the Russian Association of Indigenous Peoples of the North (RAIPON), the indigenous umbrella organisation. By the end of 2007, the government had blocked the adoption of the bill by publishing an opinion in which it concluded that there was no need for additional regulations regarding the protection of traditional territories and ways of life of indigenous peoples and that the draft law was thus redundant. Practical experience shows, however, that such a law is urgently needed to ensure that indigenous peoples' rights are respected within the centralized Russian state.

On 17 April 2008, the Russian Federal parliament, the State Duma, held parliamentary hearings on the same draft law. Members of the State Duma, the Federation Council and representatives of regional administrations, as well as scientists and members of the public, confirmed the need for such a law and supported its adoption. Only two attendees, representing the Russian Government and Gazprom (the major government-owned gas company), spoke out against the draft law.

The Government's continued refusal to eradicate contradictions within existing legislation concerning the right of indigenous peoples to land and their traditional resources and to adopt mandatory regulations for the assessment of the impact of industrial projects on indige-

nous peoples' territories and their mitigation allows companies and local authorities to ignore the interests of indigenous peoples. This is a source of permanent conflict between indigenous peoples and private businesses which operate in their territories. There are a large number of examples:

Kamchatka

The Kamchatka Peninsula in the Russian Far East is world famous for its volcanoes, its rich salmon stocks and its unique wildlife. At the same time, it is a place abundant with subsoil resources which, to the indigenous peoples, including the Koryak, Itelmen and Evens, has been a curse rather than a blessing.

One cause for grave concern is the development of the offshore oil reserves on the western coast of the peninsula and related activities such as pipeline construction along the coast.

While Russian legislation prescribes that an environmental impact assessment be conducted prior to operations such as pipeline construction or oil extraction, practice in Russia shows that companies pay only lip-service to international standards, while in the actual project documentation and during project implementation, they take into account only a very narrow selection of environmental demands and completely disregard the rights of indigenous peoples.

This was exemplified by the discussions in 2007-2008 concerning the oil and gas extraction projects on the Kamchatka Shelf in the Okhotsk Sea. Despite public protests by the community, along with a Public Environmental Impact Assessment (PEIA) of the project as allowed by law and carried out by civil society organisations, the state approved the official Environmental Impact Assessment (EIA), which ignored the risks identified by the PEIA, and the project has been underway since July 2008. The Ethno-Ecological Information Center of the Indigenous Peoples of Kamchatka "Lach", which employs indigenous people, participated in collecting information for the PEIA.

Almost all the Itel'men (862 individuals) live in coastal villages in the southern Tigil' Rayon of Kamchatka Krai. Living in the area of a potential oil spill, they are at great risk. Their unique culture and lan-

guage are extremely vulnerable and they face the loss of their language and culture in the event of forced resettlement.

Fish: commodity or livelihood?

Another threat indigenous peoples on Kamchatka are confronted with is the privatization and alienation of their fishing grounds. For a number of years, the administration of Kamchatka has been preparing a long-term relicensing of all of the peninsula's fishing grounds through commercial tenders. In 2008, residents of the village of Kovran in Tigil' Rayon, the only village in Kamchatka where the Itel'men constitute a majority, reported that their own traditional fishing grounds had been put on a commercial tender. The area affected was precisely where Kovran residents fished using traditional fishing gear. An indigenous *obshchina*² in Kovran participated in a tender for their own river but lost their bid to a commercial company. The appearance of this fishing company means trouble for the residents of Kovran. Firstly, those who stand with their nets further upstream are first to catch fish returning from the sea. Secondly, the commercial fishing grounds are allocated to the leaseholder for twenty years and, in the instance of a man-made accident, e.g. an oil spill or other damage inflicted by the oil industry, it will be the leaseholder that receives compensation. So Kovran residents may not only lose fish but they will also not be compensated for any loss.

In 1996, the Council of Itel'men "Tkhsanom" demanded the establishment of a special protected territory of traditional natural resource use in the southern part of Tigil' district in order to protect the unique Itel'men culture as well as the salmon stocks. In response to protests by "Tkhsanom", the Itel'men Council of Kamchatka in 2008, regarding the auctioning of the Kovran River, the Vice-Governor of Kamchatka Krai in charge of indigenous affairs declared, "Protest all you want – this is not ten years ago!"

After losing the tender, the Kovran *obshchina* submitted documents to court claiming that the creation of a commercial salmon fishing area on the Kovran River, the announcement of the tender for the area, and the award of the fishing grounds to a commercial entity with no relation to the indigenous population of Kovran were in contradiction to principles of the sustainable use of biological resources in terms of the

interests of future generations and were in violation of the Russian law “On guarantees of the rights of indigenous small-numbered peoples of the North, Siberia and the Far East”.

Amur Oblast

In 2006, the authorities of Amur oblast, a region bordering Yakutia (Sakha) in the North and China to the south, put out to commercial tender virtually the entire hunting grounds which constitute the main source of income for the Evenki communities of that region. The eight Evenk *obshchinas* of Amur Oblast were not permitted to participate in the tender for their land. The authorities conducting the tender cited procedural reasons to justify the exclusion stating that the *obshchinas*’ applications to the tender did not meet the Tender Committee’s requirements. However, from a legal perspective, these requirements contradict current federal law, which provides for the use of such lands for hunting in areas of traditional indigenous settlement and dictates that such lands be made available first to indigenous *obshchinas*. Hunting is the primary source of existence for over 1,000 Evenk in Amur Oblast. Moreover, Evenk also pasture small herds of domesticated reindeer on those very same lands, using the animals as transportation for their nomadic travel as well as for subsistence food. The loss of these hunting lands means the loss of access to food and the ability to provide for their families. The *obshchinas* submitted a legal complaint, stating that the tender was conducted illegally. In 2008, a judge agreed with the *obshchinas*’ lawyer’s conclusions and invalidated the results of the 2006 tender. The administration is in no rush, however, to act on the judge’s finding. The department that conducted the 2006 tender states that it will abide not by the judge’s ruling, but rather by what the governor decides.³

Involuntary resettlement

In clear violation of the widely acknowledged international customary norm⁴ requiring consent of indigenous communities prior to the au-

thorization of projects involving their resettlement or relocation, the current energy strategy, adopted by the Russian Federal government in May 2003 and valid until the year 2020, includes projects involving the mass resettlement of indigenous peoples without prior consultation and without their consent.

The Evenkiiskaya dam: drowning Evenkia

2008 saw increased activity to resurrect a giant hydroelectric dam project which had first been proposed in the 1970s and had, with the advent of *Perestroika*, been shelved due to both environmental concerns and lack of technical feasibility. The Turukhansk Hydroelectric Dam on the Lower Tunguska River in Krasnoyarsk province, now renamed "Evenkiiskaya", would create the world's largest artificial lake, measuring 9000 km². Environmentalists warn of potentially disastrous environmental consequences, including the loss of one million hectares of virgin forest and the possible spread of radioactive material stemming from subsoil nuclear explosions from the 70s and 80s. Experience shows that large dams usually have grave unforeseen consequences, even including the risk of dam-induced earthquakes.⁵ RAIPON has joined the WWF, Greenpeace and other environmental organisations in a campaign to stop the dam.⁶ The project is being prepared by RusHydro (formerly OAO HydroOGK) and will submerge a number of Evenk settlements located in the river valley, as well as Tura, the capital of Evenkia. RAIPON has received letters from the inhabitants of those settlements strongly protesting at the proposed projects on their lands and the impact on their communities.

Despite these protests, the administration of Krasnoyarsk province supports the proposal and accuses opponents of attempting to disturb "Russian energy security". In August 2008, the UN Committee for the Elimination of Racial Discrimination (CERD) urged Russia to cease support for this project.

Another project involving involuntary resettlement is the "Programme for the comprehensive industrial development of deposits on Yamal peninsula and adjacent waters", which is being implemented by Gazprom and which, according to the publicly announced plans,

requires the alienation of land on which approximately 500 families of Nenets herders currently practice reindeer husbandry.

By entering into their own agreements with Gazprom, regional authorities in the Yamal-Nenets Autonomous Okrug are attempting to reduce the negative impacts on Yamal of the federal program, by creating their own regional programs to adapt local indigenous *obshchinas* to the gas development process, expanding construction of housing for reindeer herders, and implementing vocational training programs in new professions for the indigenous population.

In the news: racist attitude of the mass media

In 2008, the press intensified their attacks on indigenous peoples of the North, prompted by indigenous NGOs' struggles for their right to traditional settlement patterns and compensation for industrial exploitation of their traditional lands. On the basis of one of these published stories, "The indigenous: behold their roots," in *Russian Newsweek's* #3 issue in January 2008,⁷ RAIPON appealed to the Prosecutor General's office. The article contained the most outrageous journalistic assessments of the indigenous movement included the following statements: "until recent times the indigenous peoples were considered the lowest caste of humanity, but now all are being forced to reckon with them"; "in the 21st century the battle by indigenous peoples for their rights is beginning to resemble economic blackmail on a global level"; and "discussions of the sovereignty of a majority of indigenous peoples should be understood in the context of a bargaining tactic". RAIPON's complaint regarding this publication was submitted to a Moscow district court, and, as they were recently advised, is still being reviewed "in the context of linguistic analysis".

International human rights advocacy in Russia and abroad

In its attempts to protect the rights of Russian indigenous peoples, RAIPON is collecting information about violations of indigenous peoples' rights through a network of regional indigenous information

centers. RAIPON also attempts to participate actively in the legislative process and, through deputies and senators, promote proposals and legislation serving the interests of indigenous peoples of the North, Siberia, and the Far East and tries to put pressure on the Russian government by participating in United Nations treaty body procedures. In cooperation with the German-based Institute for Ecology and Action Anthropology (INFOE), in spring 2008 RAIPON submitted an alternative report to the UN Committee for the Elimination of Racial Discrimination (CERD)⁸ on the occasion of the consideration of Russia's 18th and 19th periodic reports on its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), covering the period 2003 to early 2008. The report was considered at the 73rd session of CERD, which took place from 28 July-15 August 2008. On 22 September 2008, the committee published its concluding observations in which it incorporated several of the issues raised therein, including an appeal to cease all support for the Evenkiiskaya hydroelectric dam and to put into practice the law on Territories of Traditional Nature use, which should provide indigenous communities in Russia with basic land rights.⁹ □

Notes

- 1 The Russian Federation consists of 83 "Federal subjects", a term which is comparable to the Federal states of the USA or the cantons of Switzerland.
- 2 Under Russian legislation, an *obshchina* is a kinship or community-based non-commercial enterprise which enjoys certain tax privileges. *Obshchinas* engage in traditional economic activities such as hunting, fishing and reindeer herding. *Obshchinas* are meant to enable indigenous peoples to maintain their traditional economic activities. Non-indigenous people may also be members. Historically, "obshchina" or "mir" were terms for the Russian peasant community. The concept of the indigenous *obshchina* was developed during the *Perestroika* period.
- 3 See Yulia Yakel: *Evenki Amurskoi oblasti otstayali svoi prava v sude* (The Evenks of Amur oblast have defended their rights before court), in: *Mir Korennykh Narodov – Zhivaya Arktika* (The indigenous peoples' world – The Living Arctic), Nr. 21, 2008, pp. 85-92
- 4 For example, the UN Declaration on the Rights of Indigenous Peoples (Art. 10, 19 and others), ILO Convention 169 and policies of the international financial institutions.

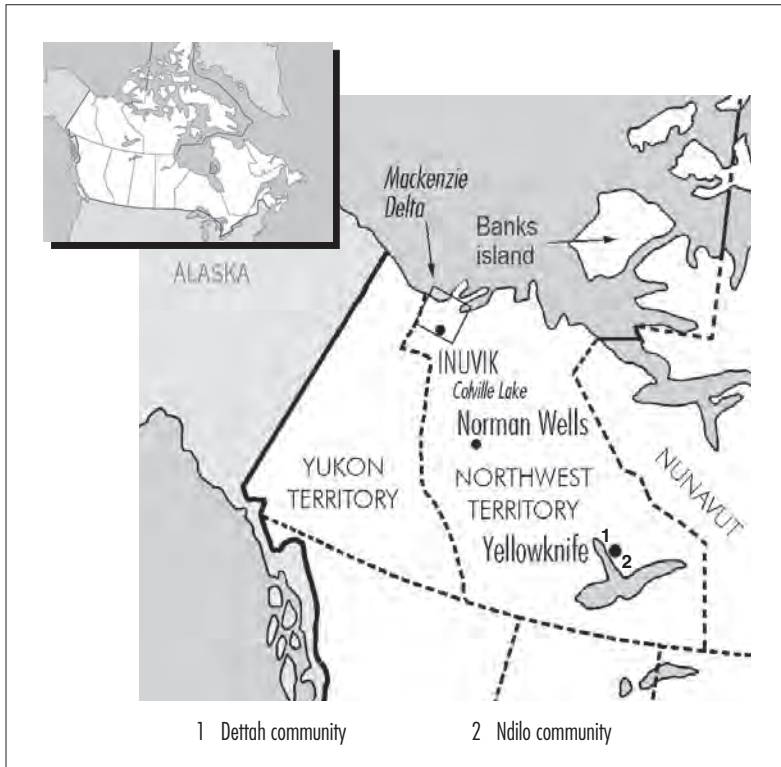
- 5 One recent example was the earthquake in Sichuan province, China, in May 2008, which killed up to 80,000 civilians and which has been linked to the construction of the Zipingpu Dam...
- 6 See http://www.wwf.ru/about/what_we_do/greenenergy/evenkya/
- 7 <http://www.runewsweek.ru/globus/8646/> (last accessed: 12 March 2009)
- 8 Available at http://www.infoe.de/pdf/Parallel_report-infoe-RAIPON-CERD_2008.pdf
- 9 <http://www2.ohchr.org/english/bodies/cerd/cerds73.htm>

Olga Murashko is a Russian anthropologist and one of the co-founders of IWGIA Moscow. She works as a consultant for the Russian national umbrella organization of indigenous peoples (RAIPON) and coordinates RAIPON's legal advocacy work.

NORTHERN CANADA THE NORTHWEST TERRITORIES

Canada's Northwest Territories (NWT) has a total population of approximately 43,000, of which more than half are indigenous – Dene, Inuvialuit and Métis. Land, resources, water and socio-economic issues as well as the right to self-govern continue to be key issues despite the recognition of Aboriginal Rights, co-management boards, impact and benefit packages, and the settlement of several land claims. The Inuvialuit land claim was settled in 1984, the Gwich'in in 1992, the Sahtu Dene in 1994. The Inuvialuit, Gwich'in and the Sahtu Dene communities of Deline and Tulita are negotiating self-government. The Tłı̨chǫ Land Claim and Self-government Agreement was finalized in 2005. The Akaitcho and Dehcho First Nations are negotiating for both land and the right to self-government. Hunting, trapping and fishing are important socially, culturally, and have economic significance for most families. With the worldwide economic difficulties and the lay-offs in the NWT, the vitality of the traditional economy may once again increase in importance.

Until the fall of 2008, northern Canada was on the verge of major developments associated with extractive industries – oil and gas, and diamond, uranium and gold mining. The global financial crisis has had its impact in the NWT. Of the three diamond mines in operation, one has laid off over two hundred employees while another is slowing production by closing the mine for two months. These seemingly minor acts impact on families as well as northern-owned companies. Take for example, Tłı̨chǫ Logistics. Last year 10,000 trucks hauled supplies over the ice roads to the mines; this year only 5,000 are planned. Furthermore site services, such as catering and laundry serv-



ices, have been cut back at the diamond mines just as seasonal fuel handlers are in less demand. The diamond sorting facility is open, while the polishing companies are virtually closed. The ripple effects are being felt in the indigenous communities but it is too early to determine the exact impact.

Mining and hydropower have been the focus for the *Tłı̄ch̄o*, and the communities of Łuselk'e0, Dettah, Ndilo and Colville Lake, whereas the pipeline has been the focus for indigenous people living along the Mackenzie Valley for the past few years. The pros and cons of the pipeline continue to be discussed just as community people discuss all development.

Indigenous people have concerns that circumscribe the economic benefits of development – the healing of themselves and the well-being

of the land. Indigenous people are concerned about water and caribou, and are taking steps to ensure they have input into management decisions. Barren ground caribou, a source of subsistence and identity for indigenous peoples throughout the NWT, are in decline. In 2007, representatives from First Nations governments, caribou management boards, renewable resource and co-management boards, big game outfitters, environmental organizations, the oil and gas and mining industries all came together to identify priorities at the Caribou Summit held in Inuvik, NWT. At the Summit and since, indigenous leadership talked about their willingness to forego harvesting rights for the sake of recovery of caribou populations. The same leaders continue to emphasize that it is indigenous governments who must make these decisions – they cannot be imposed by the Government of the Northwest Territories (GNWT). Leaders meet regularly to discuss caribou issues, while local community projects acknowledging the benefits of traditional laws and rules associated with respect and stewardship of caribou are being initiated.

Leaders are also speaking about water pollution resulting from all extractive industries but, most particularly, the “tar sands” in northern Alberta, the province just south of the NWT, and its impact on the Mackenzie River watershed. Due to these outcries, the GNWT is now focused on raising awareness – nationally and internationally - about the jurisdictional problems resulting from provinces contaminating water that flows into other jurisdictions.

Indigenous people of the NWT are realizing the limitations of their land claim and self-government agreements beyond co-management bodies, especially when hoping to control development of settlement land but within their traditional territories. To combat these limitations, they continue to educate industry and government personnel through discussions and workshops; and continue to advocate for indigenous knowledge to remain separate from scientific studies and that both have a role in cumulative impact monitoring and management decision-making.

The acknowledgement by government and the churches that their residential school policies were designed to assimilate indigenous children has allowed the recognition of the emotional and physical abuse that damaged the spirit of indigenous people. A Federal truth and rec-

conciliation commission has been set up that will allow indigenous people to tell their stories so that all Canadians will understand exactly what they endured. Both individual counselling and support groups relating to loss, grief and relationships have been initiated, and community members throughout the NWT are requesting land wellness camps in their own languages such as the ones in the Dehcho and the Gwich'in. □

Alice Legat is social anthropologist and has worked extensively with the Dene in northern Canada. Her current work looks at indigenous methods of monitoring their "land", the social ecology of human-animal relations, and how the past informs the present. She is an Honorary Research Associate in the Department of Anthropology, University of Aberdeen, Scotland, and oversees research and monitoring for the Wek'èezhìi Renewable Resources Board.



NORTH AMERICA

CANADA

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

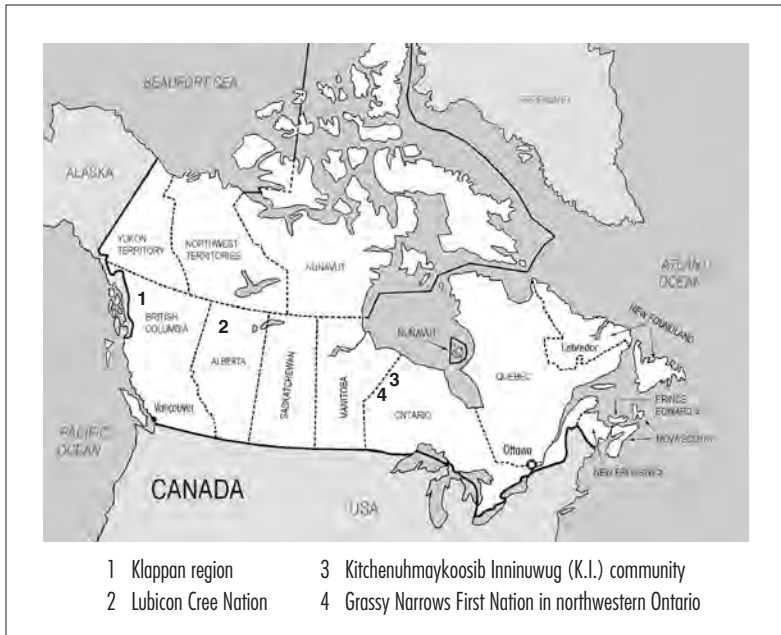
According to the 2006 census, Aboriginal peoples in Canada total 1,172,790, 3.6% of the population of Canada.¹ First Nations (referred to as “Indians” in the Constitution and generally registered under Canada’s Indian Act²) are a diverse group of 698,025 people, representing more than 52 nations and more than 60 languages. About 55% live on-reserve and 45% reside off-reserve in urban, rural, special access and remote areas.

The Inuit number 50,480 people, living in 53 Arctic communities in four Land Claims regions: Nunatsiavut (Labrador); Nunavik (Quebec); Nunavut; and the Inuvialuit Settlement Region of the Northwest Territories.

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

Indian Residential Schools: government apology and TRC

On June 11, 2008, the Prime Minister of Canada offered an official apology in the House of Commons for the physical, sexual and other abuses that had taken place in Indian Residential Schools.³ Indigenous leaders, elders and survivors were present in the House. Many more watched on television and responded all across the country. As required by a court settlement on Indian Residential Schools, the Truth and Reconciliation Commission (TRC) was created. It began



its five-year mandate on June 1. Unfortunately, after the first seven months all three commissioners have resigned. Currently there is a search to replace them.

The severity of the abuses to Aboriginal children is described in the *Report of the Royal Commission on Aboriginal Peoples*:

No segment of our research aroused more outrage and shame than the story of the residential schools. ... the incredible damage – loss of life, denigration of culture, destruction of self-respect and self-esteem, rupture of families, impact of these traumas on succeeding generations, and the enormity of the cultural triumphalism that lay behind the enterprise – will deeply disturb anyone who allows this story to seep into their consciousness.⁴

When offering the government's apology, the Prime Minister did not mention "human rights" in referring to the countless violations during the 140-year period of residential schools. In responding to the apolo-

gy, Grand Chief Edward John emphasized the crucial need for truth and reconciliation in a human rights context:

We cannot afford to continue to be victims because we have not fared well in that place. Rather we seek to explain a difficult and painful chapter in our own history and in the history of our relations with Canada. This impact on our people is real, it is deep, it is multi-layered and it is multi-generational. Remember for a moment that our people are recovering from an aggressive past government policy to kill the Indian in the child.

...

As an integral part of the reconciliation process it is critical for Canada to demonstrate unequivocal respect for the human rights of our peoples as indigenous peoples. The United Nations has adopted a set of minimum standards for relations between a state and indigenous Peoples... reflected in the UN Declaration on the Rights of Indigenous Peoples... This Declaration is the most comprehensive universal international instrument to address indigenous human rights issues, including issues giving rise to policies leading to institutions like residential schools. Numerous provisions in this Declaration will prevent the recurrence of such damaging actions and policies.⁵

UN Declaration on the Rights of Indigenous Peoples

On April 8, 2008, the House of Commons adopted a resolution calling on Parliament and the government of Canada to “fully implement” the standards contained in the UN Declaration.⁶ The House of Commons is the elected chamber of Canada’s Parliament. In adopting this resolution, the House rejected positions expressed by the current minority government at home and abroad. Unfortunately, the minority government continues to ignore the democratic will of Parliament.

In an Open Letter released 1 May 2008, more than 100 legal scholars and experts asserted that there was no legal barrier to prevent Canada from moving ahead with implementation of the UN Declaration on the Rights of Indigenous Peoples.⁷

“The Declaration provides a principled framework that promotes a vision of justice and reconciliation,” the expert letter states. “In our

considered opinion, it is consistent with the Canadian Constitution and Charter and is profoundly important for fulfilling their promise. Government claims to the contrary do a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations." The experts also state, "We are concerned that the misleading claims made by the Canadian government continue to be used to justify opposition, as well as impede international cooperation and implementation of this human rights instrument."

Regretfully, the government of Canada has continued an aggressive strategy to undermine the Declaration and prevent its application in Canada. For example, at the December 2008 world meeting on climate change in Posnan, Poland, it is reported that Canada, Australia, New Zealand and the United States spearheaded the deletion of any references to the UN Declaration or to the term "rights" in relation to indigenous peoples.⁸ These same states "used the phrase 'indigenous people' instead of 'indigenous peoples' with an 's' which is the internationally accepted language". Further, in a press conference in Poland, Canada's Environment Minister claimed that the UN Declaration "has nothing whatsoever to do with climate change".⁹

Such actions serve to unfairly politicize indigenous peoples' human rights, as well as global attempts to respond effectively to climate change. In addition, the above statement by Canada's Environment Minister is inconsistent with international opinion.¹⁰ It detracts from a human rights-based approach to climate change.¹¹

The Assembly of First Nations, which is the national political organization for First Nations, and the British Columbia First Nations Leadership Council hosted a two-day Symposium, "Implementing the United Nations Declaration on the Rights of Indigenous Peoples" in North Vancouver, British Columbia. Sessions included the development of the Declaration, legal analysis of provisions and Canada's opposition, and developing strategies for implementation. The Symposium was attended by 300 indigenous leaders and community members, international experts, legal counsel and technicians working with indigenous organizations, politicians and academics. Such initiatives are critical for human rights education. A publication based on many of the presentations will be published in the summer of 2009.

Canadian Human Rights Act

On June 18, 2008, the Parliament of Canada amended¹² the Canadian Human Rights Act (CHRA) in order to remove an exemption¹³ that prevented First Nations and individuals from filing human rights complaints for any matter under the Indian Act.¹⁴ Previously, the Canadian government had unsuccessfully attempted to amend this human rights law without consulting First Nations or accommodating their concerns.¹⁵ Of specific concern was the government's refusal to accept any interpretative clause that would balance the collective and individual rights of the indigenous peoples and individuals concerned. Ultimately, the minority government had little choice but to reach a compromise.

The Canadian Human Rights Commission can now accept complaints against the federal government dealing with the Indian Act that were previously exempted under the CHRA. In order to allow for the necessary adjustments to be made, the Act provides for a three-year transition period before complaints can be received against First Nations governing authorities.

In September 2008, the Canadian Human Rights Commission accepted a complaint from the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations against Indian and Northern Affairs Canada. The complaint is with regard to the level of on-reserve funding for children and family service providers, which is said to be lower than provincial standards for off-reserve children. The complaint alleges that the federal government's underfunding of First Nations child welfare amounts to racial discrimination under the Canadian Human Rights Act. The response of the federal government was to initiate legal proceedings to challenge the jurisdiction of the Commission and to have the complaint dismissed.

Failure to honour indigenous treaties

In May 2008, the Senate Standing Committee on Aboriginal Peoples released a Special Study on the implementation of comprehensive land

claims agreements in Canada.¹⁶ This Study has been endorsed by the Land Claims Agreements Coalition,¹⁷ which consists of the indigenous signatories of all of the 21 modern treaties (comprehensive land claims and self-government agreements) in Canada since 1975. The Study states:

*there are deep structural reasons for the government's failure to make measurable and meaningful progress on issues affecting Aboriginal Canadians ... [M]uch of this failure rests with the institutional role and mandate of the Department of Indian Affairs and Northern Development Canada (DIAND), a department which is steeped in a legacy of colonialism and paternalism.*¹⁸

The recommendations of the Study include, *inter alia*: 1) "That the Government of Canada abandon its practice of systematically refusing to consent to arbitration and, in collaboration with the Land Claims Agreements Coalition and its present and future members, take immediate steps to develop a new national land claims implementation policy"; and 2) "That the Government of Canada, in collaboration with the Lands Claims Agreements Coalition and its present and future members, take immediate steps to establish an independent body, through legislation, such as a Modern Treaty Commission, to oversee the implementation of comprehensive land claims agreements, including financial matters. ... That the mandate of the Commission be developed jointly with the Land Claims Agreements Coalition and its members."

Criminalizing of indigenous rights defenders: mining in Ontario

As stated in a 2007 UN report, "to defend their rights and express their needs, indigenous people turn to various forms of organization and social mobilization that often represent the only means of making their demands heard. All too often, however, social protest is criminalized, giving rise to additional and sometimes serious human rights violations".¹⁹

The Ontario Mining Act, passed in 1873, is based on a free entry system. Anyone 18 or older can get a prospector's license and stake mineral claims on any land in the province. By its very nature, free entry is incompatible with Aboriginal title. The Supreme Court of Canada's decision in *Delgamuukw* stated: "Aboriginal title encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes..."²⁰ Aboriginal title also includes a jurisdictional component; the First Nation holding the title has the right to decide the use to which the land in question is put. Free entry limits the ability of Aboriginal peoples to make these decisions and this constitutes a potential violation of rights.

In 2008, seven elected leaders and spokespersons from two separate indigenous communities – Kitchenuhmaykoosib Inninuwug (K.I.) in north-western Ontario and the Ardoch Algonquin in eastern Ontario – were sentenced to jail terms for contempt of court. The prosecutions resulted from their peaceful efforts to stop exploration on lands still used for traditional activities. The provincial government had licensed exploration activities without the consent, or even knowledge, of the affected communities. On February 15, Bob Lovelace was sentenced to six months for protesting against uranium mining on traditional Ardoch land. On March 17, six K.I. leaders were sentenced to six months after they violated an injunction, protesting against drilling for platinum.

Amnesty International Canada reports that in both cases the territories were already the subject of long-standing land claims. The granting of uranium exploration permits at Ardoch and platinum exploration permits at K.I. ignored the established constitutional duty to identify and "accommodate" the interests of indigenous peoples in any decision that could impact their rights. Despite this, both mining companies were able to obtain injunctions in favour of continued access to the land and then successfully bring contempt charges against community members who refused to comply.

After Lovelace and the K.I. 6 had served between two and three months in jail, the Ontario Court of Appeal reduced their sentences to time served and ordered their release.²¹ Even though they were not asked to rule on the underlying land dispute, the Appeal judges strongly criticized the failure to exhaust all opportunity to reach a reso-

lution of the dispute before “bring[ing] down the hammer”²² of jail sentences. The Court characterized the disputes as a clash between the communities’ “respectable interpretation”²³ of their rights as indigenous peoples and the fact that “remarkably sweeping” provincial laws for granting mineral exploration permits include no recognition of or protection of these rights. The court concluded that the prosecution of the activists could not help but emphasize the estrangement of Aboriginal peoples generally from the justice system.

In July the provincial government announced plans to reform the Ontario Mining Act and to initiate a new partnership in land-use planning in the northern forest region that includes K.I.. The provincial minister of Aboriginal Affairs was quoted in reports as saying, “We want to avoid that ever happening again.”²⁴ He promised that “a very, very significant shift” in provincial policies would ensure “there will be no situation where exploration will take place on traditional territories or sacred burial grounds without the consent of First Nations, without the consultation of First Nations.”

While indigenous peoples’ organizations have welcomed the promised reform of the Mining Act, they have also made it clear that much broader and more urgent reform is needed to ensure a just resolution to the conflict between corporate rights and indigenous rights exemplified by the experience of K.I. and Ardoch.

Lubicon Cree²⁵

The Lubicon Cree are a nation of 500 people in the northern part of the province of Alberta. The Lubicon were overlooked when the Canadian government negotiated treaties with other First Nations at the end of the 19th century. Despite having not negotiated legal access to Lubicon lands, the federal and Alberta governments have treated Lubicon land as Crown land. Government licensing of large-scale oil and gas development starting in the late 1970s led to the collapse of the traditional economy and ways of living on the land. The result has been widespread impoverishment and devastating levels of disease and illness associated with poverty.

Over the past two decades, United Nations human rights bodies have repeatedly raised concerns over Canada's failure to respect and uphold the Lubicon people's rights in the face of oil and gas development on its unceded lands.

In an August 15, 2008 letter to Canada's representative to the UN in Geneva, the UN Committee on the Elimination of Racial Discrimination questioned whether TransCanada Corporation's billion dollar gas pipeline across the Lubicon traditional territory could be authorized by the Government of Alberta or the Alberta Utilities Commission without prior Lubicon consent. On October 10, the Alberta Utilities Commission approved the building of the massive TransCanada gas pipeline despite the absence of any agreement with the Lubicon.

The UN's repeated and unanswered calls for a just resolution of the Lubicon Lake Cree land dispute highlight Canada's disturbing failure to uphold international human rights standards.

Indigenous women

In November, the UN Committee on the Elimination of Discrimination against Women expressed concern that "hundreds of cases involving aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished."²⁶

Concluding its latest review of Canadian compliance with the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Committee has urged all levels of government to "give priority attention to combating violence against women" including by establishing a comprehensive national plan of action to address the social and economic factors that lead to increased risk for indigenous women and women from ethnic minorities.²⁷

The Committee made a number of other important recommendations aimed at improving Canada's human rights record for Aboriginal women, including:

- proactive measures to address the shortage in shelters and services for Aboriginal women who are victims of violence;

- measures to address the disproportionate number of Aboriginal children being put in state custody;
- independent oversight of the correctional system and comprehensive and accessible redress measures for women who have experienced violations in the correctional system;
- immediate action to address the discriminatory provisions of the Indian Act in the transmission of status to future generations; and
- greater efforts to provide a sufficient number of affordable quality childcare spaces and affordable and adequate housing options, including in Aboriginal communities.

Other notable developments in 2008

On December 5, 2008, the province of British Columbia announced it would amend Shell Canada's petroleum and natural gas tenure license. The amendment will stop Shell from exploring and developing coal bed methane (CBM), a form of natural gas extracted from coal beds, in the Klappan region. The Klappan is a region in north-western BC that is home to the headwaters of three major salmon bearing rivers - the Stikine, the Skeena and the Nass. Amnesty International Canada reports that the Province's announcement is a necessary step toward ensuring the Tahltan people have the time they need to develop their own land-use plan and address potential impacts of major development projects on their communities.

Multinational paper company Boise Inc. will stop purchasing wood fiber from the traditional territory of the Grassy Narrows First Nation in north-western Ontario, until that community has given its consent to logging. Amnesty International had called for companies logging at Grassy Narrows or buying wood and wood fiber from the territory to "work toward a voluntary suspension of logging in the Grassy Narrows traditional territory and/or establish alternative sources for wood fiber, taking into consideration the fact that the people of Grassy Narrows have not given their consent to large-scale logging in their traditional territory." In a letter dated February 27, 2008, Boise Inc. states that it has decided to "honor the request" of the Grassy Narrows

Chief and Council and “stand in support of Amnesty International’s recommendation.”

The Specific Claims Tribunal Act (Bill C-30) came into force in 2008.²⁸ The legislation creates an independent tribunal with the power to make binding decisions on the validity of and compensation for specific land claims. In tandem with the companion Political Agreement that was signed on November 27, 2007, this initiative will speed up the process of negotiating specific claims and will also provide First Nations with an independent body – a tribunal with binding authority on settlements of up to \$150 million – to hear claims that cannot be resolved through negotiation.²⁹

Supreme Court of Canada (SCC) decision in *R v. Kapp*.³⁰ The Court has indicated that the federal Aboriginal Fisheries Strategy is *not* a race-based fishery and is constitutional. This confirms that it does not offend equality principles for the government to take special measures to ensure the effective exercise of indigenous rights. □

Notes

- 1 Statistics Canada. 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 For text of Prime Minister’s apology, see *House of Commons Debates*, No. 110 (11 June 2008).
- 4 Royal Commission on Aboriginal Peoples, (Ottawa: Canada Communication Group, 1996), vol. 1 at 601-602.
- 5 Grand Chief Edward John, “From Apology to Action: A Response to the Residential Schools Apology”, presented June 11, 2008 at the Chief Joe Mathias Centre, Squamish Nation, British Columbia.
- 6 The vote was 148-113 in favour of the Motion: see *House of Commons Debates*, No. 074, (8 April 2008) 4656. The text of the Motion is contained in House of Commons, Status of Women Standing Committee, “Third Report of the Committee (United Nations Draft Declaration on the Rights of Indigenous Peoples)” Sessional Paper No. 8510-392-55 (13 February 2008).

- 7 "UN Declaration on the Rights of Indigenous Peoples: Canada Needs to Implement This New Human Rights Instrument" (1 May 2008), online: CFSC <<http://www.cfsc.quaker.ca/pages/documents/UNDecl-Expertsign-onstatement-May1.pdf>>.
- 8 Victoria Tauli-Corpuz (Executive Director, TEBTEBBA and Chair, UN Permanent Forum on Indigenous Issues), "International Human Rights Day 2008: A Sad Day for Indigenous Peoples", Press Statement, Poland (10 December 2008). The references to indigenous peoples and the Declaration were removed from United Nations Framework Convention on Climate Change (Subsidiary Body for Scientific and Technological Advice (SBSTA)), "Reducing emissions from deforestation in developing countries: approaches to stimulate action: Draft conclusions proposed by the Chair", FCCC/SBSTA/2008/L.23 (10 December 2008), online: FCCC <<http://unfccc.int/resource/docs/2008/sbsta/eng/l23.pdf>>.
- 9 Bill Curry and Martin Mittelstaedt, "Ottawa's stand at talks hurting native rights, chiefs say", *Globe and Mail* (12 December 2008) A10 (quoting Environment Minister Jim Prentice).
- 10 See, e.g., Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61 (15 January 2009).
- 11 Permanent Forum on Indigenous Issues, *Report on the seventh session (21 April - 2 May 2008)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2008/43, E/C.19/2008/13.
- 12 See *An Act to amend the Canadian Human Rights Act* (Bill C-21), Statutes of Canada 2008, c. 30, assented to 18 June 2008.
- 13 *Canadian Human Rights Act*, Revised Statutes of Canada 1985, c. H-6, s. 67: "Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act."
- 14 Revised Statutes of Canada 1985, c. I-5.
- 15 See, e.g., "Assembly of First Nations, Native Women's Association of Canada call for full consultation before the repeal of Section 67 of Canadian Human Rights Act", News release, December 13, 2006: "Both the Assembly of First Nations and the Native Women's Association of Canada (NWAC) ... support the repeal ... but only after proper consultation."
- 16 Parliament of Canada - Standing Senate Committee on Aboriginal Peoples, *Honouring the Spirit of Modern Treaties: Closing the Loopholes*, May 2008.
- 17 Land Claims Agreements Coalition (LCAC), "Universal Periodic Review of Canada: Submission of the Land Claims Agreements Coalition (LCAC) to the United Nations Human Rights Council September 8, 2008", online: <http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/LCAC_CAN_UPR_S4_2009_LandClaimsAgreementsCoalition_JOINT.pdf>.
- 18 Parliament of Canada - Standing Senate Committee on Aboriginal Peoples, *Honouring the Spirit of Modern Treaties: Closing the Loopholes*, May 2008, pg viii.
- 19 UN General Assembly, *The situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General* (Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people), UN Doc. A/62/286 (21 August 2007) at para. 11.
- 20 *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, para. 117.

- 21 *Frontenac Ventures Corp. v. Ardoch Algonquin First Nation*, 2008 ONCA 534, online:QL.
- 22 *Ibid.*, para. 65.
- 23 *Ibid.*, para. 62.
- 24 Kerry Gillespie, "Ontario First Nations demand firm right to say 'no' to mining developments", *Toronto Star* (16 July 2008).
- 25 Adapted from Amnesty International Canada et al, "Open Letter to the Government of Canada and the Government of Alberta: Uphold United Nations Recommendations on the Rights of the Lubicon Cree", November 18, 2008.
- 26 Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Canada*, CEDAW/C/CAN/CO/7 (7 November 2008), para. 31.
- 27 *Ibid.*, para. 30.
- 28 *Specific Claims Tribunal Act*, Statutes of Canada 2008, c. 22, assented to 18 June 2008, and came into effect October 16, 2008.
- 29 Assembly of First Nations Bulletin, Bill C-30 – The *Specific Claims Tribunal Act* May 2008.
- 30 *R. v. Kapp*, 2008 SCC 41 (June 27, 2008).

Jennifer Preston is the Programme Coordinator for Aboriginal Affairs for Canadian Friends Service Committee (Quakers). Her work focuses on international and domestic strategies relating to indigenous peoples' human rights. This includes the United Nations Declaration on the Rights of Indigenous Peoples. In this context, she has worked closely with indigenous and state representatives as well as human rights organizations in various regions of the world.

THE UNITED STATES

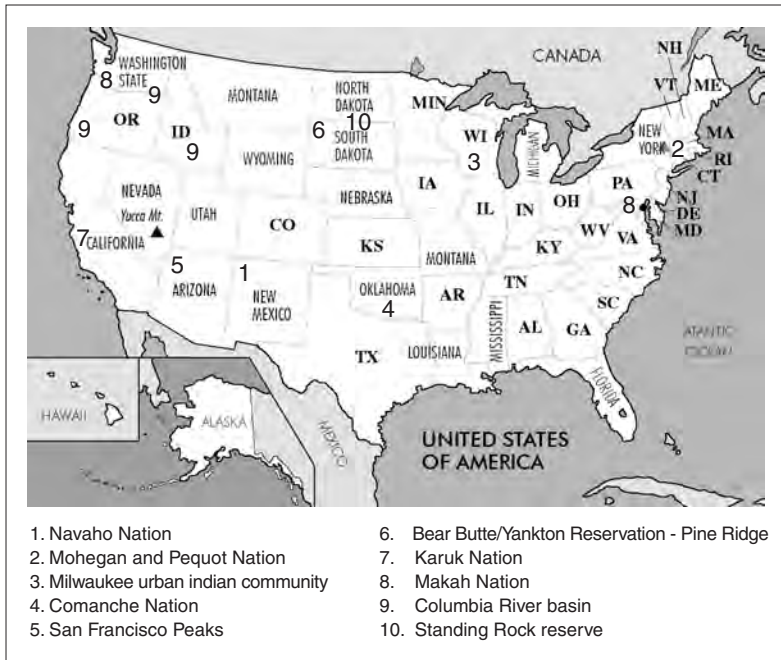
According to the United States Census Bureau 2007,¹ 2,151,322 people in the United States (minus Alaska) identified as Native American only, and 4,006,160 people identified as Native American in combination with another ethnic identity. These numbers add up to 0.75% and 1.4% of the total population respectively. There are currently around 335 federally recognized tribes in the United States (minus Alaska). Tribal governments are sovereign on reservation and trust lands. More than half of American Indians live off-reservation, many in cities.

American Indian law includes individual treaties and federal Indian law, which is in flux and often dependent on individual U.S. Supreme Court decisions. Tribal governments' sovereignty is limited by plenary power of the U.S. Congress, which can unilaterally change historical treaty articles. The government has treaty obligations, stemming from historical land sales by Indian nations to the federal government. Separate federal agencies, such as the Bureau of Indian Affairs and the Indian Health Service, are responsible for the federal government's trust responsibilities to Indian tribes. The political status of American Indian nations in relation to the United States has been defined as "that of a ward to his guardian."² This is best seen in land ownership. Some of the lands that are the property of American Indians are held in trust by the government; the government holds the title to the land, and is supposed to manage or at least extend oversight over the land's use on behalf of individuals or tribes.

While there are widespread differences between indigenous nations, as a whole, American Indians have a lower life expectancy and higher poverty rates than the average U.S. citizens. Some of the main challenges they face are related to trust lands and sovereignty, unemployment, housing shortages, health problems and youth suicides.

The most pressing issue for Native Americans at the end of 2008, just as for all Americans, was the state of the national economy. Reservation economies are mostly dependent on the national economy. On many rural reservations, most jobs are provided by either tribal or federal government agencies. With the wars in Iraq and Afghanistan eating into the federal budget, the Bush administration has consistently cut the budget for the Bureau of Indian Affairs (BIA) over the past years, and many tribal programs run on government grants. Most non-governmental jobs still depend on contracts from non-Indian businesses; with the national economy entering a recession, some of these service jobs are the first ones to be cut. Unemployment on rural reservations runs as high as 80%. In 2005, 25.3% of Native Americans lived in poverty. Every job lost in this situation means a traumatic loss of income for the whole community. The economy is also affecting those tribes that operate Indian casinos. While the Navajo Nation has opened its first casino in Church Rock near Gallup, New Mexico, many casinos, among them two of the largest ones, Foxwood and Mohegan Sun in Connecticut, have seen revenues from slot machines drop. The two casinos have cut over a thousand jobs.

Hopes for a better economy in the near future are attached to the election of Barack Obama (Democrat) as President of the United States in 2009. His main opponent, John McCain (Republican) had served as the Chairman of the Senate Committee on Indian Affairs for many years and enjoys a good reputation in Indian communities. This might explain why, while most Native communities voted for the Democrat's candidate, the vote was more split than it had been in 2004. Some American Indian leaders feared, however, that a McCain administration would have meant even fewer resources for Indian Country, since McCain aggressively campaigned against legislative monetary earmarks, which provide much needed adjustments to the federal budget on American Indian affairs. Obama, who campaigned on the promise that he would restore federal-tribal relationships, will face several hurdles in this task. The BIA is leaderless again, after its director, Assistant Secretary of the Interior Carl Artman, resigned in May after only around a year in the position (see *The Indigenous World 2008*). Relationships between tribes and the BIA have worsened over the past years because the agency has largely refused to recognize tribes, which



would allow them to be eligible for federal funds, among other things, and to turn land into trust status, which would place it under tribal control. Recognition is an extremely long and burdensome process, in which tribes petitioning for recognition have to prove, for example, that they have continuously existed as a distinct community, have been regarded as an American Indian entity since 1900, and have had their own political leadership. Most recognition processes take more than ten years. The land into trust process has been made difficult because it affects local and state land taxes and because tribes can build casinos on trust lands.

Debates about the worsening economy have also again prevented Congress from passing the Indian Health Care Improvement Act (see *The Indigenous World 2008*). President Bush has tried to cut the Indian Health Service (IHS) budget for urban Indian health programs, which makes up only one percent of the total IHS budget, for the third year in a row. While Congress restored the budget, IHS cut its contract to the

last urban Indian clinic in Wisconsin in September. Several tribes have declared states of emergency over the status of health care in their communities this year as money for services was running out.

Sacred sites and land issues

The Comanche Tribe won a rare victory in a lawsuit over a sacred site under the Religious Freedom Restoration Act (RFRA) and the National Historic Preservation Act. The RFRA was passed in 1993 to bolster the American Indian Religious Freedom Act (AIRFA), passed in 1978. The Comanche Tribe sued the U.S. Army because the army wanted to build a warehouse at the foot of Medicine Bluffs on Fort Sill, Oklahoma. The warehouse would have obstructed religious ceremonies at this sacred site. Federal Judge Timothy DeGiusti issued a preliminary injunction against the army in September. In November, the army applied for a motion to drop the case because it was going to move the construction site away from Medicine Bluffs. The Comanche have opposed the motion, as they want the trial to continue. Only if that happens may the suit lead to a decisive outcome that could not only permanently protect Medicine Bluffs but could also serve as a precedent for other cases over sacred sites. A victory for the protection of sacred sites would be much needed.

In 2007, hopes for the protection of sacred sites had been raised by a ruling on the expansion of a ski resort in the San Francisco Peaks in Arizona (see *The Indigenous World 2008*). These hopes were crushed in 2008 with the full 9th Circuit Court of Appeal's reversal in the case. The full court held that the spread of artificial snow made with wastewater did not mean the Navajo and others could not continue their religion or hold the mountains sacred anymore. The tribes still had access to the mountain and no springs, plants, or liturgy were polluted, destroyed or modified by the development, the court held. "[T]he sole effect of the artificial snow is on the Plaintiffs' subjective spiritual experience," the majority opinion reads. "That is, the presence of the artificial snow on the Peaks is offensive to the Plaintiffs' feelings about their religion and will decrease the spiritual fulfillment Plaintiffs get from practicing their religion on the mountain. Nevertheless, a gov-

ernment action that decreases the spirituality, the fervor, or the satisfaction with which a believer practices his religion is not what Congress has labeled a 'substantial burden' ... on the free exercise of religion."³ Thus, the decision has raised the burden of proof for sacred site cases; only activities that would absolutely prevent any religious activities, no matter how much they would otherwise impede them, would meet these standards. The court specifically cited the 1988 Lyng case, which dealt the first blow to the American Indian Religious Freedom Act and caused Congress to pass the supposedly stronger Religious Freedom Restoration Act. It would, of course, be interesting to see how the court would have ruled if a company had planned to create a wastewater lagoon next to a cathedral or the Washington Monument.

In South Dakota, conflict continues over the environment of Bear Butte, a sacred site for the Lakota and Northern Cheyenne. Bear Butte is located near Sturgis, the place of an annual motorcycle rally that attracts thousands of people. Local developers have built bars outside of town and close to the mountain, and tribes have raised concerns over the noise and activities disturbing religious practices. In 2004, a proposed shooting range close to the site was abandoned (see *The Indigenous World* 2005). The governor of South Dakota, Mike Rounds (Republican) has proposed buying an easement on lands around the butte to prevent entertainment developments. The state legislature, however, objected to this twice in 2008, arguing that the state should not be involved in easements on lands that would prohibit development projects. The easements would allow the land's continued agricultural use but would prevent any other uses for it.

The 9th Circuit Court of Appeals also ruled in a case centering on aboriginal title. In the United States, an American Indian person can claim aboriginal title for land within the federal domain if he or she can prove continuous residency of a specific parcel of land by direct ancestors starting before the time that the land was withdrawn from settlement. In this case, *United States v. Lowry*, the claimant occupied a parcel of land in the Klamath National Forest next to an allotment of a direct ancestor; her own family had resided within the area but apparently without holding an official allotment and not on the exact parcel where she later built a residence. Lowry, a Karuk from northern Cali-

ifornia, contended that the family had always treated her claimed property as if it were part of their allotment and tried to shift the burden of proof to the government to show that she would not qualify for aboriginal title. The court rejected this and considered "that if we were to place the burden on the government, we would create a presumption that Indians have an individual aboriginal claim until the United States proves otherwise. Such a presumption might prove unworkable in a number of ways."⁴ With a narrow interpretation of the law and by placing the burden of proof on Indian tribes and individuals, the government makes it almost impossible to claim aboriginal title.

Ecological issues

In their trial over the killing of a whale without tribal or federal permit (see *The Indigenous World 2008*), two members of the Makah tribe in Washington were sentenced to prison terms. The federal court sentenced the two leaders to three and five-month sentences respectively; all five men involved in the incident were placed on probation. The sentences have been appealed.

The Umatilla, Warm Springs, Yakama, Colville and Shoshone-Bannock Tribes reservation governments in Oregon, Washington and Idaho signed an agreement with the federal government over a lawsuit to improve salmon runs in the heavily dammed Columbia River basin. The Columbia River Basin Fish Accords mark a landmark agreement between the tribes, the states and federal agencies that will allow for coordinated habitat improvements and onsite resource management.⁵ The settlement establishes a ten-year plan that will provide almost US\$900 million to the tribes. The Nez Perce tribe in Idaho, which also has treaty rights to the Columbia River, has opted out of the plan. The tribe sees the removal of the dams as the best option to restore the salmon runs in the river basin and plans to continue its litigation to that end.

A lawsuit over a planned hog farm on the Yankton Reservation in South Dakota was denied in June. The hog farm is planned to be built on private lands within the reservation, only two miles from the tribe's Head Start facility for young children. Tribal members concerned over

water and air pollution from the operation had filed the lawsuit to prevent the construction. Indian demonstrators tried to block access to the site, which is only possible over Indian lands, but were arrested by state troopers and county sheriffs, who raised concerns over jurisdictional limits. A judge found that, although the building site lies within the boundaries of the reservation, it is not under tribal jurisdiction.

The Navajo Nation's Dine Power Authority (DPA) and its partner, Sithe Global Power, received an air quality permit from the Environmental Protection Agency (EPA) for its proposed Desert Rock coal power plant in July (see *The Indigenous World* 2008). The permit was challenged by the state of New Mexico and environmental groups, including Diné Citizens Against Ruining our Environment (CARE). The complex questions of economic development, ecological conservation and cultural values this project raises and the situational alliances it has created – between the Navajo Nation and a global power corporation on one hand, and between grassroots activists and the state of New Mexico on the other – are a good example of the complexities in current indigenous issues in the United States.

Law enforcement

The Centers for Disease Control and Prevention (CDC) issued a report in February that supports the report by Amnesty International on the high occurrence of intimate partner violence in indigenous communities (see *The Indigenous World* 2008). According to the CDC survey, 39 percent of Native women and 19 percent of Native men are victims of intimate partner violence. This violence is often related to the absence of any meaningful law enforcement efforts directed toward such crimes in Native communities. Jurisdiction is complicated and often uncertain, and police agencies, whether tribal or federal, are underfunded and overworked. In August, more than 30 officers (about half) of the Oglala Sioux Tribe's police force on the Pine Ridge reservation in South Dakota resigned, mostly for these reasons. The BIA temporarily sent 35 of its own agents to support law enforcement efforts on the reservation, which has a very high crime rate. In a related move, the BIA sent law enforcement officers to Standing Rock reservation in North

and South Dakota for a few months to create a sustained environment in which violations of the law could be prosecuted. With the influx of BIA police officers, the total police force went from nine to 29. Operation Dakota Peacekeeper, as the federally funded effort was called, saw much success.

The Senate Indian Affairs Committee held hearings on the refusal of federal attorneys to prosecute crimes in Native communities. 58% of serious assaults, 76% of sex crimes involving adults and 72% of sex crimes involving children in Indian Country went unpunished between 2004 and 2007. Federal attorneys have declined to prosecute 62% of all cases on Indian reservations. While some federal attorneys share data with tribes in their areas, others refuse to provide data on why these crimes are left unprosecuted and deny that there is any problem with the criminal justice system on reservations. As the Denver Post reported, some federal attorneys saw their interests in fighting crime in Indian communities questioned by the White House. Apparently, high officials in the Justice Department saw no reasons for federal attorneys to spend their energies in that way and were even unaware that the federal government had jurisdiction and the responsibility for law enforcement over major crimes on Indian lands.⁶

Trust monies

Judge Robertson, who replaced Judge Lamberth in the twelve-year old Cobell lawsuit over trust monies⁷ the government owes individual American Indians in 2006 (see *The Indigenous World 2007*), tried to bring the lawsuit to an end in 2008. In January, he ruled that the government could not provide adequate historical accounting numbers for Individual Indian Money (IIM) trust funds. The breach of trust by the government, who is responsible for collecting lease and other land-use moneys for lands held in trust, Robertson wrote, was "irreparable". This decision seemed to favor the plaintiffs, who have long argued that the mishandling and destruction of documents by the government prevents an historical accounting. In August, however, Judge Robertson surprised the plaintiffs in his final judgment on the case. He ruled that the government owed Indian beneficiaries US\$455.6 million. The

plaintiffs had argued for US\$46 billion. Eloise Cobell, the lead plaintiff in the case, appealed the decision. Robertson had not included any interest on the mishandled trust monies in his decision.

In the meantime, Judge Robertson is weighing the next steps in a series of new lawsuits by tribes seeking an historical accounting of their trust monies. The Native American Rights Fund, who wants a class action lawsuit, has pointed out that the tribes simply want to re-view accounting numbers for now. Should money damages become involved, the tribal trust money lawsuit could dwarf the Cobell case. The Navajo Nation will have the opportunity to re-argue a trust money case before the Supreme Court in 2009. The case involves alleged corruption in the signing of a coal mining lease. Ronald Reagan's Secretary of the Interior had met behind closed doors with a close friend and lobbyist for Peabody Energy, and then refused to make an adjustment to the royalty agreement that the Navajo Nation says cost them US\$600 million. In 2003, the Supreme Court argued that the tribe did not demonstrate how this violated the trust relationship, but the Federal Circuit Court of Appeals has now reopened the case.

The Supreme Court and American Indians

In its deliberations over whether tribal courts have jurisdiction in a dispute between a company that is majority Indian owned and a non-tribal bank, an idea the Supreme Court ultimately denied, Chief Justice Roberts unwittingly showed that he does not understand the special legal situation of American Indians. In the context of tribally-owned companies, he asked the attorney arguing the case if a corporation formed by Justices Scalia and Alito, both of whom have Italian ancestors, would be considered an Italian corporation. Scalia, taking up the cue, then asked whether such a company would qualify for special loan guarantees, as American Indian-owned companies do. Such comparisons between ethnic identities of immigrants and their descendants and American Indian legal identities as dual citizens of the United States and their indigenous nations have long been used to deny Indian rights. They are, however, shocking coming from the highest justices in the land, the last guarantors of these rights. □

Notes and references

- 1 United States Census Bureau, 2007: *The American Community – American Indians and Alaska Natives: 2004*. American Community Survey Reports. Issued May 2007
- 2 *Cherokee Nation v. Georgia*. U.S. Supreme Court, 1831
- 3 *Navajo Nation v. U.S. Forest Service*. 9th Circuit Court of Appeals, 2008
- 4 *United States v. Lowry*. 9th Circuit Court of Appeals, 2008
- 5 See <http://www.salmonrecovery.gov> and <http://www.critfc.org>
- 6 See the special reports at <http://www.denverpost.com/lawlesslands>
- 7 Trust monies are monies the federal government collects, and has collected historically, for the use of trust lands. These monies can come from the lease of lands as grazing range, from oil, gas, or mineral leases, or timber and other resource exploitation. The BIA, which holds the title to these lands that are owned by individuals, collects the lease monies and deposits the amounts due each owner in an Individual Indian Money (IIM) trust account. The government is then supposed to provide balances of these accounts to their owners. Because of missing records and poor datakeeping, the government lost control over these accounts. In 1992, the BIA admitted that it was “neither possible nor cost-effective” to reconcile the accounts. Some – or a lot, depending on the perspective – of the monies had disappeared. See <http://www.gao.gov/new.items/d02970t.pdf>

Sebastian Felix Braun is a cultural anthropologist and is assistant professor with the Department of Indian Studies at the University of North Dakota. He is author of “Buffalo Inc. American Indians and Economic Development” and co-author of “Native Peoples of the Northern Plains. An Interdisciplinary Introduction to American Indian Studies”.



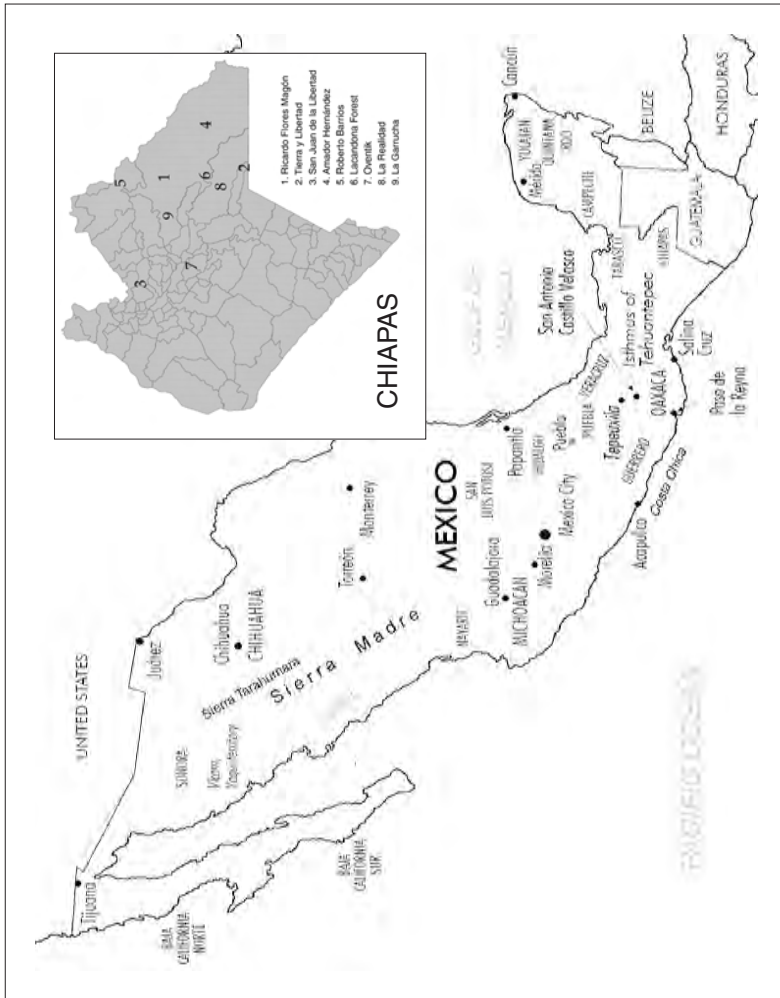
MEXICO AND
CENTRAL AMERICA

MEXICO

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

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

The country ratified ILO Convention 169 in 1990 and, in 1992, Mexico was recognised as a pluricultural nation when Article 6 of the Constitution was amended. In 1994, the Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional* - EZLN) took up arms in response to the misery and exclusion being suffered by the indigenous peoples. The San Andrés Accords¹ (add a footnote with some information on the Accords) were signed in 1996 but it was not until 2001 that Congress approved the Law on Indigenous Rights and Culture and, even then, this did not reflect the territorial rights and political representation enshrined in the San Andrés Accords. More than 300 challenges to the law were rejected. From 2003 onwards, the EZLN and the Indigenous National Congress (*Congreso Nacional Indígena* - CNI) began to implement the Accords in practice throughout their territories, creating autonomous indigenous governments in Chiapas, Michoacán and Oaxaca. Although the states of Chihuahua, Nayarit, Oaxaca, Quintana Roo and San Luís Potosí have state constitutions with regard to indigenous peoples, indigenous legal systems are still not fully recognised.²



Territorial dispossession and indigenous migration

The indigenous peoples and communities live, resist and recreate their ways of life while at the same time experiencing a gradual loss of their own traditions and a loss of control over their territories. During 2008, the Wixarika people kept up their struggle to defend their territories in the face of the construction of a highway passing through the community of Tuapuri in Santa Catarina Cuexcomatlán, Jalisco state.³ The Nahua people suffered the death of a community leader defending a thousand hectares of community land in Santa Maria de Ostula, Michoacán state.⁴ The mining revival made itself felt on Nahua territory during 2008, in the Sierra Sur communities between the states of Jalisco, Michoacán and Guerrero, where the Italian transnational Hylsa-Ternium has been exploring for and extracting minerals, causing huge destruction of the mountainous landscape and contamination of the waters and subsoil.⁵ The concentration of military and police forces around the so-called “drugs war” has turned a number of rural and indigenous regions into veritable territories under siege, involving unprecedented levels of violence and insecurity and giving rise to the criminalisation of popular and ethno-political movements.

While conflicts around land and natural resources escalated in the face of the advancing “silent colonisation” of Indian territories, the Presidents and Heads of State of Mexico, Central America and Colombia signed the Villahermosa Declaration in June 2008, providing a new version of the regional *Plan Puebla Panama* megaproject, now the Project for the Integration and Development of Meso-America (or *Proyecto Mesoamérica*), highlighting a trend towards transnational capital intervention, ever weaker State regulation and plans to dispossess the indigenous and Afro-American peoples of their territories.

The exodus of indigenous and peasant farmers from their lands continued throughout the year, with an estimated half a million Mexican indigenous people now living in the United States.⁶ Once transformed into agricultural labourers, in these desperate times of economic recession, they scatter and regroup in exile, their clandestine “Indianness” an oppressive weight on their shoulders.⁷ It is very important for indigenous immigrants in the US to send money home to Mexico, and these funds represents an economic opportunity for their families, who can replace their adobe hut for a concrete house, for example. These remittances currently form an important source of income for Mexico’s poor. The US\$ 25,145 million sent home in 2008⁸ was

in fact the most effective flow of funding into the country so far, greater than any government subsidy or development cooperation fund.

Eight new Protected Natural Areas covering 1,109,639 hectares were decreed in 2008.⁹ Deserts, lakes, mountains, forests and woods of all kinds, along with marine ecosystems, are now inaccessible to their previous inhabitants, converted into privately-operated reserves or tourist sites. Government bodies and national and international NGOs of a conservationist persuasion obtain funding for programmes in these areas but show no regard for the historic role played by indigenous peoples in conserving and restoring the ecosystems, arguing instead for their eviction or confinement.

During 2008, movements such as: The Countryside Can Take No More, the Corn Defence Network, Oil Defence, the Zapatista National Liberation Army and The Other Campaign, the National Indigenous Congress, the Mexican Network against Dams, the Anti-mining Network, the Resistance Movement against High Electricity Costs and networks of indigenous communicators kept up and “transnationalised”¹⁰ the low-key and solitary struggles taking place within the confines of cooperatives and communities throughout Mexico. The indigenous peoples are involved in these at all levels.

Geography of dispossession

Those peoples who live in resource-rich areas remained the focus of an ongoing dispute with the interests of capital throughout the year. Forested hillsides, sites of carbon capture and water absorption, are now seen in terms of their equivalent tonnes and cubic metres, swelling the coffers of companies that have made fuel their life blood. During 2008, the Ford Motor Company, the Grand Prix, the Coca-Cola Company and CEMEX all continued to offer to preserve these “gardens”, making themselves out to be the guardians of these spacious territories, of these exponential “commodities” on carbon markets and in green funds, the markets of the future.¹¹ During the year, indigenous peoples were accused of ecocide because they were using trees essential to their daily life. A people that demands its right to look after the forest is not tolerated. As soon as they try, police forces and paramilitary groups are organised to evict them, and, in the end, silence their demands.¹² The programme known as *Proárbol* provides support for crops of varying profitability, all non-indigenous mono-crops that sideline traditional crops such as maize and beans, the mainstay and foundation of rural nutrition.¹³

Decrees that expropriate cooperative and communal lands on the basis of regulations that alienate plants and animals, de-linking them from their environment and from traditional indigenous knowledge, go hand in hand with derisory sums of compensation or payment. At the same time, the Lacandona Forest is being increasingly highly prized while its Tzeltal, Chole and Tzotzil inhabitants are opposed to this. In 2008, this conflict intensified in the Montes Azules region of the Lacandona Forest, with the eviction of the communities of El Semental and Nuevo Salvador Allende by the federal police and army.

Lower down, on the hillsides, according to experts, the soil in the areas used and cared for by peasant farmers, converted into terraces for growing maize, beans, squash and chilli, remains fertile. This system, as endemic as the forests themselves, forms an area of experimentation in which peasant farmer knowledge recreates and promotes food biodiversity using local genetic varieties, all indissolubly linked to the indigenous way of life and knowledge. But this year, at the same time, the implementing regulations for the Law on Biosecurity of Genetically Modified Organisms (GMO)¹⁴ were published, authorising the experimental planting of GM crops in Mexico. Monsanto and Golden Harvest sowed GMO in Chihuahua¹⁵ and, in November, research results were published confirming that Mexican maize had been genetically contaminated.¹⁶

The valleys are also areas in which archaeological ceremonial sites are imposingly maintained. Temples are now used as backdrops to commercial folkloric shows in Tulum, Chichen Itza, El Tajin, Palenque and, this year, Teotihuacan.¹⁷ Beware anyone who tries to object and claim their ancestral right to look after these sites, or to call themselves the heirs of these glorious peoples. This year, the gravest insult to the Indian peoples in this regard took place in Chinkultik, Chiapas: Tojolabal people were killed for trying to look after their nearest archaeological site.¹⁸ Ecotourism - another environmental service so popular in accustomising the peoples and communities to the idea of the profitability of scenic beauty - forces the communities to do away with their privacy and open up their knowledge to the tourist industry, an area in which the indigenous people have no possibility of income.¹⁹

The *Lubi* (wind in the Zapotec language) or *Ik* (wind in the Mayan language) was mastered by clean development mechanisms being implemented on the Mexican plains in 2008. Wind farms that will produce energy not for the general public but to supply and ensure the self-sufficiency of the polluting companies themselves. Such was the case in 2008 of the Cemex company, which will hold rights of use over the EURUS wind farm. All

against a backdrop of cooperative assemblies and community agreements destroyed in order to expropriate the land.²⁰

The indigenous peoples and communities are faced with the challenge of reversing or bearing witness to the exhaustion of their lands. PROCEDE and PROCECOM (programmes for the certification of cooperative and communal lands, respectively) are imposed programmes that force land to take on commercial risks through their privatisation. The alternative for the indigenous people is to give up and see what their plots can offer them, plots treated with increasingly inaccessible agrochemicals and hybrid seeds. The *Environmental Services Operation Programme* was established during 2008 as a legal way of entering territories owned by peasant farmers under the pretext of sustainable development.²¹ A commercial environmental rationale that provides no information on and is opposed to other methods of land management. It was precisely in this year that an indigenous Mixtec from Oaxaca received the Alternative Nobel Prize for Ecology.²² Along with a group of community members, he forms part of the Centre for Integral Mixtec Peasant Development (Cedicam), which transformed the lunar landscape of their native Highland Mixtec into a cultivated and wooded area.

Autonomy and indigenous meetings during 2008

The indigenous peoples are demanding recognition of their collective rights, and specifically their right to self-determination. The coverage given to the UN Declaration on the Right of Indigenous Peoples – including its translation into several native languages – has not resulted in the adoption of new legal instruments at federal or state level, the state sheltering behind the non-binding nature of the Declaration. Although five of Mexico's states have incorporated indigenous rights' initiatives into their local constitutions, indigenous legal systems are still not fully recognised,²³ nor is the right to self-determination.

Within the Consultative Council of the National Commission for the Development of Indigenous Peoples (CDI), made up primarily of indigenous people, in line with the law creating this commission, indigenous demands to form part of the government body have intensified, without any positive result so far. Moreover, complaints of discrimination have been made by some twenty representatives of the Consultative Council, holding the CDI's authorities responsible for manipulating the meetings to exclude them.

Two years into the current government, the 2006-2012 National Development Programme for Indigenous Peoples, which includes requests and proposals from the grassroots communities themselves, has still not been made official.

The indigenous movements are seeking the release and control of their own territories. Some through legal recognition, others – having given up hope of this – through their *de facto* management. *De facto* autonomies are flourishing in all corners, involving not only the defence and control of their territories but a different logic, a different way of being, thinking and organising life.²⁴

These autonomies are establishing alliances with all the country's "rebel communities" (*rebeldía*), as could be seen in December 2008 with the holding of the First World Festival of Dignified Rage, an international meeting organised by the Zapatista movement, the National Indigenous Congress and the Other Campaign in the context of the 25th anniversary of the founding of the EZLN (*Ejército Zapatista de Liberación Nacional*) and the 15th anniversary of the Zapatista uprising. Thousands of people, first in Mexico City and later in Zapatista territory, culminating at the Tierra Cideci University in San Cristóbal de las Casas, demonstrated their overwhelming support for national and international indigenous struggles.

The First Indigenous Sports Meeting also took place in December 2008, organised and promoted by an indigenist policy and held in Tuxtla Gutiérrez, the capital of Chiapas state, bringing together nearly 3,000 athletes from more than 17 of the country's states. Young indigenous people were thus able to meet in a different forum and strengthen their national networks.

Two international associations of indigenous affairs held their meetings in Mexico in 2008. The indigenous advisory group to the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean met in Mexico to demand the transformation of monoethnic states into multiethnic ones and make recommendations for the use of funds in activities such as impact assessments for regional megaprojects and their monitoring, the search for state respect for the autonomies, a strengthening of the indigenous agenda and decentralisation of the Indigenous Fund, among other things. The Indigenous Parliament of the Americas also held its session in Mexico in 2008.

The indigenous peoples are making communication and information an instrument of struggle in order to open up and consolidate spaces in which to promote their ways and their different experiences. The II National Congress of Indigenous Communication took place in 2008 in Mexico City with

a rich exchange of experiences between communicators from all the country's ethnic groups. Its final declaration listed the National Congress's demands to the federal government and society in general in terms of guaranteeing indigenous peoples the right to communication and information.²⁵ The communicators also requested 1% of the Social Communication budget of the Presidency of the Republic as initial funding to enable a strengthening of indigenous media. However, murders of indigenous communicators, the closure of community radio stations, their almost complete lack of access to the mass media and the extremely limited airtime given to indigenous issues, along with the unfavourable context in which the draft Radio and Television Law that would guarantee access to radio frequency licences is being promoted, all means that the outlook for indigenous communication in the country is not the most encouraging. Nevertheless, the emergence of various indigenous community radio stations and networks of communicators, in Oaxaca, Chiapas and Yucatán in particular, along with a concern on the part of different organisations and universities to promote the training of leaders, keeps the possibilities open in terms of raising the profile of the problems facing Mexico's indigenous peoples and trying to promote an agenda.

Indigenous criminalisation and political prisoners

A clear criminalisation of the indigenous lifestyle could be seen throughout 2008. Hundreds of indigenous people were arrested, particularly in the south-east of the country. The detention of members of the Organisation of the Indigenous Mé'phaa People in Guerrero state, for defending their lands and rights, was closely monitored by the La Montaña Tlachinollan Human Rights Centre.²⁶

Indigenous prisoners held many hunger strikes and, along with the demonstrations and campaigns supported by the Jovel Other Campaign, People of Faith, the prisoners' families and other organisations managed to get the cases overturned and 146 prisoners released from three prisons in Chiapas.²⁷ "We are political prisoners because our detention and imprisonment is due to a policy of repression and annihilation on the part of Chiapas state, in relation to both the social organisations and the EZLN itself," declared the prisoners in an open letter. In its documentation, the Fray Bartolomé de las Casas Human Rights Centre stated, "They are demanding their rights because they were deprived of their freedom due to procedures that did not observe the right to due legal process; they state that they were

subjected to torture, cruel, inhuman and degrading treatment in order to obtain confessions.” There are still indigenous prisoners in Chiapas and Tabasco on hunger strike. □

Notes

- 1 The San Andrés Accords are agreements reached between the Zapatista Army of National Liberation and the Mexican government, at that time headed by President Ernesto Zedillo. The accords were signed on February 16, 1996, in San Andrés Larráinzar, Chiapas, and granted autonomy and special rights to the indigenous population of Mexico. President Zedillo and the Institutional Revolutionary Party (PRI) however, ignored the agreements and instead increased military presence with the political support of the other important political parties Democratic Revolution Party and National Action Party (PRD and PAN).
- 2 **Aragón Andrade, Orlando, 2007:** Los sistemas jurídicos indígenas frente al derecho estatal en México. Una defensa del pluralismo jurídico. *Boletín Mexicano de Derecho Comparado*, Nueva Serie, Año XL, Num. 118, Jan-April 2007, pp. 9-26
- 3 Note from the Wizarika People’s Community Communication Body, 13 February 2008
- 4 **Carlos Gonzalez Garcia, 2008:** Pueblos indios: despojo interminable y resistencia, *La Jornada de Jalisco*, 25 September.
- 5 **Carlos González García, 2008:** Minería y resistencia indígena, *La Jornada de Jalisco*, 18 December.
- 6 “La migración indígena y sus desafíos en la coyuntura actual” Speech given by Rufino Domínguez Santos, director of the Oaxaca Binational Centre for Indigenous Development, to the Chamber of Deputies on 25 November 2008.
- 7 See the work of the Indigenous Migrant Assembly of Mexico City at <http://www.indigenasdf.org.mx>
- 8 Figures from the Bank of Mexico, 27 January 2009 <http://www.banxico.org.mx/documents/%7BB7CBCFAF-AB7D-BE65-F78F-6827D524C418%7D.pdf>
- 9 SEMARNAT, Comunicado 235/08, “Con el decreto de ocho nuevas áreas naturales, México se mantiene a la vanguardia en material de conservación.”
- 10 **Jorge G, Vargas Hernandez, 2008:** La Ecología Política Indígena. La Transnacionalización de los Movimientos Indígenas. *DELOS* Vol.1 Num2, June. Available at <http://www.eumed.net/rev/delos/02/jgvh.htm>
- 11 “Who’s Who in the carbon sinks business <http://www.sinkswatch.org>
- 12 “Presos indígenas ecologistas de San Isidro Aloapan”
- 13 <http://zapateando.wordpress.com/2009/02/02/presos-indigenas-ecologistas-san-isidro-aloapan/>
Source: CONAFOR http://www.conafor.gob.mx/index.php?option=com_content&task=blogcategory&id=24&Itemid=49
“Pro árbol malgastó millones...”
http://www.greenpeace.org/mexico/news/auditan_proarbol

- 14 Department for the Environment and Natural Resources. Regulations for the Law on Biosecurity of Genetically Modified Organisms. Official Journal of the Nation, Wednesday 19 March 2008, 23 pages.
- 15 **Miroslava Breach Velducea, 2008:** Transnacionales realizan siembras con trasgenicos en Chihuahua, *La Jornada*, 18 May.
- 16 **Rex Dalton, 2008:** Modified genes spread to local maize, *Nature*, 456:13, November.
- 17 "Protestan trabajadores de INAH en Teotihuacán". <http://www.eluniversal.com.mx/notas/564647.html>
- 18 "Hubo ejecuciones extrajudiciales en Chincultik, confirman testimonios" <http://www.jornada.unam.mx/2008/10/06/index.php?section=politica&article=016n2pol>
- 19 "Planes de desarrollo turístico, riesgo para los pueblos indígenas" *La Jornada*, 9 November 2008
- 20 Octavio Velazquez Ascencio, "Ejidatarios y trabajadores bloquean la entrada a paque eólico La Venta 4" *La Jornada*, 1 October 2008. "Buscan sacar a firmas españolas de Oaxaca" *La Jornada*, 6 November 2008.
- 21 Operating Rules for Environmental Services. http://www.conafor.gob.mx/index.php?option=com_content&task=view&id=165&Itemid=400, Ribeiro Silvia, "La trampa de los servicios ambientales" <http://www.ecoport.net/content/view/full/24747>
- 22 "El Nobel de Ecología", *El Pais*, Monday 16 February 2008
- 23 Aragón Andrade, Orlando. *Los sistemas jurídicos indígenas frente al derecho estatal en México. Una defensa del pluralismo jurídico*. Boletín Mexicano de Derecho Comparado, Nueva Serie, Year XL, Num. 118, Jan-April 2007, pp. 9-26
- 24 For cases of experiences in Mexico both rural and urban see: Xochitl Leyva, Araceli Burguete and Shannon Speed (coord.) *Gobernar(en) la diversidad: Experiencias Indígenas desde America Latina. Hacia la Investigación de co-labor*. Mexico: CIE-SAS, 2008
- 25 Declaration of the II National Congress of Indigenous Communication, *America Latina en Movimiento*, 17 November 2008. <http://alainet.org/active/27481&lang=es>
- 26 Sergio Ocampo Arista, "Preocupantes abusos contra indigenas en Guerrero: ONG," *La Jornada*, 28 February 2008
- 27 "Liberan 137 presos políticos en Chiapas" *Cimac Noticias*, 2 April 2008, <http://www.cimacnoticias.com/site/08040209-Liberan-a-137-presos.32634.0.html>

María Elena Martínez Torres is a geographer who works with indigenous and peasant movements and is a lecturer-researcher at the Centre for Research and Higher Studies in Social Anthropology at its headquarters in Chiapas. Ana Luz Valadez Ortega is a graduate in social psychology and a freelance researcher. She has supported indigenous and peasant groups in Mexico, specifically in Chiapas, producing knowledge on defence of biodiversity, traditional knowledge, health and indigenous nutrition.

GUATEMALA

There are more than 6 million people living in Guatemala, 60% of whom are indigenous, belonging to 24 different peoples. They are the following: 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, Xin-ka and Garifuna. However, despite Chalchiteco having been recognised by the Congress of the Republic as a distinct language within the Academy of Maya Languages, these people have thus far not been included in any official statistics. This report does, however, include them because of their struggle in defence of their water resources. The indigenous peoples inhabit the west and north of the country.

The situation of Guatemala's indigenous peoples showed no significant improvements during 2008. The latest national human development report, published during the year, confirmed the social exclusion suffered by the indigenous population in relation to the rest of the country's inhabitants. According to this report, 73% of the indigenous population are poor and, of these, 26% are extremely poor, as opposed to 85% of the non-indigenous population poor and only 8% extremely poor. Similarly, the Human Development Index (HDI) is 0.625 for the indigenous population and 0.738 for the non-indigenous. Educational disparities indicate that the indigenous peoples achieve an average of 4.7 years of schooling as opposed to the non-indigenous with 6.9 years. Furthermore, the rate of economic participation of indigenous peoples in the country's economy as a whole is 61.7%, and for the non-indigenous 57.1%, which is explained by the fact that the indigenous peoples undertake a greater diversity of non-agricultural activities.



As will be observed in this report, because of their social and environmental vulnerability, disasters have a more intense impact on indigenous peoples, as was seen in the cases of La Unión Zacapa and San Cristóbal Verapaz.

Other indicators related to aspects of interculturality show that, although expressions of racism and social exclusion continue, some progress is being made, with indigenous proposals now more visible in debates and in national and international fora. Media coverage is now a little more explicit with regard to indigenous affairs and there are programmes and campaigns in the universities promoting the inclusion of indigenous peoples in academic activities. The hosting of the Social Forum of the Americas by Guatemala, as well as the fact that indigenous demands are now being considered by international courts, demonstrate that small changes are taking place in terms of the positioning of indigenous proposals within Guatemalan society as a whole.

The indigenous face: from electoral rhetoric to government programme

With a majority of the vote throughout most of the country, with the exception of the capital, Alvaro Colom took over the Presidency of the Republic on 14 January 2008. His electoral support came primarily from the poor and indigenous rural people, to whom he offered, both in his campaign and his inaugural speech, “a government of hope”. The main actions of his government, under the slogans of “times of solidarity” and “the people first”, have included “governing with the people”, a form of direct contact with departmental organisations and players; the Social Cohesion Programme, which aims to increase educational and health coverage in the 44 poorest municipalities of the country, all of which have a majority indigenous population; the “my family is progressing” programme, a system of financial support to enable poor families to send their children to school; and also the “Prorural” programme aimed at providing financial support for increased productivity in rural areas. The government has thus attempted to demonstrate greater openness and attention towards the indigenous peoples, resulting in a desire to officially use the Maya flag at public ceremonies and also in the appointment of a Maya elder as the country’s indigenous peoples’ ambassador.

However, these actions have been questioned by analysts, some highlighting the populist nature of these measures and others describing them as insufficient to resolve the causes of poverty and social inequality, which lie in the scarce employment opportunities, low economic incomes, limited access to resources (particularly land) and even racism that affect the indigenous population disproportionately. To date, there have been no indications that the measures being taken will significantly improve the living conditions of the indigenous population.

Repression against the indigenous and popular movements

The indigenous peoples have continued their firm resistance to extraction activities on their territories, such as open cast mining or the construction of dams, oil wells and large biofuel plantations. Over the year, indigenous organisations held protest activities in various parts of the country that were violently repressed by the police, leaving a number of people dead and wounded. The government has responded to the indigenous resistance and demands by putting a “state of emergency” in place that restricts people’s rights to organise or move freely.

One such case is the state of emergency that was imposed on the municipality of San Juan Sacatepéquez, Guatemala department, in June to counteract the protests of the indigenous Kakchiquel people who were demonstrating against the establishment of a mine for cement production on their territory. The company in question has had a monopoly over the country’s cement production for a number of years now and the family that owns it is extremely influential in the country’s political life, largely due to the public works contracts it has negotiated with different governments.

Despite its apparently indigenous face, the government has persisted with the repressive measures against peasant and indigenous demonstrations, particularly those related to demands for land. Ramiro Choc, one of the indigenous leaders of the Maya Kekchi people, was arrested during a violent eviction on the part of the police in Izabal department, during which a peasant farmer from the area was also

murdered. One year on and Ramiro Choc, still in prison, has not been brought before the courts nor has there been any concrete response to the calls from social organisations for his release.

Between community consultations and reforms of the mining law

Given the increasing pressure from mining companies, the country's indigenous communities continued with the processes of community consultation to ascertain the peoples' opinion with regard to such projects on their territories. In all, consultations were held in 22 municipalities of Huehuetenango and San Marcos departments in the west of the country, involving more than 400,000 people. The conclusion was a clear rejection of such activities on indigenous territories. Both the government and the mining companies and their allies have tried to de-legitimise the results of these consultations, arguing that they were not endorsed by the Supreme Electoral Court (TSE).

The consultations do have a legal basis in Guatemala's Municipal Code, however, in particular Article 65: "Consultations of the municipality's indigenous communities or authorities. When the nature of an issue affects particularly the rights and interests of the municipality's indigenous communities or their own authorities, the Municipal Council shall hold consultations at the request of the indigenous communities or authorities, including applying the criteria of the indigenous communities' own customs and traditions". In addition, Article 66 establishes that the methods of consultation may include the: "Application of criteria from the relevant community's own legal system".

In addition to the opposition expressed in the consultations, the communities and social organisations have, at different fora and in different press releases, stated their rejection of a supposed development based on open cast metals mining, given the consequences wreaked on the environment and the social conflict caused. In addition, various studies have shown that the royalties obtained from mining in the country are insignificant in comparison to the vast profits to be made. One such example is that of the Montana Mine, which, in three years

of operations (2006 to 2008), made profits of US\$ 600 million, out of which it paid the country only 1% by way of taxes and royalties.¹

There is no evidence at a local level of any improvement in the living conditions of the communities, in fact quite the contrary: internal conflicts between communities, illnesses that the inhabitants put down to the impact of mining, damage to housing and the frustration of residents who have been deceived or forced into selling their lands at low prices. In any case, no substantial investment can be observed at local level that would demonstrate a benefit to the communities from the taxes imposed on mining.

Faced with this situation, a number of social organisations have proposed reforms of the Mining Law and also suggested a moratorium on this law aimed at preventing the expansion of these activities on indigenous territories, as well as increasing the taxes and royalties due to the country and communities. However, the government and mining companies have also been exerting pressure for a change in the law, but in favour of the mining companies, which could mean less control in terms of environmental impact and less tax income for the country.

In addition, the Council of Indigenous Peoples of West Guatemala stated its concern at the government's criminalisation of the resistance movement because, very often, peaceful protests in defence of territory have been suppressed by government forces, as was the case in the communities of San Juan Sacatepéquez in Guatemala department.

The Social Forum of the Americas

From 7 to 12 October 2008, the country's social organisations hosted the Social Forum of the Americas (FSA), with the Maya Waqib'kej National Coordination and Convergence playing a prominent role. This body seeks to coordinate the struggle of the Maya people around the construction of a participatory state. During the FSA, various activities were organised to discuss the situation of indigenous peoples in countries across the continent and to reach a consensus with regard to proposals and approaches in national and international arenas.

A Central American hearing of the Permanent Peoples' Tribunal (TPP) was held in the context of the FSA, a body which for 25 years has highlighted and supported the peoples' struggles against mass violations of their fundamental rights such as the denial of self-determination and destruction of the environment. The suffering of the communities of the Maya Kaqchikel people in San Juan Sacatepéquez, Guatemala department was submitted to the Court. These people are enduring invasions of communal property, a lack of prior and informed consent, systematic and repeated repression, and appropriation and pollution of the water on the part of the Holcim company, a transnational company of Swiss origin, and the national Cementos Progreso company, which want to establish a cement production plant on the indigenous territory.

In addition, a case was presented against the Goldcorp company, a transnational company of Canadian origin, due to the impact that open cast mining for gold is having on the environment, the damage being caused to local people's houses, the deceitful appropriation of the community's lands, and threats against the people. In its deliberations, the TPP found sufficient evidence in both cases of a violation of civil and political rights (including the right to life and to physical integrity, the right to physical freedom, to free movement and to effective legal protection), of social, economic and cultural rights, and also of collective rights (third generation rights) on the part of the state and the companies involved. Consequently, the TPP has ethically and morally accused the state, the companies and the large international organisations that are financing mining activities on indigenous territories and has demanded the suspension of contracts granted without the communities' consent.

The struggle for a new form of protected areas management

In March 2008, representatives of the Maya K'eqchi people, who live in the Sierra de Santa Cruz, to the north of Izabal Lake in the north-east of the country, went before the Inter-American Commission on Human Rights to denounce the negative effects of the establishment of protected areas on their ancestral territories, as these were limiting

their rights of access to and traditional use of natural resources. At the hearings held in Washington, the leaders demanded on behalf of 43 communities that their living resources and their collective and individual rights due to them as indigenous peoples be respected. They stated that they were not against environmental protection but against the interference of government bodies in the management of their communal heritage. According to the plaintiffs, the establishment of protected areas without the consent of the indigenous organisations will lead to the imposition of new rules that will cause a breakdown in the communities' age-old relationship with the environment and, above all, will restrict their fishing and hunting activities, ceremonies and gathering of products essential to their existence. They also called for the state to recognise the indigenous peoples' contribution to environmental protection and to value their traditional knowledge, ancestral organisations, indigenous property rights, forms of governance and local institutions within conservation efforts.

In fact, the creation of protected areas on indigenous territories without community consent has been one of the greatest difficulties facing the country's environmental management, in addition to being in violation of the right to self-determination as stipulated by ILO Convention 169. Faced with this situation, various indigenous organisations, some of them grouped together within the Indigenous Peoples' Advisory Council to the National Council for Protected Areas, have raised the need to reform the Law on Protected Areas, with the aim of establishing new categories of management more relevant to indigenous peoples. Similar proposals are also being made jointly by indigenous organisations in global fora such as the Congress of the International Union for Conservation of Nature (IUCN), held in Barcelona.

Some of the country's indigenous organisations have also supported the formulation of the National Strategy for Natural Resource Conservation and Management on Communal Lands, which seeks to establish new management mechanisms on the basis of a recognition of the collective rights of indigenous and non-indigenous peoples with communal tenure.

Indigenous cases before the Latin American Water Tribunal

The Latin American Water Tribunal (TLA), an international, autonomous and independent body for environmental justice created with the aim of helping to resolve conflicts related to Latin America's water systems,² held its fourth session from 8 to 12 September 2008 in Guatemala with the aim of hearing special cases of water issues affecting indigenous populations. At this session, the country's indigenous organisations presented the following three cases: 1) pollution of the Chichoj Lake to the detriment of the Maya-Kekchi communities of Alta Verapaz department; 2) mining activity in the Cuilco River basin and sub-basin of the Tz'alá River to the detriment of the Maya Sipakapense community of San Marcos department; and 3) the severe contamination of the San Juan River to the detriment of the Maya-Chalchiteka community in Huehuetenango department.

The first case, brought against the municipality of San Cristóbal Verapaz and the Departmental Development Council, highlighted the prolonged and severe pollution that is being created by urban waste and by industrial and agricultural activities that discharge directly into the lake, with severe impacts on the health of the inhabitants of Poqomchi village who live on its banks and who use its waters for different activities, including fishing. At this hearing, the TLA gained a commitment to achieve a reconciliation and rapprochement between the local players and the San Cristóbal Verapaz municipality. It recommended that this commitment be extended to the other players involved and that the resolutions be made public so that the population can monitor them and so that the social sectors, users and beneficiaries of the goods and services provided by Chichoj Lake can be involved in its recovery.

The second case, brought against the Guatemalan government and the Montana Exploradora de Guatemala mining company, denounced the fact that open cast mining operations were damaging the environment of the people of Sipakapa and additionally warned that possible cross-border conflicts could arise with Mexico given that the Cuilco River flows into that country. In its verdict, the TLA held the Guatemalan government responsible for not correcting the situation of the high-

risk mining operations and also criticised it for not applying ILO Convention 169, Articles 44 and 46 of the Guatemalan Constitution and the Peace Accord on the Identity and Rights of Indigenous Peoples. It also criticised the government for not respecting the traditional legal system of the indigenous peoples and, at the same time, held the Minera Montana Exploradora de Guatemala S.A. mining company responsible for the damage caused to the environment and to the people of San Miguel Ixtahuacán and Sipacapa. The TLA recommended a reform to the Mining Law, respect for the legal organisation of the indigenous peoples and the conducting of independent studies to assess the impacts of mining on the population and how the company should compensate the indigenous population for the damage caused.

The third case, brought against the National Forests Institute, Aguatán municipality and the Ministry of Energy and Mines, denounced the significant reduction in the flow of the San Juan River. It has been suffering from significant declines in its volume associated with excessive logging and, possibly, the activities of the Tenango Co Mining company, which has been extracting copper, silver and zinc from this area since 2005. At its hearing, the TLA managed to get an agreement between the parties to implement a protection programme for the San Juan River, and recommended the suspension of mining activities on the Chalchiteco indigenous territory.

Indigenous peoples once again the worst affected by disasters

The inhabitants of indigenous communities were once again the most severely affected by the disasters that occurred during the year. The Ch'orti people of La Unión municipality in Zacapa department were affected by the landslide that occurred on 24 July 2008, causing 30 deaths. This situation could have been completely prevented if the waste coming from urban areas had been managed more effectively and if there had been adequate investment in basin management and in addressing the living conditions of the poorest sectors.

Another natural phenomenon that cost the lives of indigenous people was the landslide that occurred in San Cristóbal Verapaz muni-

pality at the end of 2008 and early 2009, caused by highway construction works. This left more than 38 dead, most of them indigenous people who were passing through the area to get to work.

Pressure on indigenous territories due to new territorial dynamics

The indigenous territories are under increasing pressure from large transnational interests wishing to establish hydroelectric power plants, agroindustrial plantations or tourist infrastructure on their lands, in addition to the gas/oil and mining projects that are already present. The road projects that have been proposed for this region are designed to facilitate the mobility of large-scale investment in the area.

The indigenous communities believe that these investments jeopardise their own development, change their ancestral relationship with nature and radically transform the environmental, cultural, economic and social conditions of their territory. In the north of the country, in the areas known as Chisec and Ixcán, the indigenous territories are rapidly changing to such a point that, under pressure from large investment companies, many entire communities have been forced to sell their land at low prices.

The lands acquired by the large companies have been transformed into large-scale sugar cane, palm oil or rubber plantations or have been turned over to cattle grazing; others have been used to build hydroelectric plants. Land is gradually being re-concentrated in the hands of a few large estate owners, causing further conflict in the area.

Faced with these problems, the indigenous communities have mobilised and are making proposals aimed at preventing the construction of megaprojects on their territories, and designing strategies to improve territorial management at grassroots level: a territorial development model that takes the nature and capacity of the territory and its local players into account. □

Notes

- 1 <http://www.prensalibre.com/pl/2009/marzo/15/PDFs/PLMT15032009.pdf>
- 2 http://www.tragua.com/es/index.php?option=com_content&task=view&id=74&Itemid=58

Silvel Elías is Lecturer in the Faculty of Agronomy of the San Carlos de Guatemala University

NICARAGUA

The seven indigenous peoples of Nicaragua live in two main regions: firstly, the Pacific Coast and Centre North of the country (or simply the Pacific), which is home to four indigenous peoples: the Chorotega (221,000), the Cacaopera or Matagalpa (97,500), the Ocanxiu or Sutiaba (49,000) and the Nahoia or Náhuatl (20,000); and, secondly, the Caribbean (or Atlantic) Coast, inhabited by the Miskitu (150,000), the Sumu-Mayangna (27,000) and the Rama (2,000¹). Other peoples enjoying collective rights in accordance with the Political Constitution of Nicaragua (1987) are the black populations of African descent, known as “ethnic communities” in national legislation. These include the Kriol or Afro-Caribbeans (43,000) and the Garífuna (2,500).

It is only in recent years that initiatives have been taken to establish regulations for and improve regional autonomy, such as the 1993 Languages Law; the 2003 General Health Law, which requires respect for community health models; Law 445 on the System of Communal Ownership of Land 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 the 2006 General Education Law, which recognises a Regional Autonomous Education System (SEAR).

The Sandinista National Liberation Front (FSLN) came to power in Nicaragua in 1979, subsequently having to face up to an armed insurgency supported by the United States. Indigenous peoples from the Caribbean Coast, primarily the Miskitu, took part in this insurgency. In order to put an end to indigenous resistance, the FSLN created the Autonomous Regions of the North and South Atlantic (RAAN/RAAS) in 1987, on the

basis of a New Political Constitution and the Autonomy Law (Law 28). Three years later, the FSLN lost the first national democratic elections in Nicaragua to the National Opposition Union (UNO), headed by the liberal Violeta de Chamorro, and a land policy was put in place that promoted the colonisation and individual titling of indigenous territories, also commencing the establishment of protected areas over these territories without any consultation. Daniel Ortega, the historic leader of the FSLN, returned to power following the 2007 elections, creating expectations amongst the indigenous movement with regard to their rights.

Changes in the political context

The 2008 local elections marked a political sea change in terms of a gradual erosion of the country's limited democracy. It began with the exclusion of two political parties (the *Movimiento Renovador Sandinista* and the Conservative Party) from the elections for alleged irregularities in their internal functioning: the Supreme Electoral Council (CSE) refused to allow the presence of national and international independent observers and the FSLN's electoral campaign was seen to be using public resources and staff. The illicit use of state funds was also denounced following the elections. The CSE, controlled by the Sandinista party itself, stated that the FSLN had made significant progress in terms of local councils gained,² including the capital Managua. A few days after the elections, the liberal opposition candidate in the capital, Eduardo Montealegre, published his version of the results with data from virtually all of the polling stations, which told a different story. Since then there has been no reliable recount of the vote, despite pressure from the opposition, the media, the Church, civil society, various human rights organisations and international development cooperation agencies.

In the case of the North Atlantic Autonomous Region (RAAN), elections were postponed in its seven municipalities until the start of 2009, with the official argument that the infrastructural destruction caused by Hurricane Felix in 2007 prevented elections from being held.

The unofficial version is that the Miskitu political party YATAMA was in negotiations with the FSLN with regard to cancelling the local elections completely in the autonomous regions. This idea must be seen in the context of the process commenced in 2007 to reform the Regional Autonomy Law (Law 28). A group of Miskitu leaders and the Secretariat for the Development of the Caribbean Coast (SDC) were involved in drafting this reform law, which would imply a political-administrative reconfiguration of the Autonomous Regions and of the Sumu-Mayangna and Miskitu areas of Jinotega department.

At the same time, the Secretariat for the Development of the Caribbean Coast began to play a role in supervising and directing the autonomous processes of the indigenous and Afro-descendant peoples in these regions. One aim was to analyse international cooperation in favour of civil society and indigenous peoples, prior to its implementation in order to ensure that it was in line with national government policy.

International cooperation

Daniel Ortega ended the year 2008 by publishing the General Budget of the Republic without it having obtained the necessary approval of the National Assembly. The FSLN was not able to obtain the legislature's support because, if it had called a session of the assembly to discuss the budget, the opposition's proposal to cancel the local elections would also have been on the agenda.

Whatever the breakdown of the budget, it is a fact that public expenditure cannot be financed without the support of what is known as the Budgetary Support Group, a group of Nicaragua's major donors, including some EU-member countries, the Interamerican Development Bank and the World Bank. At the end of the year, in order to express their reservations regarding the democratic situation and the lack of separation of state powers, most of these donors were unwilling to commit their support. The bilateral cooperations began to reassess their support strategies both to indigenous peoples and to the country's poverty reduction strategies. Some, such as Spain, now



chose to channel Nicaragua's funding through UN mechanisms. This does not actually give a clear political message, however, given that the president of the UN General Assembly is Miguel D'Escoto, head of the Nicaraguan diplomatic corps and with a long history as President Daniel Ortega's international affairs adviser.

The United States, for its part, froze its support to Nicaragua's Pacific region through the Millennium Challenge Account, stating that its reactivation would require a series of democratic conditions and fundamental rights to be fulfilled. At the same time, its embassy began to

discuss the idea of reactivating the Account only in the Caribbean Coast.

Because of this, a study into the land tenure of the Sutiaba people in the departments of León and Chinandega, also funded by the Millennium Account, has had to be put on hold. A cadastral sweep was going to be conducted over the area to which the Spanish Crown granted them a title in 1727 and which is recorded on the public registry. This would affect the municipality of León, the San Antonio sugar refinery (producer of "Flor de Caña" rum) and numerous private and corporate persons.

As of the end of the year, the United States – the Interamerican Development Bank's main partner - had not clearly stated its support for the General Budget of the Republic.

The financial assistance initially offered by Venezuela, which could have created a change in the financial panorama and led to the reduced weight of the US and European countries, no longer appears on the cards given the decline in international oil prices. In any case, the funds channelled through the Bolivarian Alternative for Latin America and the Caribbean (ALBA) in 2008, never showed up in the public budget, according to civil society organisations and indigenous representatives; these funds were instead used by the government's political party discretionally through the Councils for People's Power (CPC).³

Legislative initiatives

On 5 May, by means of a presidential decree, Daniel Ortega created a Special Development Administration under the direct responsibility of the Presidency of the Republic for three titled indigenous territories: Miskitu Indian Tasbaika Kum, Mayangna Sauni Bu and Kipla Sait Tasbaika, located in the Alto Wangki (Coco) basin and Bocay, in Jinotega department. The administration team was to be made up of the head of each of the three territories and, from these three, the head of the indigenous territorial government was to be elected. In actual fact, this means a merger of three territories into one single multiethnic one.

A change in the political-administrative configuration of the country is not the responsibility of the government but corresponds, by law, to the National Assembly, given that it requires a constitutional amendment. In this case, it is also the responsibility of the indigenous Mayangna and Miskitu peoples themselves as they enjoy the right of self-determination. The representative Mayangna authorities therefore did not accept the idea, given that it ran counter to its projected government model based on territories and authorities of their own nation. The head of the new system was consequently elected from amongst presidents of associations accredited by the Ministry of the Interior and not from amongst the true presidents of the territorial authorities that are certified by the municipalities and by the Council of the North Atlantic Autonomous region. Mayangna leaders also believe that the new administration did not receive the expected funds for development of the area within the special system, given that a leader favoured by the FSLN was not elected.

A series of legislative proposals with both negative and positive implications for the indigenous movement made no progress throughout the year. This included the draft Indigenous Law of the Pacific and Centre North initiated in 2006 and which passed its second committee reading in 2008 without, however, being referred onto the National Assembly for consideration, and the Coastal Law, which aims to nationalise all land in the country within 200 metres of the tide line and hand responsibility for it over to the municipal councils. This law was also not introduced due to disagreements, primarily with the country's tourism sector. The law is, however, of great significance to the processes of self-government and land titling stipulated in Law 445.

On the other hand, as a result of indigenous lobbying, the draft Law on Territorial Organisation now envisages recognising the territories of indigenous and Afro-descendant peoples as political-geographical entities, considering the indigenous governments as territorial administrative bodies.

The process of ratifying Convention 169 was to be revived at the government's initiative, commencing a discussion and public analysis with the support of the UN and international NGOs in the country. At the last moment, however, this activity was dropped.

Three bodies, including indigenous organisations, lodged an appeal with the Constitutional Court against the General Law on National Waters, which came into force in 2008, because the indigenous peoples and ethnic communities had not been consulted prior to its approval and because they had been excluded as users.

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

It is noteworthy that the National Commission for Demarcation and Titling (CONADETI) has finally achieved the titling of the Awas Tingni Mayangna Sauni Umani (AMASAU) territory, including the lands of the symbolic Mayangna community of Awas Tingni.⁴ The historic event took place in the presence of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya.⁵ It now remains to be seen whether CONADETI has the capacity to complete the final stage of this process, which is the solving of legal disputes with third parties who claim land rights inside the territory. There has so far been no progress in this respect in any of the territories titled since Law 445's enactment in 2003.

The Awaltara Luhpia Nani Tasbaya territory at the estuary of the Río Grande in the RAAS was also titled in the context of the electoral agreement commitments made in 2007 between the FSLN and YATAMA (see *The Indigenous World 2008*).

CONADETI produced the assessments for the Wangki Maya (Río Coco Abajo) and Wangki Twi-Tasba Raya territories, around Waspam. Unfortunately, there is some confusion as to the legitimate territorial authorities in these cases, and the territorial boundary is being questioned, which means there is little indigenous identification with these assessments and this perhaps explains why the titling of these territories was not achieved alongside that of Awas Tingni, as was intended.

According to the Rama and Kriol territorial government (GTR-K), the territorial assessment that accompanied their request for demarcation and collective land titling, submitted on 7 December 2007, has

been hindered by political/economic interests related to megaprojects planned on their territory. These include the inter-oceanic canal and its related infrastructure: a railway line and main roads, an oil pipeline and a deep-water port. These initiatives have been planned without the prior, free and informed consent of the people. This situation forced the GTR-K to lodge an appeal with the Constitutional Court against the President of the Republic and the president of CONADETI on 2 December 2008 calling for a reactivation of the titling process and transparent consultation with regard to the megaprojects.

In a case initiated by the Environmental Ombudsman in 2001, the Bluefields Court of Appeal in the RAAS ruled in favour of the North American Greek, Peter Tsokos, stating that the title he holds to some of the Pearl Cays⁶ should not be removed from the Registry. The General Attorney of the Republic regretted the ruling, announcing that the District Attorney's Office would take the issue of the registry cancellation to the Supreme Court of Justice. Independent jurists maintain that the ruling does not legally affect the communities of the Pearl Lagoon basin as they were not party to the case; they can therefore continue to claim the Cays in the demarcation and titling process initiated under Law 445. However, the ruling is considered a dangerous precedent on the part of a now discredited Nicaraguan judicial system.

The indigenous movement and state institutions

Last year, the Sumu-Mayangna nation continued its process of self-determination, following the organisational recovery of its mother organisation, SUKAWALA. This relates to a gradual process of converting the territorial associations into true *sui generis* representative territorial authorities, echoing the self-government expressed in the UN Declaration and stated as a valid option in Law 445. In addition, a process of statutory reform of SUKAWALA itself is underway, which is set to become the autonomous government for this entire indigenous nation. For the Mayangna nation, UN project financing via a parallel SUKAWALA organisation that holds a certification of

no legal basis and led by a party political appointed leader, is a cause for serious concern.

When the indigenous government of the Mayangna Sauni Arungka territory won a legal case in Bonanza against a mestizo invader of their territory in July, the conflict escalated between organised mestizos and the Mayangna living on the territory. A number of Mayangna were attacked with knives and indigenous leaders were pursued such that they had to flee into the cities and mountains through fear of persecution. The territorial authorities and SUKAWALA requested UN intervention, even that of the UN "Blue Helmets", to no avail.

In November 2008, as a consequence of Hurricane Felix but independent of the above mentioned case, Law 669 "Law on Preservation of the Use of Land in the Bosawas Biosphere Reserve" was approved. This law bans the invasion of, or establishment of human settlements in the buffer zones around the Bosawas Biosphere Reserve and indigenous territories located within it, such as the Arungka territory. Through its territorial delegations and Technical Secretariat in Bosawas, the Ministry for the Environment and Natural Resources (MARENA) will be responsible for implementing the Law. The Law also empowers the Nicaraguan Army and National Police to bring in and make use of whatever equipment and staff necessary in critical areas of migrant, squatter and estate owner entry, in order to help the stated institutions enforce the law. It thus seems that now at least the legal basis exists to intervene and prevent future cases of illegal colonization in this area. However, the situation continues to be a fragile one, without any sign of a solution in the Mayangna territories.

For the Council of Elders, which represents primarily the Miskitu communities, 2008 began with great hope when the President of the Republic agreed at a meeting to draft a national agreement that would commit the state to recognising a series of principles laying the foundations for a government model based on the precepts and norms of the Miskitu nation. Their claim and justification is based on the fact that the former Moskitia of the Atlantic Coast was never conquered but was rather a British Protectorate until its forced annexation to the state of Nicaragua in 1894. On the basis of annexation treaties and historical rights, the Council of Elders has its own vision of self-determination and now feels that the UN Declaration on the

Rights of Indigenous Peoples has bolstered its struggle. The hopes they placed in the President were ill-founded, however, probably due to similar negotiations ongoing between YATAMA and the FSLN with regard to reforms of the Regional Autonomy Law (see also *The Indigenous World 2008*).

The Indigenous Movement of Nicaragua (MIN) remains an organisational expression with little institutional strength. In the Pacific in particular, the municipal election process meant opportunities for some leaders in party political life and led to a breakdown in some of the revival processes commenced the previous year.

“Development” projects and natural resources

Virtually none of the trees that fell in the RAAN during Hurricane Felix in 2007 have yet been made use of. The regional government of the RAAN has, however, been negotiating a number of proposals that have resulted in a contract with US businessmen that have shares in the Nicaraguan company “Raya Ka Raya”. This company has been especially established to make use of the timber from trees fallen during Hurricane Felix, with a commitment to reconstruct, reforest and establish community cooperatives in exchange for extracting the fine woods at the extraordinarily low price of US\$20 per cubic metre. Critics of this contract state that it is illegal because it is in contradiction to the provisions of the Community Forest Strategy, which state that the community should benefit from the wood and sell it in its secondary and tertiary processed forms. Meanwhile, the Miskitu communities are taking a positive view of the National Forestry Institute (INAFOR) since it has approved dozens of forest use plans for communities, co-operatives, private companies and associations that have undertaken to use part of the wood for *in situ* construction work. In addition, through the regional government, INAFOR has donated more than 10 sawmills to promote community forestry.

Without waiting for the title that will recognise the collective ownership of its traditional territory, the Rama and Kriol territorial government, which represents nine communities of the RAAS and the department of Río San Juan, in December published the first Au-

tonomous Plan for the Development and Administration of an indigenous/ethnic territory in the Caribbean Coast of Nicaragua. It includes a presentation of the legal context supporting the autonomy initiative from the outset. It then continues with a series of proposals such as: an indigenous model of community justice, a guide to economic and social co-existence with the mestizo population that is largely illegally occupying their territory, a joint management model with MARENA and the regional Secretariat for Natural Resources with regard to the protected areas superimposed on their territory, an endogenous model for economic development and for financing the territorial administration, along with a series of maps that demonstrate in visual terms their own environmental zoning and desired distribution of infrastructure and territorial services. With these priorities defined, implementation and coordination with other authorities can now begin in order to achieve its incorporation into protected area management plans as well as within the local, regional and national development plans. □

Notes

- 1 Source: Universidad de las Regiones Autónomas de la Costa Caribe Nicaragüense (URACCAN, 2000) and the Rama and Kriol Territorial Government (GTR-K, 2005-7). Field studies jointly conducted by URACCAN and the GTR-K with funding from the Danish cooperation agency, DANIDA, as a contribution to the Rama and Kriol Territorial Assessment.
- 2 Because the results of the local elections are in a process of political negotiation, the official results have still not been published!
- 3 The *Consejos de Poder Ciudadano* were established by Daniel Ortega as the government's grassroots organisational structures
- 4 This was the ruling of the IACHR in 2001 on a forestry concession in this community and against the State of Nicaragua, which led finally to the enactment of Law 445.
- 5 This has also, unfortunately, created further conflict with Miskitu community members from the *Diez Comunidades* territory who continue to claim to be the beneficiaries of a real title that covers the whole of Awas Tingni community.
- 6 The Pearl Cays (Spanish: *Cayos de Perlas*) is a group of 18 small islands located about 35 kilometers off of the Caribbean Coast of Nicaragua from Laguna de Perlas. They are part of the RAAS autonomous region.

Claus Kjaerby is Danish and holds a Master's in International Development Studies and Civil Engineering. He is an indigenous affairs advisor to the Danish NGO Ibis in Central America. He has spent 12 years working on organisational development processes, joint management of protected areas, ecotourism and territorial governance with indigenous peoples in the Amazon, the Andes and, more recently, on intercultural governance.

HONDURAS

Honduras has communities of black African descendants plus seven indigenous peoples. The black communities include the Garífuna and English-speaking populations.

These peoples live in the following areas of the country: the Lengua in the south-western departments (269,000 individuals); the Miskito in Gracias a Dios department in the east (96,000 individuals); the English-speaking black communities in the Caribbean islands and along the north coast (80,000 individuals); the Garífuna along the north coast (80,000 individuals); the Mayas Chortí in Copán Department (35,000 individuals); the Tolupán in Yoro (30,000 individuals); the Nahua in Olancho (19,000 individuals); the Pech in Olancho (5,000 individuals); the Tawahka in a small area between Olanchito and Gracias a Dios (1,800 individuals), in all a total of 607,300 people, according to the estimates of these peoples themselves, or 8% of the Honduran population.¹ The official figures state 496,000 individuals, or 6.5 %.²

The territory claimed by the indigenous peoples accounts for approximately 2 million hectares out of a total national land mass of 11.2 million. Only 10% have a guaranteed property title.³

Each of the peoples retains a degree of individuality, in line with their habits and customs, and this is reflected in their day-to-day practices in terms of, for example, their community councils. Over time, however, they are fighting a losing battle to preserve their different distinctive features.

Honduras ratified ILO Convention 169 in September 1994. In 2007 it voted in favour of the Declaration on the Rights of Indigenous Peoples. Apart from Convention 169, there is no case law to protect the rights of indigenous peoples.



Election campaign

2008 saw the start of the electoral campaign, a process that normally lasts 18 months. Parliamentary elections will be held in November 2009, one year after the primaries, which traditionally end with two parties dominant, the “red” liberals, the Honduras Liberal Party (PLH), currently in power under the leadership of President Manuel Zelaya Rosales, and the “blue” conservatives, the Honduran National Party (PNH) led by Roberto Micheletti.

The primaries resulted in two presidential candidates going forward, the conservative Porfirio “Pepe” Lobo Sosa and the liberal Elvin Ernesto Santos, also currently the vice-president.

One issue of clear interest to the country’s indigenous peoples was the embryonic attempts of President Zelaya to reach an agreement with presidents Evo Morales of Bolivia and Hugo Chávez of Venezuela aimed at showing the United States that they would not accept interference in their internal affairs. The US ambassador was thrown out of Bolivia in September for allegedly supporting the opposition to Evo Morales’ democratically-elected government. This led to a similar action on the part of Venezuela and a show of solidarity, albeit a timid

one, from President Zelaya, who postponed the official reception of the new US ambassador to Honduras, Hugo Llorens, for a week. At the same time, Zelaya stated that he did not want any problems with Washington, whose government he described as an “ally”.⁴

Prior to this, a debate had arisen with regard to the ALBA, the Bolivarian Alternative for Latin America. This is a proposed trading bloc for Latin America and the Caribbean that prioritises the eradication of poverty and social exclusion over indiscriminate economic growth. In August, Honduras decided to join this group. You might be forgiven for thinking that this desire to put poverty above the creation of income for large companies represented a change in the government’s neoliberal policies but, in actual fact, this is not the case. There was not one word on the indigenous peoples, who are among the poorest of the poor and who enjoy no particular recognition of their rights.

Implementation of indigenous rights

The long-awaited enactment of a new forestry law should also be mentioned. After a drafting process that lasted more than ten years, this law was finally approved by Congress. Even though only mentioning indigenous peoples at the periphery,⁵ the law will nevertheless encourage an improvement in their economic situation as peoples.

Most indigenous peoples in Honduras live in the latifoliate forest or surrounding areas. With the prospect of more control over forest exploitation, including encouraging certification and a greater volume and variety of species, new prospects are being created for the growth and diversification of indigenous peoples’ income, through the exploitation of both timber and non-timber products.

The new forestry law was ratified by the president in February and is now awaiting the drafting of the corresponding implementing regulations, expected in early 2009.

It is surprising that, 15 years after ratifying Convention 169, there are still no implementing regulations governing the specific rights of indigenous peoples in Honduras. The Constitution talks of human rights and individual rights⁶ but there is no mention of the collective

rights of indigenous peoples. Once Convention 169 was ratified, the Constitution should have been changed to include a legal responsibility for implementing actions to protect their collective rights, such as their rights to culture, language, customary law and territories, and also ensuring respect for their integrity by means of special measures.

Honduras has had a Poverty Reduction Strategy in place since 2001 and this refers to the "ethnic peoples".

Work has been ongoing for a number of years on a draft "indigenous law",⁷ which has still not been approved by Congress. This bill of law, which has been emphatically supported by an Inter-American Development Bank-funded project, is however in contradiction with Convention 169 in terms of the right to consultation. It is also limited in comparison with the Convention with regard to aspects of territoriality.⁸

There are some small signs of a change in the state's attitude, however. For example, the "2008-2020 Social Protection Policy", which was being drafted in 2008, refers to "indigenous peoples" and their marginalised status several times.

The international community is currently making various efforts to support the indigenous peoples, for example the Inter-American Development Bank. address these peoples' problems. The IDB's Integrated Development Programme for Indigenous Peoples (DIPA) is an 11 million dollar project, of which a little less than two million, or 18%, is destined for specific support to each of the peoples. The project began in 2007 and will run until 2010.⁹ The Programme's stated objective is to improve the living conditions of indigenous peoples in Honduras and to contribute to their integrated and sustainable development in economic, social, cultural and environmental terms. An important element of the programme is to provide support to the Ministry of the Interior in its leading role in issues affecting indigenous peoples and black communities.

The women's project in the Moskitia, financed by Danida through the NGO Nepenthes, is an example of a specific commitment to promoting indigenous peoples.¹⁰ The project began in 2007 and will run until 2009. Apart from these, there are virtually no projects that seriously address these peoples' problems.

The indigenous movement

In terms of the indigenous peoples' internal cohesion, 2008 was marked by conflict within their umbrella organisation, CONPAH. This led to the Garífuna walking out, thus clearly demonstrating that the indigenous peoples are still unable to work together to demand their rights from government. What makes it worse is the fact that the Garífuna are precisely the ethnic group that has the greatest organisational capacity and internal cohesion, and the group that could have set an example to the others in terms of establishing the broad outlines of their demands. The Garífuna's leading role had already been questioned earlier on in the year in terms of not being active enough in their role as spokesperson with the Ministry of the Interior, which is the government's contact point with the indigenous peoples. The Garífuna did not accept this criticism and so decided to withdraw from the organisation, thus consolidating the attempts by some sectors to fragment the indigenous movement. It is difficult to criticise the government for this situation. The lack of unity is caused by a complex set of different desires on the part of both old leaders and national and international organisations which, whilst well-intentioned, have failed to make any real efforts to understand the power struggle taking place within the movement itself.

The current disunity of the nine peoples and the general lack of coordination of their interests clearly shows that, before criticising the government and the Honduran state for not respecting their rights, they need to look within and agree on an area of interest that they all have in common, for example land and territory, the translation of Convention 169 into *de facto* regulations governing their rights, or their active involvement as an interest group in the country's politics. □

Notes

- 1 Figures indicated by each of the nine peoples during interviews with the Confederation of the Indigenous Peoples of Honduras, CONPAH, the only exception being the figure for the Garífuna, which comes from another reliable source.
- 2 Social Protection Policy 2008- 2020, Draft IV, May 2008, page 13.
- 3 Approximate figures suggested by members of CONPAH.

- 4 Tegucigalpa. ACAN-EFE Agency. 12 September 2008
- 5 Article 45 of the Forestry Law concludes by stating: «Indigenous and Afro-Honduran peoples are recognised the right to forest areas situated in the lands that traditionally belong to them, in accordance with national legislation and ILO Convention 169»
- 6 Article 59, and articles 65 to 110 of the 1982 Constitution of the Republic of Honduras
- 7 Also known as the “IDB’s indigenous law” and which, for many, Miriam Miranda of the Garífuna organisation OFRANEH included is, in essence, “no more than an attempt to water down ILO Convention 169 on indigenous and tribal peoples”
- 8 See the numerous observations of the ILO’s CEACR (Committee of Experts on the Application of Conventions and Recommendations) ILO: CEACR 2008/79th meeting.
- 9 See the website www.gobernacion.gob.hn for more information on this programme
- 10 See the website www.nepenthes.dk > www.nepenthesprojekter.dk > Español > Proyectos de desarrollo > Honduras > Derechos de mujeres miskitas

Jørgen Riis Pedersen is a sociologist and Central America representative of the Danish environmental organisation, Nepenthes.



COLOMBIA

Colombia has 87 indigenous peoples, belonging 12 linguistic families. Their population is estimated at between 1.2 and 1.4 million people (around 3% of the Colombian population).

Approximately 85% of the indigenous population lives in the Andes or along the Atlantic coast but in fact this accounts for scarcely a dozen of these groups. Most of the peoples live in the Amazon, the Pacific and the savannah's of eastern Colombia, some of them comprising scarcely a hundred individuals. After Brazil, Colombia has more indigenous peoples than any other country on the American continent.

There are great differences between them. These include, cultural differences: ; different forms of "contact" with the wider society and therefore different degrees and forms of acculturation of indigenous peoples; different demands: in the Andes they are struggling for land and their opponents are the land-owners whilst in the Amazon and on the plains they are struggling to retain and defend their territories from estate owners, logging and mining companies and even from settlers who, displaced from the interior of the country, are laying claim to their lands; different organisational forms and political ways of facing up to problems: Some organisations have been influenced by political parties, churches, anthropologists or NGOs. Some have been subordinated or co-opted by different institutions. The most significant organisations retain their autonomy but seek alliances with other popular sectors. Others seek to retain their autonomy and follow their own path.

The 1980s were a period of organisational consolidation and ascent of the indigenous peoples, after a successful struggle for land and



the establishment of their territories, the “reserves”, in the previous decade. The 1990s and the first years of the new millennium, however, were characterised by violence and territorial dispossession of the indigenous peoples and black communities. This violence is intimately linked to a series of economic initiatives: 1) the expansion of natural

resource extraction companies (gold and other minerals); 2) the implementation of agricultural mega-projects (palm oil, banana and plantain), including coca and poppy crops; 3) the expansion of cattle ranches; 4) the use of water (dams) and 5) modernisation of the road and port infrastructure. These economic initiatives are undertaken by private, national and multinational companies with the support of paramilitary forces created for this purpose. These “businesses” have grown over the period, in the face of official indifference that is tantamount to complicity. *Complicity* because, during these last six years of President Álvaro Uribe Vélez’ administration, we have witnessed the systematic dismantling of the economic, social and cultural rights of the indigenous and black peoples. Perhaps the most appropriate term would be *connivance*, however, because, with the new Mining Code (Law 685 of 2001),¹ the procedure being implemented for the Organic Law on Territorial Organisation,² the Rural Development Statute (Law 1152 of July 2007)³ and the disregard for the right of prior consent on laws and economic projects that affect their interests, the Colombian government is smoothing the way for the expropriation and pillaging of the communal territories of indigenous and black peoples. What’s more, President Uribe has said that the central policy of his government is that of “democratic security”, as a basis for “investor confidence” or, in other words: a strengthening of the military apparatus in order to ensure the entry of transnational capital that will exploit the country’s natural resources to the full.

The indigenous struggle for their rights and for democracy in Colombia

The indigenous marches that began in the middle of October 2008 and reached Bogota on 20 November⁴ were aimed not only at calling on the government to control their own security forces, who are closely linked to paramilitary groups that have stained the reserves with blood, but also at demanding protection of their communities’ territorial rights, which are being violated by extraction companies and biofuel plantations, promoted by the government as “important agribusiness” for Colombia’s development.

Their demonstrations were also aimed at showing that neoliberalism is not only an economic doctrine but also a cultural and political project with a particular concept of economic development and of relations between the state and civil society, relations that do not acknowledge diversity of thought as the basis of a democratic state.

Their demands are not therefore limited, as in the past, to calling for compliance with land agreements or the application of laws favourable to them but instead, like their indigenous brothers in Bolivia, they are highlighting the need to rebuild Colombia both morally and democratically and to produce a new and inclusive development model, given that the widespread exclusion of the national majority has caused the decline of our democracy and political degradation.

The language is very specific. They talk of “liberating Mother Earth”, meaning recovering it from drugs traffickers, palm oil cultivators and cattle ranchers. They talk of respect for nature. In sum, they talk of an urgent need for action to prevent the green environment in general from disappearing from their lives.

In this context, they use the term “*minga*”, which in Quechua means “collective work”, thus implying that the renewal of democracy is an issue for all of society’s excluded sectors. Let’s hear what some of the indigenous people had to say during their march:

It is clear that our struggle includes the issue of land, which is paramount for indigenous peoples. But we are not only demanding that our agreements be fulfilled and our needs be resolved as the issue of lands is not a problem exclusive to the indigenous peoples. Nor is it only a demand from the Cauca... it is a demand of all peasant farmers in Colombia...

...the social conflict over land in the country affects us all because the Colombian state does not guarantee the social function of the land and always acts in favour of the landowners.

...this minga seeks to create unity, integration and struggle for lands and the defence of the territorial resources of indigenous, black and peasant farmer communities.

Another important aspect of our minga is to put a stop to what we have called "Legislation for dispossession". We are also demanding that the Law on Rural Development, the Mining Code, the water plans and all laws that should have been submitted to prior consultation in line with ILO Convention 169 be revoked.

In terms of the issue of Dr. Álvaro Uribe Vélez' "democratic security", it may have managed to weaken the illegal armed groups but it has not put a stop to the violence against the Colombian people ...we reject the repeated murders of indigenous peoples, peasant farmers, Afro-Colombians, union members and ordinary people, ..some of them presented as "false positives"⁵ ..and we demand that the physical and intellectual authors of these crimes be brought to justice.

The link between politics and drugs trafficking has brought a political class to power that has benefited from the dispossession of the lands of 3 million peasant farmers, indigenous and Afro-Colombian peoples. This dispossession will only end when the poor people in rural and urban areas put a stop to this corrupt association.

As for the Free Trade Agreement, we believe that this will open up a space for multinationals to come and exploit the wealth of Colombia, impoverishing the country and its rural people yet more. So the Colombian people should also be consulted about this.

A new institutional set-up

In line with their statements, the indigenous people are thus proposing a new institutional set-up for relations between the social sectors, and with regard to the way politics is conceived and implemented in the country. This new institutional set-up must take as its base the diversity of lives, interests and protest experiences of all sectors that make up the popular class. Through the struggle for democracy, this new institutional set-up will rescue precisely those social sectors that have traditionally been ignored and excluded by the state, but also by dogmatists, fundamentalists, voluntarists, vanguardists, sectarianists and

authoritarianists from many political parties, including those of the Left: landless farmers, indigenous peoples, long-term unemployed, Afro-Colombians, environmentalists, cultural movements, women, Christians who are for pluralism and intellectual sectors committed to democracy and social change, in sum, ordinary Colombians, weary of the fact that new “vanguards” emerge every day, armed or not, trying to decide the future and life of Colombians for them.

The state’s response

President Uribe’s discourse has been characterised by efforts to cover up the problems of Colombian agriculture. According to him, there are no poor peasant farmers or landowners, nor social sectors that can be distinguished by their culture or by their position in the social structure. There is no intolerable concentration of land, and terms that refer to a conflict of interests have been removed from the official rhetoric. Political mobilisation in defence of rights therefore has negative connotations, comparable to actions aimed at destabilising the state or promoting terrorism. Here’s what the indigenous people have to say:⁶

...the concentration of lands and wealth and the legislation that guarantees benefits and privileges to chiefs, landowners, higher social classes and transnational companies at the cost of the poverty and exploitation of the rural people are an abhorrence and must disappear.

The Colombian government was one of the few countries that did not vote in favour of the UN Declaration on the Rights of Indigenous Peoples, thus turning its back on improved international regulatory standards for indigenous peoples and scorning the years of effort put in by the United Nations to bring this instrument to fruition. Once again, the indigenous people:

As indigenous peoples, we demand that the United Nation’s Declaration on the Rights of Indigenous Peoples be ratified by the Colombian state and transposed into the law of the Republic. We also support the specific

rights of other peoples and social sectors in the context of social justice and equity.

...to continue delaying these changes is irresponsible and is leading the country to a precipice...

Indigenous landowners?

It is not surprising that the President's first reaction to these marches was to try to delegitimize them, discrediting them with untrue facts: "They make up only 3% of the population but they own 27% of the national territory"... "They are the true landowners of the country, not the paramilitaries".⁷ These false figures, often repeated in presidential speeches, end up being accepted as fact. No-one in Colombia, and certainly not government officials, would dare contradict figures presented by the President himself. They would not dare question him. With almost feudal submission, the Minister for Agriculture, Andrés Felipe Arias, not only corroborated these figures but went further, stating that the indigenous peoples would receive not one metre more of land during his term in office. And these figures continue to be repeated despite the fact that the indigenous organisations, the Ombudsman and even some civil servants from his own department have indicated that 90% of the indigenous territories are Amazonian or Pacific forest (and can only be used as forest), Andean plains (the main water sources, where the country's main rivers emerge), deserts such as Guajira or lands exhausted by over pasturing on the part of cattle ranchers. We now know that the main cause for concern amongst Andean indigenous farmers is the lack of land appropriate for cultivation. What's more, attempts to seize their land have been at the origin of all the violence they have suffered, from the Conquest to the present day, and the repression currently being unleashed against them is aimed at preventing them from recovering those lands.

Some analysts think that these government stories have a perverse aim, that of sending a message to the landless peasants that there is no land to distribute because the indigenous peoples are hoarding it and refusing to share. The indigenous people say:

With this minga we are affirming our commitment to the well-being of all peoples, through equity and social justice, and we are doing it as ancestral and native peoples. We consequently call on the government to stop trying to confuse guarantees of collective rights, social justice and equity, permanent obligations delayed and denied by the state, with the right to difference and respect for diversity.

The President and the Minister for Agriculture are manipulating figures and interpreting different events in a distorted manner so that other sectors and the general public believe we are receiving unmerited privileges or, even worse, that we are responsible for their problems and difficulties. This is not true and has no basis in reality. Poverty and social justice affect us all. We are the victims of state policies that are responsible for this.

Another way in which the government tries to face up to the increasingly favourable opinion that the indigenous peoples are creating through their protests is to state that there is no discrimination in Colombia. It states that both the indigenous and the Afro-Colombian peoples form part of the state. The government is here referring to the fact that some indigenous and Afro-Colombian individuals do occupy public positions and participate in collegiate bodies (councils, assemblies, Senate and Chamber). But what good has it done the Afro-Colombian sugarcane workers to have a Minister for Black Culture?⁸ This post holder has never made any comment regarding the inhuman working conditions and discrimination of her ethnic brothers and sisters, which led them to strike and unite with the indigenous marches. The indigenous peoples similarly refer to the allegorical indigenous representation in state collegiate bodies, where representatives often forget why they are there and who elected them. One case that confused public opinion and produced a great deal of unease amongst the indigenous organisations was that of the indigenous senator, Ernesto Ramiro Estacio, who was in favour of the above mentioned Rural Development Statute, rightly criticised by the peasant farmer, indigenous and black peoples for encouraging the dispossession and legal expropriation of their lands.

What of the indigenous peoples in the “lowlands”?

It was primarily the Andean indigenous peoples who were involved in the dynamic of the indigenous marches, concretely the indigenous Paeces, Guambianos, Coconucos, Yanaconas and mountain Emberas (Eyabida). Although some indigenous individuals from other peoples were also involved, it was generally a symbolic involvement on the part of their leaders. The paradox here is that the problems of the lowland (Amazon, eastern plains, Pacific, Guajira) indigenous peoples are the most pressing, given that some of them are consequently on the verge of extinction. This is due to two coinciding phenomena: on the one hand, the national and transnational company interests that have flowed into these territories in search of subsoil resources (minerals, hydrocarbons),⁹ in search of large areas of land for biofuel plantations (palm oil, maize), to continue expanding the cattle frontier or to continue extracting wood from natural forests. In all these cases, the state has created a legal basis to facilitate these companies' actions.

On the other hand, the policy of “democratic security” and its consequent increase in security forces has displaced the FARC guerrillas towards the country's marginal regions, precisely where the most vulnerable indigenous groups live. The guerrilla insurgency abandoned political spaces long ago and, in the hope of establishing military control over these regions, has entered them to strategically govern them and subordinate their inhabitants. It is a matter of conquering areas strategic for the war by force and establishing controls over the population. And so you end up with a situation of forced recruitments, disdain for indigenous peoples' own systems of governments, control over the communities' resources and economies and, in recent cases, demonizing any failure to comply with these practices as paramilitarism, or even using violence.

Most of the indigenous peoples from the eastern plains, from the Amazon and from the Pacific (approximately 70 different peoples) have traditional organisations, many of them under the paternalistic supervision of churches, evangelical sects, NGOs or state bodies, and they are also insufficiently supported by their regional or national organisations. They have little possibility of resisting the onslaught of

these economic and military forces. They “lost” the indigenous agenda (territory-culture-autonomy) in these regions some while ago and now find themselves on the verge of extinction. This is a true humanitarian tragedy, as was presented by IWGIA, the Black Communities Process, PCN and the Jenzera Work Collective for the Pacific Region during the session on the Universal Periodic Review of Colombia in the Human Right Council of the United Nations.¹⁰

A resurge in racism

The indigenous peoples complain that, from the highest state levels, ideas aimed at discrediting the indigenous marches have filtered down, ranging from those seeking to expunge it of all justification to those accusing it of guerrilla infiltration. This is creating a clearly “xenophobic” climate, given the press releases and e-mails that indigenous organisations have been receiving. And given the irresponsible way in which the protests have been handled by the government and some of the media,¹¹ taking advantage of the President’s high popularity¹² among the Colombian population. To the tragedy being experienced by the indigenous and black peoples must be added a growing xenophobia which, in countries such as ours, can lead to paramilitary groups (old and new), sectors of the population or even the public forces of law and order believing they have the right to act against criticism of the President and carry out massacres of the indigenous peoples. As Hans Magnus Enzensberger states, “The official obsession with terrorism has encouraged an hysterical idolatry of state power and absurd sanctification of the forces of law and order”.¹³ □

Notes

- 1 Which establishes that a mining company can move from the prospecting stage to the exploitation stage of non-renewable natural resources automatically and with one single license.
- 2 This law has been debated for more than 12 years without results. It is very important because it would give recognition and real participation to indigenous peoples. Indigenous reserves are national geographical entities in Colom-

- bia's Political Constitution. However, there is no organic law regulating the functioning of these.
- 3 This law is currently being questioned at the Constitutional Court. According to the address of Judge Jaime Córdoba, it is in violation of ILO Convention 169 (now Law 21 of 1991), "En vilo , ley de Desarrollo Rural", El Espectador.com, 3 March 2009.
 - 4 Most of these marches departed from Cauca but were joined by others coming from Antioquia, Risaralda, Caldas, Córdoba, Valle del Cauca, before entering Bogotá. See: Carl Henrik Langeback, "Marchas indígenas del Cauca: del mito a la realidad", Razón Pública, 2 November 2008.
 - 5 In Colombia this term denotes a series of irregularities committed by members of the forces of law and order against the civilian population. The ones that have scandalised both human rights organisations and the international community are those related to the assassination of young unemployed people from the popular sectors who, deceived with promises of work, were murdered and presented as dead guerrilla combatants. The aim of these fateful events was to achieve promotions, obtain licences or collect rewards.
 - 6 Declaraciones de Ayda Quilcué, durante la marcha indígena. Consejera Mayor del CRIC. 17 de noviembre de 2008
 - 7 Television address of President Uribe, 22 October 2008.
See: <http://www.youtube.com/watch?v=231wgWDwRsM>
 - 8 María Jimena Duzán: "La Colombia racista", semana.com, 25 October 2008
 - 9 One example of this is the so-called Minero Mandé Norte project, located between Carmen del Darién (Chocó), and Murindó (Antioquia). Since the 1970s, large companies have been prospecting the area, with the permission of Ingeominas (Instituto Colombiano de Geología y Minería). Already certain of the existence of large deposits of gold, copper and a little-known mineral called molybdenum, they were waiting for a government that would guarantee their security. This has happened with the Uribe government, which has granted the Muriel Mining Co. valuable concessions over a territory of 160 km². This area coincides with the collective territories of the black communities of Jiguamiandó and the indigenous reserves of Urada-Jiguamiandó and Murindó of the Embera-Katio people.
 - 10 See: IWGIA, PCN, Colectivo de Trabajo Jenzera, "La tragedia humanitaria del Pacífico colombiano", <http://alainet.org/active/27810=es>
 - 11 See Jaramillo y Santos: "Colombia bajo la lupa de las naciones" (Servindi).
 - 12 According to a Gallup poll in March, President Uribe is the most popular president in Latin America with a positive public rating of almost 80%. El Tiempo, 12 March 2008.
 - 13 Quoted by Thomas Assheuer: Piraten der neuen Welt, Baudrillard, Enzensberger, Guéhenno, Rancière: Einige Theorien über den Ursprung von Gewalt und Terror in der Moderne, Die Zeit 40/2001 (our translation).

Efraín Jaramillo Jaramillo is an anthropologist and member of the Colectivo de Trabajo Jenzerá.

VENEZUELA

Venezuela recognises and guarantees the existence of its indigenous peoples and communities. The indigenous peoples in Venezuela are the Baniva, Baré, Cubeo, Jivi, Hoti, Kurripaco, Piapoco, Puinave, Sáliva, Sanemá, Wotjuja, Yanomami, Warekena, Yabarana, Yekuana, Mako, Ñengatú, Kariña, Cumanagoto, Pumé, Kumba, Urak, Akawayo, Arawako, Eñepa, Pemón, Sape, Wanai, Warao, Chaima, Wayuu, Añu, Bari, Yukpa, Japreria, Aya-man, Inga, Amorura, Timoto-cuicas and Guanono. Of the 26 million inhabitants in the country, 2.2% are indigenous.

The 1999 Constitution recognised the country's multiethnic and pluricultural nature for the first time, and includes a special section devoted to indigenous rights. It opens up opportunities for indigenous political participation at national, state and local level. In 2001, the Law on Demarcation and Guarantee of Habitat and Lands of Indigenous Peoples came into force; in 2002 ILO Convention 169 was ratified; in 2005, the Organic Law on Indigenous Peoples and Communities expanded and consolidated this framework of rights. At least 20 laws, decrees, resolutions and agreements, in addition to three international conventions, make up a coherent series of regulatory advances that have been expressing the political will and pro-indigenous government discourse in legal terms.

This political and legal context has encouraged the unprecedented direct involvement of indigenous representatives within decision-making circles. There are thus currently: one indigenous governor (Amazonas state), six indigenous mayors, five indigenous MPs in the National Assembly and eight indigenous legislators in the Legislative Councils of states with indigenous populations, plus other indigenous individuals in popularly elected posts at regional and local level.

The government institutions have been adapting to these new regulations over the last few years, creating the relevant offices for the design and implementation of public policies aimed at the indigenous population. Noteworthy in this respect are the actions being undertaken by the ministries of Education, Health, Culture, Housing, Defence, to name but a few. The Ombudsman created the Special Ombudsman for the Protection of Indigenous Peoples in order to “watch over the rights of indigenous peoples and take the necessary action for their guarantee and effective protection”; the “Guaicaipuro Mission”² was created in 2003 as the implementing agency for policies and projects aimed at indigenous peoples; and, in 2007, the Ministry for Indigenous Peoples was created as “the guiding body and coordinator of government policies on indigenous issues”. It is worth noting that most of these bodies are headed by indigenous individuals.

The Law on Indigenous Languages, aimed at regularising, promoting and strengthening the use, revival, preservation, defence and promotion of indigenous languages, came into force in July 2008

Actions related to land demarcation and health were particularly noteworthy in 2008, and so this report will focus on these.

Regulatory and institutional progress

Rejection of proposed reform of the LOPCI

Despite important achievements, however, progress in implementing regulations has been limited. This can be put down to the fact that many of the indigenous leaders now occupy the new government posts and so the indigenous organisations that they came from have been weakened, divided and are now subordinate to the state. The indigenous movement finds itself in a position where to exert pressure for their rights would be seen as an act of treason.



One fortunate exception during 2008 was the united front presented by the National Indian Council of Venezuela (CONIVE), ten regional indigenous organisations, the indigenous legislators and MPs from the Legislative Councils and National Assembly and indigenous councillors in order to challenge two proposed reforms of the Organic Law on Indigenous Peoples and Communities (LOPCI). These proposals were presented by the Ministry of Indigenous Peoples and the Ministry of the Environment with the aim of reforming the LOPCI through

a fast-track process that enables the government to amend or pass laws without any discussion within the National Assembly. The aim of the proposed reforms was, among other things: a) to change the term “indigenous habitat and lands” to “communal territories”; b) to do away with the current indigenous organisations and replace them with “communal councils”; and c) to change the procedure for demarcating indigenous lands, all issues that were “clearly and openly in violation of the rights of indigenous peoples to their lands, habitat, natural resource use, creation of areas under special administration (ABRAE) on indigenous lands, among others”.³ Thanks to this union, these plans - which moreover were in violation of the right to participation and to prior and informed consent - were rejected and a reform was overthrown that would have diminished all of the rights thus far achieved.

The Ministry of Popular Power for Indigenous Peoples

Since its creation in 2007, the Ministry for Indigenous Peoples has unleashed a series of disputes over the new regional power spaces and structures that it has been establishing. Its management has been characterised by a focus on immediate service provision as a palliative to the cyclical and structural problems, leveraging a torrent of financial resources but lacking in long-term planning or strategic direction. Created as a guiding body and coordinator of state indigenous policies, it has been implementing projects and actions in areas of health, infrastructure, housing and food but tasks, efforts and resources have been duplicated as it has worked in isolation from other relevant bodies and has shown no spirit of cooperation or interinstitutional coordination.

Programmes such as the “centres for Shamanic health and training” threaten to repeat the highly criticised failures of the past in Venezuela and other countries. Moreover, the allocation of salaried posts along clientelist lines diminishes local leadership, dividing the communities into pro- and anti-government sectors. In addition, crucial issues such as land demarcation – which does not even figure in the institution’s objectives - have been sidelined, even though they are a priority to the country’s indigenous peoples. This has had an impact in

terms of a proliferation of uncoordinated institutional spaces – at national, state and local government levels – each with its own overlapping and sometimes contradictory agenda, and has led to greater divisions within the indigenous movement itself.

Land demarcations

On 22 April, International Land Day, representatives of indigenous organisations marched on the National Assembly to raise the issue of the vulnerability of indigenous peoples to environmental pollution, global warming, deforestation, illegal mining, oil and hydrocarbon activities, and to request that the national government “reaffirm and promote once more the national demarcation process for indigenous lands and habitat, giving it political and not merely technical-legal importance”.⁴

The lack of guarantees over their territories is a prime factor of vulnerability amongst Venezuela’s indigenous peoples and this is why land demarcation is their main demand. The state recognises “their habitat and original rights to the lands they have ancestrally occupied and which are necessary for developing and guaranteeing their ways of life” and requires “the national executive, with the involvement of the indigenous peoples, to demarcate and guarantee the right to the collective ownership of their lands”.⁵ In addition, the law establishes: a) the state’s obligation to finance the process; b) the creation of a National Demarcation Commission⁶ (CND); and c) the demarcation procedure.⁷

Despite these legal advances, however, the demarcation process has been an extremely long one. According to information provided by the CND, 36 collective property titles were issued to indigenous communities between 2005 and 2008, relating to a total of 958,886 hectares in the states of Anzoátegui (12 communities of the Kari’ña people); Apure (13 communities: 9 Pumé, 3 Jivi and 1 Cuiva); Delta Amacuro (one Warao community); Monagas (9 Warao communities) and Sucre (a collective title that covers various Warao communities).

Given that there are 36 indigenous peoples in Venezuela living in some 2,295 communities,⁸ the CND’s technical staff estimate that it will

take between 10 and 15 years to complete the demarcation process. The main causes of the delay are, in the opinion of representatives of indigenous peoples, communities and organisations, "the ineffectual operations of the Regional Demarcation Commissions, caused by institutional changes (rotation of ministers), a lack of financial resources and a lack of specialist technical staff".⁹ In addition, all property titles issued correspond to individual communities; no ethnic group has achieved the demarcation of a complete, integral territory. According to Lusbi Portillo,¹⁰ "If the indigenous people who are directly involved are not taken into account, we will end up with plots being allocated that lead to the isolation and break-up of the communities."¹¹ This is nothing new in the country; in actual fact it is simply an extension of the agrarian reform policies that were so harshly criticised in previous decades in Venezuela. Behind this constancy persists the fear of an alleged secessionist desire on the part of indigenous peoples. President Chávez himself admits this when he says, "We can't give indigenous people the whole of the Amazon just because they live there or they would break away from Venezuela".¹²

Land conflicts

Since its creation in 2004, the CND has had 23 cases of conflicts referred to it that require resolving. Conflicts over land ownership have arisen between indigenous and non-indigenous communities, with large farms and cattle ranches, with councils, mining concessions and areas under special administration (national parks).

Mining activities, both legal and illegal, are a persistent threat and cause of conflict, and yet the national government has taken no convincing measures to prevent their impact on the communities and the environment. In the area of the Paragua River (Bolívar state), a company with a mining concession is using a dredger to obtain alluvial gold, polluting waters that are used by 33 communities, primarily Pemón. In the Caura River basin (Bolívar state), illegal mining invasions have been continuing for the past three years. The Venezuelan Indigenous Parliament passed judgement on these actions and on the activities of military personnel in the region, urging the regional and

national authorities to protect the indigenous peoples' right to life and to preserve the natural spaces. The Tascabaña community of the Kariña people (Anzoátegui state) has been suffering the effects of gases escaping from closed oil wells for nine years now, and these have polluted the waters of the Tascabaña River and aquifers. The water is no longer fit for human consumption and there are no other available sources. There are 15 closed oil wells around the community.

Without wishing to undermine the severity of all these land conflicts, the Yukpa case is worth more detailed discussion as it was one that had the greatest impact during 2008.

The Yukpa case

In the 1930s, the Yukpa were displaced from their ancestral lands in the foothills of the mountains by cattle ranches, and had to move to the mountainous areas of the Sierra de Perijá on the border with Colombia (Zulia state). During the 1970s, the Yukpa began the slow but sure recovery of the foothills by occupying the ranches. Since then, they have been the victims of constant harassment on the part of cattle farmers in the region – with the support of the Armed Forces and paramilitary groups – with the aim of evicting them from the lands they have recovered. However, “the conflict is not limited to clashes between ranch owners and indigenous peoples as there are also peasant farmers in the area with relatively small plots, Colombian refugees, guerrillas and paramilitaries crossing the border without any difficulty as well as those involved in carbon and phosphate mining projects”.¹³

On 23 April, an illegal armed group attacked the Chaktapa community, attempting to murder Sabino Romero Izarra, an indigenous leader at the forefront of the struggle to recover the Yukpa people's indigenous lands. The same armed group, led by the owner of the Kusare estate, Alejandro Chávez Vargas, returned on three further occasions to threaten and physically and verbally attack community members. On 22 July, Sabino Romero Izarra's father, José Manuel Romero, died aged 109, following blows received. On 5 August members of the Chaktapa community occupied the Kusare estate to put pressure on the relevant bodies to commence the process of demarcating their lands. On 6 August members of the Army arrived “to guard

the community” and serve as a mediating force. Days later, with the support of the National Guard, they surrounded the area, preventing any movement in or out and cutting off the electricity supply, leaving the Chaktapa and Guamo communities in a state of siege. This was accompanied by acts of repression and terror, with shots to the ground, tear gas, insults, provocations, harassment and death threats.¹⁴

The above is just one example out of many. During October 2008, at least eight estates were occupied by the Yukpa. Given this situation, the national government has adopted a more conciliatory – and ambiguous – position, promoting the peaceful co-existence of all those living in the area, guaranteeing both parties’ (indigenous and ranch owners) rights to land, convinced that there is room for everyone.¹⁵ In addition, “the government only paid attention to events in the Sierra de Perijá after the Yukpa had intensified their occupation of estates to demand lands that belong to them by ancestral right”.¹⁶ Thus on 12 October, Day of Indigenous Resistance, President Chávez approved a plan of assistance for the indigenous peoples in the Sierra de Perijá (Yukpa and Barí) totalling some US\$ 109 million and aimed at improving rural roads, education, health, basic services, agricultural production, security forces and land demarcation.

Health

An Indigenous Health Department (DSI) was created within the Ministry of Health in 2005 with the aim of adapting healthcare services and programmes to the specific geographical, cultural and linguistic needs of the indigenous peoples. Significant and sustained progress has been made in this regard; however, indigenous peoples are still the most neglected sector in their respective regions, with the worst health indicators.¹⁷

In 2008, the Ministry of Health included the *ethnic* variable in its epidemiological care and monitoring records for the first time. This will enable greater clarity in the future with regard to the health problems affecting these peoples and, consequently, enable improved actions to be implemented.

One successful experiment implemented by the DSI has been the Indigenous Care and Guidance Services established in the main referral hospitals for indigenous people. These services seek to improve the quality of indigenous care through use of bilingual intercultural mediators who support the patient, intervening with the health staff, serving as interpreters and facilitating all help required within the institution. This has enabled a drastic reduction in the length of hospitalisation of patients and has increased the number of indigenous users (43,988 indigenous patients treated in 2008), as people had previously avoided the hospitals for fear of ill-treatment. These services are now operational in 23 hospitals throughout the states with indigenous populations, as well as in Caracas.¹⁸

Another noteworthy example is the Yanomami Health Plan (PSY), which began in 2005 in line with an agreement signed before the Inter-American Commission on Human Rights in 1999 between the Venezuelan state and various human rights defence organisations following the Haximú Massacre.¹⁹ "The PSY seeks to sustainably extend culturally appropriate health services to 80% of the Yanomami population, which has historically been under-provided for, or completely lacking in, care".²⁰ The logistical challenges are significant, however. The Yanomami population (in Venezuela) live in some 250 communities spread across a territory of 83,000 km² in the Amazon rainforest. The extensive air support of the Armed Forces (with planes and helicopters) has been a decisive factor in the plan's success.

The PSY has been consolidating services already available in the area (improved salaries for health staff, equipment provision, inputs, medicines and fuel), and has extended the health system's sphere of action through the training of Yanomami staff in primary health care (41 in all, including health workers, laboratory workers and entomological monitoring assistants for malaria) and through the formation of mobile health teams that visit the most remote communities. Through these actions, there has been an eightfold increase in the number of consultations since 2005 (4,930 in 2005 and 40,680 in 2008).

Although these examples are proof that public health policies are well focused towards providing care for indigenous peoples, the DSI has been suffering from budgetary limitations for two consecutive years now and this has reduced its capacity for action, with fewer staff

and declines in the quality of some services. The public health system in general also continues to suffer from serious failings. In 2008, another case caught the attention of the national and international press in the Orinoco River delta.

The Warao case

The Warao are a group of around 30,000 people who live on the islands and rivers of the Orinoco River delta (22,500 km²) in houses on stilts. These people present some of the worst health indicators in the country, with extremely high mother and child mortality rates. Illnesses in the region include diarrhoea and vomiting, respiratory infections, tuberculosis and child malnutrition. In recent years, numerous cases of HIV have been reported.

The Ministry of Health has, through the DSI, been implementing the Plan Delta since 2006, a series of projects that seek, among other things: a) to improve access to healthcare services, consolidating those already in existence and creating new ones, b) to train primary health care workers (54 Warao workers have thus far been trained), and c) to establish a nutritional rehabilitation centre; however the poor living conditions of this people and the high levels of environmental pollution make their health situation highly vulnerable.

On 6 August, a group of Warao leaders visited the offices of the Ministry of Health to denounce their findings during a trip around 30 communities of the lower delta. Their report established at least 38 deaths of Warao adults and children between June 2007 and July 2008 due to an unknown infectious disease; few of the cases had received any medical treatment. Research conducted throughout the trip, during which the family members of the deceased were questioned thoroughly, concluded that the clinical symptoms were very similar to those of rabies and that, given the references to bat bites, a diagnosis of wild rabies could be presumed.

In view of the information presented, the group requested that the Ministry establish a commission to undertake an exhaustive investigation, conduct the necessary autopsies and laboratory analyses and obtain a definite diagnosis so that immediate health care measures could be taken in the lower delta to deal with the situation.²¹

Days later, the Ministry of Health was able to confirm that 13 people had died in the lower delta between September 2007 and February 2008 (nine of them children aged between 4 and 11), due to different illnesses.²² Regional epidemiology was up-to-date with the cases and has been conducting research since September 2007; measures have also been taken, such as the provision of water purifying plants and the sending of health commissions. Between July and August 2008, a special commission travelled to the Delta to investigate the case but an official report was never issued.

Conclusion

Whilst there has been important progress made in regulatory and institutional terms, and in political participation, there continues to be an implementation gap between the broad framework of indigenous rights that has been recognised and the reality on the ground. According to Dalia Herminia Yáñez, an indigenous MP in the National Assembly,

*The big problem is that there is no coordination between the institutions that are responsible for indigenous issues within government bodies; each one implements almost the same project and the results are not good. There is no coordination with the indigenous authorities and there is still discrimination on the part of the institutions.*²³

It can be seen from the situation described above that the coherent implementation of public policies requires the involvement of the indigenous peoples and communities in the design of plans and projects, along with coordination between all government bodies involved. In this respect, the Ministry of Indigenous Peoples, as guiding body and coordinator of government policies on indigenous issues, has failed to take on its intended leadership role.

In addition, the indigenous organisations and leaders need to end their silence and take up a militant stance once more in demand of their rights and to monitor government action. The Yukpa and Warao cases described above highlight a lack of tolerance within government

bodies in relation to the initiatives and demands, or dissidence, emerging from the communities, which derives in part from a “co-opting” of the traditional leaders. □

Notes

- 1 CRBV, Article 281, paragraph 8.
- 2 The “Missions” are national government programmes that seek to speed up change in the social and economic conditions of the population, circumventing the bureaucratic and administrative obstacles of the traditional state apparatus.
- 3 *Resolución del CONIVE y las organizaciones indígenas regionales acordadas en la reunión realizada en el Parlamento Indígena de América en la ciudad de Caracas, el día 18 de junio de 2008.*
- 4 Daily newspaper *Últimas Noticias*, 25.04.08, p. 13.
- 5 CRBV, Article 119.
- 6 Articles 6 and 7. *Ley de Demarcación y Garantía del Hábitat y Tierras de los Pueblos Indígenas.*
- 7 Articles 33 to 47. *Ley Orgánica de Pueblos y Comunidades Indígenas.*
- 8 Instituto Nacional de Estadísticas. Indigenous Census 2001.
- 9 *Jornadas de Demarcación y Titulación de Tierras y Hábitat Indígenas. Balance y Perspectivas.* Puerto Ayacucho, 17.08.07 (unpublished).
- 10 *Sociedad Homo et Natura*, organisation defending and promoting the rights of indigenous peoples in Zulia state.
- 11 Daily newspaper *El Nacional*. 27.08.08. p. 11.
- 12 Daily newspaper *El Nacional*. 13.10.08. p. 4.
- 13 Daily newspaper *El Nacional*. 12.10.08. “Siete días” Section. p. 1.
- 14 PROVEA. 2008. *Situación de los Derechos Humanos en Venezuela: Informe anual oct. 2007-sep. 2008.* P. 159.
- 15 *Ibid.* p. 2.
- 16 Daily newspaper *El Nacional*. 30.10.08. p. 3.
- 17 Freire, G. 2007. *Salud Indígena en Venezuela*, vol. 1. Caracas: Ministry of Health. p. 14. “Infant mortality rates among indigenous populations in Venezuela are up to 20 times higher than the national average and life expectancy at birth is several decades lower than the non-indigenous population”. Freire, G. 2008. *Pueblos indígenas y salud en Venezuela.* (at the press). In the Orinoco Delta, for example, a study showed that almost 39% of live-born children would die before reaching their teenage years; three-quarters before the age of four”. Wilbert y Ayala. 2007. “Los Warao” in: *Salud Indígena en Venezuela*, vol. 2. Caracas: Ministry of Health. p. 376. “The main causes of death among indigenous people include malnutrition, birth complications, acute respiratory infections, diarrhoea, tuberculosis...all easily preventable and easily treated if caught in time. What’s more, some illnesses occur almost exclusively amongst the indigenous population, or have the worst effects on their territories, for which reason they bear the

- burden not only of the misery of the illness itself but also of the prejudice that affects its appropriate prevention and treatment, such as cholera, leishmaniasis, malaria, pinta, mange and river blindness, to give but some examples". Freire, G. 2008. *Pueblos indígenas y salud en Venezuela*. (at the press).
- 18 Ministry of Health. *Memoria y cuenta 2008*. (at the press).
 - 19 This was the murder of 16 Yanomami at the hands of illegal Brazilian miners in 1993 in a community in Amazonas state, near the border with Brazil.
 - 20 Kelly and Carrera. 2007. "Los Yanomami" in: *Salud Indígena en Venezuela*, vol. 1. Caracas: Ministry of Health. p. 371.
 - 21 *Resumen de caso de denuncia recibida por muertes de indígenas Warao en el municipio Antonio Díaz del estado Delta Amacuro*. 11.08.08. Ministry of Healthd (unpublished).
 - 22 Daily newspaper *El Nacional*. 14.08.08. p. 8.
 - 23 *Reunión con indígenas Warao y diputados de la Asamblea Nacional*. 06.08.08 (unpublished).

Aimé Tillett is a member of the Asociación para el Desarrollo Multiétnico de la Amazonía – WATANIBA and has been involved in the Indigenous Health Department of the Ministry of Health since 2003. In association with Luis Bello, Yaneth Ypuana, María Andarcia, and comments from Isabela Luján, María Teresa Quispe and Germán Freire.

ECUADOR

Ecuador's total population numbers some 13,406,270 inhabitants, with 14 indigenous nationalities or peoples and Afro-descendant peoples representing more than 1.5 million of these. After a long 25-year struggle, a new Political Constitution was approved via a referendum in September 2008. This Constitution recognises the country as "...a constitutional state of law and social justice, democratic, sovereign, independent, intercultural, plurinational and secular". Ecuador thus became the first country in the world to recognise rights to nature in its Constitution and to include ancestral principles such as the "Sumak Kawsay" (a clean and harmonious life) in the main body of the text. These rights are a challenge to the current process of political and institutional reform, however, at a time when the global economic crisis poses a serious dilemma for the government of President Rafael Correa: opening the door to natural resource megaprojects (mining and/or oil and gas) in order to cover a growing fiscal deficit would endanger the territorial and cultural integrity of a number of indigenous peoples. Moreover, the state's capacity to guarantee a wide range of the rights enshrined in the new Constitution remains in doubt, as does its capacity to implement the full scope of the legal reforms and to satisfy the majority of the population's expectations of change.

The process of formulating and approving the New Political Constitution was undoubtedly the overriding issue for Ecuadorians last year. Government approval and credibility ratings remained high throughout 2008, fluctuating between 65% and 81%. At the time of writing this report, various opinion polls put the government's popularity at around 72%, with no likelihood of a change in this trend in the short term, and with elections planned for April 2009.



There are at least four main reasons behind this popularity: the strong leadership in all three regions of the country, Coast, Andean or Mountain region and Amazon, due to Correa's charisma; the boost given to political reform by the new Constitution approved in September 2008; the government's social policy; and, lastly, its foreign policy.

On this penultimate point, the expansion of social investment in education and health is noteworthy. Investment in education represented 3.46% of GDP and investment in health around 2.3% of GDP in 2008, far higher than in previous years.

In terms of foreign policy, the government has been proclaiming a policy of "sovereignty with dignity" with regard to issues often sensitive to the country, such as the successive deadlocks with the US embassy and, in particular, the breakdown in diplomatic relations with Colombia following this latter's bombing of a FARC encampment in Angostura, on Ecuadorian territory, on 1 March. This action, among

others, has had a bearing on the perception and position of most of the population.

Since March 2008, the situation has changed little. Correa has made resuming diplomatic relations dependent on a number of conditions, including: the active presence of Colombian forces on their border; the immediate provision of the information requested regarding the Angostura bombing; and compensation for the damage caused by the Colombian conflict in border areas.¹ Colombia has yet to comply with these conditions, and bilateral relations between the two countries therefore remain in uncertain limbo.

In this context, over the year in question, the Ecuadorian indigenous movements unfurled three broad lines of action at three different moments, all related to their position with regard to two main issues: the country's process of political and legal reform and the government's intention to promote large-scale mining and to resume oil exploration in areas already being exploited.

Disputes and opportunities around the new Constitution

As the National Constituent Assembly was getting down to work at the end of 2007 to provide the country with a new draft Constitution, CONAIE and FENOCIN - the main national indigenous organisations - were refining their strategies and proposals, the content of which would gradually be popularised both amongst their grassroots supporters and via the temporary Parliamentary Forum held in Montecristi, a small village on the central coast some 390 km to the west of Quito. In addition, both organisations had members within the Constituent Assembly, thus enabling them to exert an influence at different levels.

However, apart from occasional agreements between them on issues related to institutional reform, international relations and the full introduction of central aspects of collective rights, the two organisations' proposals and positions were in crucial and fundamental contradiction regarding the scope and content of the state's reorganisation in terms of its uninational or plurinational nature. According to Catherine Walsh, a lecturer and researcher at the "Simón Bolívar" Andean University, "In FENOCIN's case, its proposal differed little from the monocultural, uninational and inclusionist model [of the state]. Nor

did it try to challenge the structures and systems that enable the perpetuation of this model".² CONAIE's central thesis revolved around the plurinational nature of the state, which "recognises, respects and promotes unity, equality and solidarity between all peoples and nationalities in Ecuador, regardless of their historical, political or cultural differences, in order to guarantee them a dignified, economically fair and equitable and socially intercultural and inclusive life".³ To this theme were added another four: the nationalisation (or non-privatisation) of the biodiversity and natural resources; recognition of different forms of democracy; the fact that the main social services could not be treated as commodities; and the building of a supportive, environmental, equitable, sovereign, planned and inclusive socio-economic model.⁴

In some ways, FENOCIN's and CONAIE's positions acted as catalysts in relation to the scope and limitations of the Correa government's vision of the state's relationship with indigenous peoples. In other words, the debate around the new Constitution revealed a level of openness and innovation to sensitive issues on the part of a majority in the Assembly, issues such as self-determination, autonomy and territorial control, natural resource use and social participation.

The Constituent Assembly, chaired by Alberto Acosta - a well-known intellectual and researcher on social movements, and one of the founders of the *Alianza País* (the government party) - encouraged and opened up spaces for participation and dialogue between the nine working committees and the country's main political players, social organisations and unions. They were even holding mobile sessions in most provinces of the country's three regions. This was, however, insufficient and often came up against established strategies, the political timetable and the Correa government's desire to impose its views without any great consensus, in order to make the most of its absolute majority (61% of the full Assembly).⁵ The contrasting views were to lead to Acosta's resignation, as he was calling for an extension of the deadline in order to ensure greater debate and consensus. He was replaced by Fernando Cordero, who managed to keep to the initial timetable and adjust the task in line with the referendum scheduled for the end of September and the dominant strategies.

The government's lack of interest in considering and discussing CONAIE's demands (presented publicly at mass rallies of thousands of indigenous peoples) in any depth was clear throughout the whole process. At an event held in the Plaza Grande in Quito, opposite the Carondelet Palace (seat of central government), attended by more than

20,000 indigenous people, Humberto Cholango, president of Ecuarrunari (the confederation of the Kichua people of Ecuador) stated:

We have a language, a living space, a practical authority. What we want is for this process to be strengthened. We do not want to create a state within a state; the relationship between the state and the community governments must be clearly defined in the Constitution. We believe that this would strengthen the state because its action would reach these sectors through their community organisations. No-one is suggesting that the indigenous communities are going to hog all the oil, water or natural resources.

Meanwhile, a number of issues were provoking a violent reaction from opposition sectors in the Assembly. One of the most controversial issues in terms of economic policies was the recognition of different forms of ownership (private, public, state, community, social, co-operative and mixed) and the limitations as to their exercise, depending on whether they fulfil a “social and environmental function” or not. The possibility of expropriating lands for the reasons of public use (as in previous constitutions and current laws) was established. Along with other issues such as medical abortion; the reference to God in the Constitution’s preamble; the recognition of homosexual partnerships; political, administrative and geographical reorganisation; and autonomies and decentralisation, this topic was used to stir up opposition demonstrations and aggressive media campaigns involving the most conservative sectors of society, including the Church (Catholic and evangelical), Catholic schools, the mass media, particularly television channels and the traditional parties of the right in general.⁶

The issues raised by CONAIE that caused the greatest controversy and fracture of the majority bloc were threefold: the recognition of plurinationality and, in particular, the right to self-determination and self-government; the inclusion of the right to free, prior and informed consent (already present in the UN Declaration on the Rights of Indigenous Peoples (2007)); and natural resource policies and management.

The first of these was resisted by sectors of *Alianza País*, including its allies within FENOCIN, who opted for a less radical concept closer to multiculturalism. In the end, and after intense debate, CONAIE’s

position was accepted in Article 1: "Ecuador is a constitutional state of law and social justice ... intercultural, plurinational."⁷ According to Mario Melo, a university lecturer in human rights and expert on indigenous rights, "The rights achieved in 1998 were retained in the new draft Constitution, and other important rights were included such as the right to territory and self-determination of peoples living in voluntary isolation, and the right to recover their ritual and sacred places. In addition, the prevalence of the international human rights instruments in its application, including pacts, conventions and declarations, was made explicit."⁸

The second issue caused a brusque reaction from Correa himself and from the more moderate sectors of *Alianza País*, who openly stated their rejection of any deepening or expansion of indigenous rights, or of the possibility of a collapse or radical change in the traditional system of decision-making on policies of natural resource exploitation which, according to them, had to be the exclusive responsibility of the state.⁹ On this point, the concept of prior and informed consultation, already established in the previous 1998 Constitution, was ratified. For Mario Melo, "This solution only postpones a discussion on how to deal with a NO from the communities until such a situation actually arises and national or international judges resolve it by recognising the right to consent or not".¹⁰

There was greater consensus on the third issue, despite specific topics such as water giving rise to disputes as to their approval as fundamental human rights, and the well-known position of the multilateral bodies in terms of recognising "access to water", defended by various sectors in the majority bloc. The agreements reached made it possible to recognise "rights to nature", and principles such as "*in dubio pro natura*", which means that if there is any doubt as to how rights should be interpreted, then this must be done to the full benefit of environmental protection. Water was also recognised as a fundamental and inherent human right and national public good, and the national system of protected areas and intangible zones was reinforced. With regard to non-renewable natural resources, the state retains ownership and the authority to exploit them, which it can delegate provided it retains at least 50% of the profits.¹¹

Once the Constitution was approved at the end of July, an intense electoral campaign got under way with a view to the referendum. The opposition, led by the most conservative sectors of the Catholic church and Protestant sects, business associations and mass media, conducted an intense and aggressive campaign around a NO vote based on high-

lighting the possible threats to property and morality, in a country that is primarily Catholic. The social organisations and a broad front of reformist and left-wing sectors supported the draft Constitution. This included almost all of the indigenous peoples, with the exception of some organisations affiliated to the Protestant church.

For the nationalities and peoples of Ecuador and other sectors excluded from the constitutional process, it was not an easy task to get our rights and proposals understood and appropriately included (...) with regard to national proposals for social, environmental, economic, cultural and civic participation, national sovereignty, recognition of the plurinational state, the Sumak Kawsay and others. There have been significant improvements in relation to the previous 19 constitutions, and in relation to the international context. Given its historic role and constant struggle for real change in the country, CONAIE supported the referendum with a critical YES aimed at approving the new draft constitution.¹²

The referendum at the end of September resulted in a triumph for the YES vote. According to the Supreme Electoral Court, the people approved the Constitution with a 63.93% majority in favour and approximately 36.14% against, with 28% specifically voting NO (not counting spoilt or blank ballots).¹³

Between cooptation and a return to social protest

Alongside the country's constitutional process, important events were taking place that were affecting the indigenous movement's relationship with the state in one way or another. During CONAIE's third Congress, held at the start of January, the indigenous organisations stated their disagreement with the regime because of its policies on indigenous peoples.¹⁴ The president elect, Marlon Santi stated, "Rafael Correa's government is failing to put the indigenous movement's proposals on its agenda. For them we are all citizens but, for the peoples and nationalities, Ecuador is a plurinational and multicultural country. They want to delete that word."¹⁵

A few weeks later, three men kidnapped and physically and psychologically assaulted Miriam Cisneros, a leader from the Kichwa

community of Sarayaku in the central Amazon and wife of Marlon Santi. Human rights organisations called for a prompt investigation and adequate and effective measures to ensure the safety of indigenous leaders.¹⁶ This was in a context of growing tension between CONAIE and the government not only due to the above mentioned disagreements around the constitutional process but also, fundamentally, in relation to decisions regarding natural resource exploitation on indigenous territories and, in particular, oil exploitation and mining.¹⁷

It was against this backdrop that James Anaya, UN Special Rapporteur on the fundamental rights and freedoms of indigenous people, visited the country in May. In his report, Anaya took as one of his reference points the recommendations made in the report of the previous Special Rapporteur, Rodolfo Stavenhagen, following his visit to the country in 2006.¹⁸ In terms of recognising plurinationality – as stated in the new Constitution – he highlighted that, in essence, this was in harmony with the international regulatory context. In relation to the right to free, prior and informed consent, he considered that framing the debate within the context of whether the indigenous peoples should or should not enjoy a constitutional right of veto over development plans for the exploitation of hydrocarbons and minerals that legally belong to the state was not in the spirit of such principles as stated in international conventions and declarations.¹⁹

These recommendations by the Special Rapporteur were to be constantly put to the test. In the oil sector, the government is dealing with two kinds of situation. On the one hand, it has embarked on a process of renewing and amending contracts between private oil companies and the state, changing them from participatory contracts to service provision contracts. These negotiations bore initial results with the Petrobras (Brazil), Andes Petroleum (China) and Repsol (Spain/Argentina) companies all of which agreed, in different processes, to change contracts. This was despite the fact that the Ecuadorian state had, on 31 July, announced that it was commencing a process to conclude a participatory contract with the oil company Perenco for the extraction of crude oil from production fields in the Amazon.²⁰

On the other hand, it is having to confront various cases of conflict between oil companies and local communities. During the year, the state company Petroamazonas decided to push ahead with the work to develop the Pañacocha oilfield, on the boundaries of the Cuyabeno Wildlife Reserve, of a protected forest of the same name and of the ancestral Siona-Secoya lands, in the north-east of the Amazon, where settler and Kichwa families now live. On 3 October, machinery entered

via the Aguarico River, under military guard. Some 200 community members from Playas del Cuyabeno, Sábalo, Yana Alpa, Puca Peña and Caicua, among others, all members of the Federation of Kichwa Organisations of Sucumbíos, FONAKISE, intercepted the barges to prevent the passage of the equipment, denouncing the fact that they had not been consulted and demanding compensation. According to Paco Chuji, the organisation's president, "Petroamazonas was in violation of constitutional rights and legal procedures such as prior consultation of all the communities, a fundamental requirement (...) The company only negotiated with a small group of families from the Playas de Cuyabeno community, leading to divisions within the community."²¹ The soldiers' response to the communities' protest was to enter the area and fire shots, wounding two people.²²

Another similar situation resulted from the case brought against the North American oil company Texaco by thousands of settlers and indigenous people from the provinces of Sucumbíos and Orellana in the north-eastern Amazon. In April, Richard Cabrera and other experts appointed by the Nueva Loja High Court calculated that compensation for damage caused to the environment over the last 26 years totalled more than US\$27 billion.²³ Should this assessment be accepted by the judges, the final ruling could impose the greatest amount of civil compensation ever claimed in an environmental case.²⁴

While the Constituent Assembly was still sitting, different social actors, including peasant groups, miners, environmental networks, human rights organisations and various indigenous organisations, demanded the suspension of mining concessions on environmentally fragile areas and indigenous territories. Little if anything was said about other similar problems such as oil concessions. In response, on 18 April, the Assembly approved what was known as the "Mining Mandate".²⁵ This legal text, with 12 articles and four final provisions, removes all legal basis from mining concessions that have made no investments, that have outstanding obligations to the state, or that are established on protected areas. According to statistics from the Assembly, 12% of Ecuadorian territory is under concession to mining companies, and 3,298 concessions have been granted in all, covering 2,300,000 ha.²⁶ In the Amazon, there are 12 concessions on Kichwa territory (in the north central area) and 22 on Shuar territory, covering 7.1% of all the region's territories.²⁷

After the referendum, however, and once the Constituent Assembly had been dissolved, a Legislative Commission was set up comprising half of the Assembly Members, with the aim of approving a body

of 12 laws within the first 120 days, including laws on water, mining and food sovereignty, all of which would affect indigenous peoples.

The procedures for, and content of, the draft bills on water and mining proposed by the Legislative Commission and central government bodies were strongly challenged by the indigenous organisations. Both the Extraordinary Assembly of Ecuatorunari, meeting at the start of October, and the Extraordinary Assembly of CONAIE, meeting in Tena, in the central north Amazon, at the start of November, decided to declare "a national protest in defence of Mother Earth" and called for the shelving of the Mining Decree.²⁸ "The indigenous movement is opposed to the Mining Decree as it believes it establishes a large-scale exploitation model that threatens the environment, pollutes the water and plunders the country's natural wealth, providing virtually no benefits to Ecuadorians."²⁹

According to Humberto Cholango, president of Ecuatorunari, "The indigenous population were not involved in discussions on the Mining Decree proposed by the Ministry of Mines and Petroleum, although they are the ones who would be affected by the large-scale exploitation being promoted by the transnational companies."³⁰ This led to a national anti-mining strike being declared, which took place on 20 January 2009 in some eight provinces of the Andean region with the limited involvement of grassroots indigenous organisations and strong contingencies of anti-riot police. There was a small demonstration in Quito led by some of CONAIE's leaders and environmental groups and, in the south of the country, in Zamora, Loja and Azuay provinces, local organisations affiliated to Ecuatorunari and CONAIE blockaded roads.

CONAIE set out its opposition to the law in a document containing 18 reasons, including: alleged corruption in the process of allocating the concessions, environmental issues, lack of guarantees in terms of the preservation of protected areas, social conflict, lack of preventive content in relation to possible risks to environmental and human health, and human rights. By the time of writing this report, CONAIE's disagreement had intensified and it had announced legal action through the Inter-American Court of Human Rights (IACHR) in addition to the case for "constitutional action" submitted to the third judge of the Labour Court of Azuay by the leaders Carlos Pérez and Salvador Quishpe.

"The current crisis could bring about huge agro-industrial development in Ecuador in the context of South American integration. So why insist on deepening Ecuador's involvement in the old international division of labour and stepping up its unhappy role as raw ma-

terials exporter which, if it became the focus of the economy, would also herald an end to Latin American integration? Why insist on this path, Mr President?" asked the intellectual Alejandro Moreano.³¹ Paradoxically, instead of resolving conflicts in the sector, approval of the Mining Decree has opened up a hitherto unknown scenario for the country's immediate future. □

Notes

- 1 Correa condiciona el lazo con Bogotá. *Diario El Comercio*, Quito, February 28, 2009.
- 2 Cf. Walsh, Catherine, "Interculturalidad y plurinacionalidad: elementos para el debate constituyente", "Simón Bolívar" Andean University, Quito, 2008. Pg.23.
- 3 CONAIE, "Propuesta frente a la Asamblea Constituyente. Principios y lineamientos para la nueva constitución del Ecuador", CONAIE, Quito, 2007. Pg.5
- 4 CONAIE, "Nuestra Constitución por un Estado plurinacional", Quito, October 2007.
- 5 In this regard, a number of testimonials from those involved in the Assembly can be consulted, such as Acosta, Alberto, "Bitácora Constituyente. Todo para la Patria. Nada para nosotros", Ed. Abya Yala, Quito, 2008; Various, "Análisis. Nueva Constitución", ILDIS/La Tendencia, Quito, 2008; Rafael Quintero, "La Constitución del 2008. Un análisis político", Abya-Yala, Quito, 2008; Pablo Lucio-Paredes, "En busca de la Constitución perdida", Trama, Quito, 2008.
- 6 It should be noted that, in the Country Agreement, the majority bloc in the Assembly never had any intention of including the contested issues in the Constitution (medical abortion, homosexual partnerships, etc.), in part because of electoral considerations and in part because of Correa's own headline position on these issues. The marches refer to mass actions, particularly in Guayaquil in May and June. Cf. OSAL, "Informe de Coyuntura. Ecuador", Observatorio Social de América Latina/ CLACSO, Buenos Aires, May-June 2008.
- 7 Political Constitution of Ecuador 2008, Art.1, first indent.
- 8 Mario Melo, "Buen vivir, naturaleza y nacionalidades en la Nueva Constitución: una lectura esperanzada", mimeo, September 5, 2008, pg. 2. Also cf. Kingman, Santiago, "Entre la asimilación y la diferencia: la Asamblea Constituyente y los territorios indígenas", *Revista ICONOS*, FLACSO, Quito, September 2008, pgs. 25-29.
- 9 Cf. CONAIE, "Nuestros Derechos y Propuestas en la Nueva Constitución 2008", CONAIE-Ayuda Popular Noruega, Quito, 2008.
- 10 Melo, Op.Cit. pg.2
- 11 According to Alberto Acosta, "For nature to be considered as a subject of law is tremendously revolutionary and transformatory ... nature is not simply a few birds, butterflies or trees, nature is a subject with a far more real and concrete existence than legal entities, than so-called limited companies, which are not even based in any particular physical space. If these capital associations of ficti-

- tious existence have rights then nature, which is far more real, the extension of the human being, of its skin, also has rights and we have to recognise and recover them". *Diario Expreso*, Guayaquil, 14 April 2008. Also in cf. "Traits caractéristiques des expériences en cours au Venezuela, en Equateur et en Bolivie", Committee for the Abolition of Third World Debt. <http://www.cadtm.org>
- 12 CONAIE, "La CONAIE frente al Referéndum y la Nueva Constitución", Quito 8 September 2008.
 - 13 Deborah Hakes and Francisco Diez, The Carter Center to Observe Ecuador's Constitutional Referendum, September, 2008; also in the Spanish newspaper *El Mundo*, "Ecuador concede un amplio respaldo a la Constitución socialista del presidente Correa", Madrid 29 September 2009.
 - 14 Cf. CONAIE, Resoluciones del III Congreso de las Nacionalidades y Pueblos del Ecuador, Santo Domingo de los Tsáchilas, 12 January 2008.
 - 15 ALAI, "La Conaie concluye su III Congreso. Por un Ecuador plurinacional", Quito, 14 January 2008.
 - 16 CEDHU, "Investigación y sanción para agresores de la dirigente indígena Miriam Cisneros", Comisión Ecuémica de Derechos Humanos CEDHU, Quito, 26 February 2008.
 - 17 Korovkin, Tanya, "The indigenous movement and left-wing politics in Ecuador", Draft Paper, University of Waterloo, Ontario, 2008. Cf. Moore, Jennifer, "The Right to Protest for an Ecuador Free of Large Scale Mining", <http://alainet.org/active/23571>.
 - 18 Stavenhagen, Misión Ecuador, A/HRC/4/32/Add.2
 - 19 Cf. Observations of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people on the constitutional review process in Ecuador. UN, New York, June 2008.
 - 20 Cf. "Correa espera que cambio de contratos con petroleras privadas termine en un año", *El Comercio*, Quito, 21 August 2008. "Estado inducirá a las petroleras a un cambio de contrato", *El Universo*, Guayaquil, January 2008. "Cinco equipos al frente de la negociación con las petroleras", *El Comercio*, January 2008.
 - 21 "Boletín Derechos del Pueblo", Comisión Ecuémica de Derechos Humanos CEDHU, Quito, 10 October 2008.
 - 22 "Ecuador: denuncian que el ejército hiere de bala a dos indígenas en Sucumbíos", *SERVINDI*, 14 October 2008.
 - 23 Cf. Continúa litigio y acusaciones entre Chevron y demandantes amazónicos. *Diario Expreso*, Guayaquil, 15 September 2008. Seitz, Max, "En la Amazonía de Ecuador, las necesidades económicas y de protección ambiental parecen contradecirse", *BBC Mundo*, 13 May 2008.
 - 24 Michael Isikoff, "A \$16 Billion Problem. Chevron hires lobbyist to squeeze Ecuador in toxic-dumping case. What an Obama win could mean", *NEWSWEEK*, Washington, August 4, 2008.
 - 25 Cf. Mandato Constituyente No.23, 18 April 2008. Official Journal No.321 of 22 April 2008.
 - 26 Moore, Jennifer, "Ecuador's Mining Decree: A Cautious Victory for Communities", *América Latina en Movimiento ALAI*, <http://www.alainet.org/active/23734>. Also in Bebbington, A. et.al. "Contention and Ambiguity: Mining and the Possibilities of Development", *Brooks World Poverty Institute Working*

- Paper No. 57, October 2008. Available at SSRN: <http://ssrn.com/abstract=1297212>
- 27 Various, "¿Quién decide en la Amazonía ecuatoriana? La superposición de intereses en los territorios ancestrales del Centro Sur de la Amazonía ecuatoriana, Fundación Pachamama, Quito, December 2007.
 - 28 CONAIE, "Posición política frente la pretendida imposición de la Ley Orgánica de Minería", Governing Council, Quito, 30 November 2008.
 - 29 Lucas, Kintto, "Ecuador: indígenas vuelven al camino de la protesta", Inter Press Service IPS, Quito, 22 January 2009.
 - 30 Cf. "Proyecto de Ley Minera no contó con aportes de comunidades indígenas", Quito, 5 November 2008, <http://ecuadorinmediato.com> "Cambios en Ley no satisfacen a CONAIE", Guayaquil, 9 January 2009.
 - 31 Cf. "Ecuador, un país minero?", El Telégrafo, Guayaquil, 23 December 2008.

Pablo Ortiz-T. researcher and professor of social and global studies at the "Simón Bolívar" Andean University. He has a Masters in Political Science and a Doctorate in Latin American Cultural Studies. He has been working with indigenous organisations in the Amazon for several years now on issues of territoriality, self-government and forest management. He is currently advisor to a German cooperation programme. The content of this article is the sole responsibility of the author and does not represent any commitment on the part of the institutions with which he works. Contact and more information: mushukster@gmail.com

PERU

The 2nd Census of Indigenous Communities, carried out in 1,786 Amazonian communities during 2007, gathered information on 51 of the 60 ethnic groups existing in the forests. Nine of them were not recorded “because some ethnic groups no longer form communities, having been absorbed into other peoples; in addition, there are ethnic groups which, given their situation of isolation, are very difficult to reach”.¹ An Amazonian indigenous population of 332,975 inhabitants was recorded, mostly belonging to the Asháninka (26.6%) and Awajún (16.6%) peoples.

47.5 % of the indigenous population is under 15 years of age, and 46.5% has no kind of health insurance. 19.4% stated that they were unable to read or write but, in the case of women, this rose to 28.1%, out of a population in which only 47.3% of those over 15 have received any kind of primary education. In addition, the Census noted that 3,360,331 people spoke the Quechua language and 443,248 the Aymara,² indigenous languages predominant in the coastal-Andes region of Peru. Peru has ratified ILO Convention 169 on Indigenous and Tribal Peoples.

The legislative “self-coup” of the Free Trade Agreement (FTA)

During 2008, the Peruvian government’s neoliberal outlook increased yet more with the granting of exclusive advantages to private investors through a hundred or so legislative decrees to ensure the viability of the Free Trade Agreement between Peru and the United States. Different specialists and noted constitutionalists have commented that almost all of the decrees could be described as unconstitu-

tional, because the government has over-extended its powers, restructuring the legal system, amending organic laws, weakening the framework of environmental protection and damaging the collective rights of indigenous peoples and communities.³

Róger Rumrill, a specialist on Amazonian issues, maintains that, "thirty-eight of the legislative decrees directly or indirectly threaten the survival of the Amazonian indigenous peoples because they open the door to the dispossession and loss of their ancestral territories". For the Quechua anthropologist, Rodrigo Montoya, the pro-privatisation decrees signed by President Alan García reveal that,

*García is convinced that the only form of ownership that counts is individual, that collective ownership should not exist because it is part of the so-called backwardness or pre-modernity, and that rights should only be individual.*⁴

The jurist Pedro García Hierro maintains that the indigenous peoples are now facing not only the "FTA package" but

*a whole process that is cumulatively increasing the degradation of their rights until they are wiped out of this country's legal framework. This package gives no justification as to why the mining or oil companies should enter indigenous territories as they please.*⁵

Faced with such aggression, one of the main events of the year was a day of protest on the part of the Amazonian indigenous peoples, organised by the Inter-ethnic Association for the Development of the Peruvian Rainforest (AIDESEP). This took place on a symbolic date: 9 August, International Day of Indigenous Peoples. The peaceful demonstration involved thousands of indigenous people from different regions of the Amazon who, in unprecedented synchronised action, paralysed the transport system on rivers, roads and in towns. They also closed the Aramango hydroelectric station in Amazonas, stations 5 and 6 of the north-eastern oil pipeline in Amazonas and Loreto respectively, and two oil wells, platforms, heliports and fields of plot 56 (Pagoreni) in the Camisea gas project in Cusco, where the workers had to lay down tools as a precaution.



The country was in suspense and, despite the government's initial claim that political agitators were behind the protest, the media and public opinion showed that the indigenous struggle was legitimate. After a tense week, the Congress of the Republic repealed legislative decrees 1015 and 1073, the aim of which was to make procedures for disposing of indigenous communities' lands more flexible. President Alan García and the then Prime Minister Jorge del Castillo tried at all costs to avoid repealing both decrees.

The indigenous protest created solidarity with the Amazonian peoples, who normally have little visibility on the national political scene, among other sectors and a public debate arose around the need to consult them with regard to measures that may affect them, as stipulated in ILO Convention 169 on Indigenous Peoples.

The outcome of the day did not prevent the Peruvian International Cooperation Agency (APCI) from entering the offices of AIDSESEP in search of proof that international funds had been diverted towards actions of political protest, but the organisation's administrative team were able to prove that the protest had been self-financed from the grassroots, by the indigenous peoples themselves. Alberto Pizango Chota's (from the Shawi people) leadership of the Amazonian protest won him, at the end of the year, grassroots support to remain in post as AIDSESEP's President for another term, accompanied by Daysi Zapata Fasabi (Yine Yame people) as Vice-President.

The result of the Amazonian protest was that a congressional committee was established to examine the legality of the legislative decrees, and AIDSESEP announced that further protests would take place during 2009 if other regulations harmful to the Amazonian forest and to the collective rights of indigenous peoples and communities were not revoked. This includes Legislative Decree 1064, described as highly dangerous because it eradicates the prior agreement necessary to commence extractive activities on native or peasant farmer communities' lands. Similarly, Legislative Decrees 1059, 1060 and 1080, which open the door to the free entry of genetically modified crops into the country without due control, seriously endangering the country's biosecurity and organic crops. This despite the opposition of Antonio Brack, the new Minister for the Environment who, along with Prime Minister Yehude Simon, is walking an ambiguous path within the government team in relation to his underlying environmental and democratic convictions.

Violation of the right to consultation

The day of protest in the Amazon meant that many members of Congress now began to refer to ILO Convention 169 in their speeches, and

to the right of consultation. A draft bill of law aimed at regulating this right was negotiated in the committee responsible for indigenous and environmental issues. Although the initial draft was supported by the indigenous organisations, the final text restricts and denatures the aim of any consultation. In the opinion of the National Coordinating Body of Human Rights, "it is in contradiction to international law and establishes lower standards for consultation". Andean, Amazonian and indigenous women's organisations denounced the final text which "did not embody the spirit" or "take account" of the most important elements of Draft Law 2016, which was at the origin of the proposal. They thus called for its rejection. The text was sent on to a full session of Congress but, as of the end of 2008, it had not been discussed.

Human rights and the Putis graves

The largest mass grave in the country began to be exhumed at the end of May 2008, in Putis community in the high altitudes of Huanta Province, Ayacucho Region. It was here that the remains of 123 Quechua peasant farmers murdered by the army in 1984 were found, many of them children aged between six and 12 years of age.

This horrifying discovery was received with indifference by the Ministry of Defence, which refused to provide essential information on those allegedly responsible for this barbaric act. Such political attempts to cover up human rights violations were also expressed with renewed energy by various of the government's political spokespersons, such as retired Admiral Luis Giampietri, Vice-president of the Republic, and Ántero Flores-Aráoz, Minister for Defence, who in different ways rejected the recommendations of the Truth and Reconciliation Commission, the final report of which celebrated its fifth anniversary in September 2008.

An evaluation of compliance with the recommendations shows some progress in collective reparations, no progress in individual reparations and paralysis in the proposal to bring those allegedly responsible to justice. The state's indifference to human rights violations can be seen in the fact that, although the Truth and Reconciliation Commis-

sion bore witness to the existence of 4,644 graves between 2001 and 2007, only 77 of them have been exhumed.

The struggle of indigenous, agricultural and peasant farmer populations

The National Confederation of Communities affected by Mining (CONACAMI), the main Peruvian organisation involved in the Andean Coordinating Body of Andean Organisations (CAOI), has continued to promote the consolidation of a national Indigenous – Peasant Farmer Agenda coordinated with the agendas of the indigenous movement in Bolivia, Ecuador, Colombia, Argentina and Chile. The building of a Regional Indigenous Agenda would serve as a framework for common struggle to defend the collective rights of the peoples and make progress towards constructing plurinational states.

For its part, the National Convention of the Peruvian Farming World (CONVEAGRO) called on all agricultural organisations to take part in a National Agricultural Strike in order to institutionalise the dialogue between the unions and the government, speed up the import of inputs and fertilizers, regularise land claims, promote agricultural credit and define compensation for farmers in relation to the Free Trade Agreement signed with the United States. The national agricultural strike of February left an aftermath of four dead – three farmers – and hundreds seriously wounded. One of the largest popular demonstrations in opposition to the government's neo-liberal policies was the National Indigenous and Peasant Farmer Strike organised on 8 and 9 July by a coalition of farming organisations and coordinating bodies in defence of the Peruvian Amazon.

According to CONVEAGRO, 2008 was a bad year for national farming. Along with the Board of Users of Peru's Irrigation Districts, it has been promoting a process of farming unity, around a minimum agenda, as a mechanism by which to establish permanent dialogue with the government.

Criminalisation of the social protest

In March, indigenous Achuar peacefully took over plot 1-AB of the Plus Petrol company (an Argentinian company) in Andoas, Loreto region. Taking advantage of the indigenous discontent, dozens of settlers infiltrated the protest, causing clashes around the company's aerodrome culminating in three dead and 25 wounded. Father Paul McAuley, President of the Loreto Environmental Network (RAL), reported that the police had crudely and outrageously endeavoured to criminalise indigenous leaders in order to quell any protest against measures being implemented by the government in the Amazon.⁶

The lawyer Wilfredo Ardito warns in a report⁷ that Alan García's regime has become aggressive towards social organisations defending the environment or challenging the FTA with the United States. The government's intolerance has been expressed in an increasing number of arbitrary detentions and police abuses, threats to freedom of expression and association, monitoring and indictment of environmental leaders and the use of violence against civilians. This accusation is backed up by the recent publication, in early 2009, of photographs evidencing torture carried out by police officers in July 2005, in the fields of the Monterrico Metals company, against peasant farmers who were protesting against the Río Blanco mining project.⁸

The enactment of supreme decrees regulating the activity of the Armed Forces in terms of supporting the National Police on issues of internal law and order, and Legislative Decree 982 of 23 July 2007 amending the Criminal Code to declare members of the Armed Forces and National Police who cause harm or death "in the course of their duty and using their arms in a regulatory manner" as not liable to punishment, confirm this trend towards a militarisation of social conflicts, states Ardito.

Pressure on peoples in isolation

The issue of indigenous peoples in isolation continued to arouse attention and concern throughout the year, particularly among indigenous

organisations and international observers. At the start of the year, the Native Federation of the Madre de Dios River and its Tributaries (FENAMAD) reported that the British film and television company, Cicada Films, had asked for further permission to enter the Manu National Park despite the fact that, in November 2007, its presence had allegedly caused the deaths of three children and one adult, in addition to other problems amongst the population.

The discovery of trees within plot 107 (being prospected by the Canadian company Petrolífera Petroleum del Perú S.A.C., in the Ucayali region) with similar markings to the designs that exist within the Cacataibo culture have proved, in the opinion of some institutions, the presence of uncontacted indigenous groups from the Cacataibo people in the area in which the company is currently operating.

A team from the International Committee for the Protection of Indigenous Peoples in Isolation and Initial Contact in the Amazon, Gran Chaco and Eastern Region of Paraguay (CIPIACI) noted in July that the Murunahua Territorial Reserve, created in 1997 by the Peruvian state, was being invaded by illegal loggers entering along the tributaries of the Ucayali River. "To facilitate their work, the loggers have opened up a network of roads in order to penetrate the forest and extract the illegal mahogany," states the report.

One event that spread all around the world, however, was the publication of photographs of Peruvian indigenous peoples in isolation photographed on Brazilian territory, very close to the border. The images were published by the National Indian Foundation of Brazil (FUNAI). The Environmental Protection Front for the Envira River indicated that there were two new huts of indigenous peoples in isolation in the headwaters of the Xinane River that did not exist prior to 2004.

In October, officials from FUNAI discovered arrows near this area, reinforcing the belief that these uncontacted indigenous peoples were fleeing from Peru to Brazil. According to the anthropologist, Beatriz Huertas, this is an old group from Purús, where there is intense pressure from illegal loggers. This tallies with the testimony of the Head of Alto Purús National Park who admitted that the Amazon "was full of illegal logging" and with the comments of the indigenous leader, Edwin Chota, that the Forestal Venao company was probably behind the expansion of Sawawo Hito 40 community for the purposes of extract-

ing resources from the area between the Tamaya and Yurúa river basins, adjoining Acre state in Brazil.

Corruption in Inrena

With a statement, José Luis Camino, Head of the National Institute for Natural Resources (Inrena), confirmed the serious situation of forest management in the country, under the responsibility of the institute's corrupt officials. An example of the way in which logging companies feather their nests is offered by the journalist Miluska Soko's investigation, which gets to the bottom of the commercial links of the main exporters of illegal wood. The report implicates the Bozovich business consortium, responsible for 34% of cedar exports from Peru, with subsidiaries in the US and Mexico. The report shows that eight logging concessions in Madre de Dios and Ucayali all share the same directors and managers.⁹

Despite this institutional weakness, the government persists in facilitating the deforestation of the tropical forests despite the environmental commitments agreed to in the context of the FTA. First came draft Bill of Law 840 of 28 December 2006, which proposed "selling areas of the Peruvian Amazon for the purposes of reforestation and agroforestry". Then, in 2008, came Legislative Decree 1090 and, finally, draft bills of law 2959 and 2958, approved in January 2009, which enable a change of use from forest lands to agriculture if it is in the "national interest". Sandro Chávez, from the Peruvian Forest Collective – a coalition of non-governmental organisations – has denounced the fact that the fundamental issue is the "dishonourable" commitments of the government to large Asian investors wishing to produce ethanol and "it is no coincidence that, to date, the only crops thus declared have been *caña brava* and bamboo".

Concepts of development in the Amazon

The Amazonian indigenous protest led various sectors to reflect on concepts of Amazonian development in relation to the government's

clear interest in promoting private investment on communal lands and making mechanisms for their transfer more flexible. In a context in which, according to the Ombudsman ("La Salud de las Comunidades Nativas: Un reto para el Estado"),¹⁰ three out of every 10 children in Amazonian native communities die of infectious diseases before the age of 11, Manuel Rodríguez Cuadros, Peru's former Minister of Foreign Affairs, stated that "exploitation of oil and gas resources leading to the purchase of indigenous lands would be an act of unacceptable dispossession in Peru".¹¹ Gil Inoach Shawit, of the Awajún people, was of the same opinion stating that, "To produce and improve the indigenous peoples' income you do not need to mortgage, rent or sell our lands. Knowing how to make the most of the land and the resources in our hands guarantees the adequate control of our forests".¹²

The bishops of the Peruvian forest called on the state and the indigenous peoples to dialogue and come to an agreement, "in order to define and promote integral development that takes account of cultural and social plurality, recognising the contribution of indigenous peoples to national development". The issue of great debate is the government's clear interest in encouraging mining, gas and oil extraction in forests, protected areas and indigenous lands. It should be noted that a recent report showed that 72% of the Peruvian forest, that is, 49 million hectares, is now covered by 64 hydrocarbon plots, as opposed to 15% in 2005.¹³

There is an ongoing and underlying rejection and mistrust on the part of indigenous peoples, exacerbated by the various bureaucratic obstacles that prevent fulfilment – as denounced by the Federation of Native Communities of the Corrientes River (FECONACO) – of plans for assisting the native communities affected by more than 30 years of oil pollution, which were agreed in a contract signed with state ministers. This mistrust has bubbled over into the Morona population in Loreto region, who are maintaining their active opposition to the plans of the Canadian company, Talisman Energy, because they claim its activity will pollute the waters, lands and other natural resources. Similarly, Fermín Rodríguez Campoamor, priest of Santa María de Nieva, Condorcanqui, Amazonas region, has denounced the abusive and inappropriate behaviour of the Perupetro representative, among others,

whom he considers to be responsible for the breakdown in negotiations on oil activity in plot 116.

The conflicts in the Amazon region are likely to worsen, not only because of hydrocarbon activity but also because of an increase in mining. José de Echave, from the association CooperAcción, revealed that “metals mining is being displaced towards the high forest, specifically Amazonas and San Martín, highly sensitive areas due to their megadiversity”.¹⁴

Hydroelectric power stations

The construction of hydroelectric power stations is becoming a new problem for Andean and Amazonian communities. At the end of October, the inhabitants of Canchis in Cusco massively opposed the construction of the Salcca Pucará hydroelectric power station due to the effects the diversion and damming of the Salcca River would have on the basin's ecosystem and in terms of a decline in water resources for dozens of peasant farmer communities in four districts of Canchis, who live primarily from agriculture and livestock farming. The people suspended their pressure after the new Prime Minister, Yehude Simon, undertook to assess the project and ensure that it would not affect the communities.

In November, the Ministry for Energy and Mines resurrected the planned Paquitzapango hydroelectric power station and, by means of ministerial resolution, granted a concession to conduct feasibility studies for this megaproject, which would generate 1379 MW and cover the districts of Mazamari, Río Tambo and Pangoa, in Satipo province, heart of the central forest. The pro-government congressman Nidia Vélchez produced a draft bill of law aimed at declaring the public need and national interest of this project, which would dam the Ene and Tambo rivers and whose electric power lines for exporting electricity to Brazil would cross indigenous territories. This hydroelectric megaproject will undoubtedly form one of the main issues on the indigenous peoples' protest agenda for 2009 as its impacts would be devastating.

Prospects for 2009

The scandalous broadcasting of recordings of private telephone conversations has revealed the existence of highly influential corruption networks within the government aimed at awarding the concessions for hydrocarbon plots. This revelation led to a crisis and the resignation of the ministerial cabinet, presided over by Jorge del Castillo, and brought to light another even more serious event: the existence of an industrial and political espionage communications network, involving members of the Navy, the political trail of which (still under investigation) was to compromise further prominent individuals in the current government and Fujimori group. This situation has led to the pro-government party and the Fujimori group strengthening their political alliance in order to cover up the investigations. This pact is now probably the main obstacle to any opposition initiative prospering in Congress aimed at reversing the legislative decrees issued by the Executive that harm the environment, forests, biodiversity and indigenous peoples. The entry into force of the FTA with the United States, on 1 February 2009, the international financial crisis and a lack of will to adopt a crisis plan for the rural sector offer no better prospects for the struggle against poverty. On the contrary, they herald a clear deterioration in efforts to achieve the Millennium Development Goals. □

Notes

- 1 Instituto Nacional de Estadística e Informática (INEI): "Resultados definitivos de las comunidades indígenas" National Census 2007: XI on Population and VI on Housing, Lima, January 2009, p. 7
- 2 Instituto Nacional de Estadística e Informática (INEI): "Perú: resultados definitivos" National Census 2007: XI on Population and VI on Housing, Lima, September 2008, Book 1, p. 563.
- 3 Eguiguren Praeli, Francisco: "Análisis de la conformidad constitucional del uso de las facultades legislativas otorgadas por el Congreso al Poder Ejecutivo mediante la Ley N° 29157" at: http://www.servindi.org/pdf/Eguiguren_Analisis_DL_.pdf
- 4 Montoya Rojas, Rodrigo: "Alan García: Vender la amazonía y todo el Perú para no ser 'perros del hortelano'", 4 de marzo 2008, en <http://www.servindi.org/actualidad/3549/3549> y en <http://alainet.org/active/22659&lang=es>

- 5 García Hierro, Pedro: "Reflexiones sobre la protesta indígena en el Perú", at: <http://www.servindi.org/actualidad/4502>
- 6 Servindi: "El operativo de Andoas fue una farsa para intimidar al movimiento amazónico" states Father McAuley, at: <http://www.servindi.org/actualidad/4003>
- 7 Ardito, Wilfredo: "Perú: La criminalización de la protesta en el gobierno de Alan García", at: <http://www.servindi.org/actualidad/4549>
- 8 See: The Indigenous World 2006, p. 178-179.
- 9 Soko, Miluska: "Los Barones del cedro y la caoba. La familia Bozovich y la industria maderera" at Servindi: <http://www.servindi.org/actualidad/6030>
- 10 Defensoría del Pueblo: "La Salud de las Comunidades Nativas: Un reto para el Estado", Informe Defensorial N° 134 en <http://www.defensoria.gob.pe/descarga.php?pb=2311>
- 11 Rodríguez Cuadros, Manuel: "La inversión en la Amazonía, el crecimiento y los derechos de los pueblos indígenas" en diario La Primera, 10 septiembre 2008, Lima, Perú. Ver en: <http://diariolaprimeraperu.com/online/noticia.php?IDnoticia=23191>
- 12 Inoach Shawit, Gil: "Los indígenas amazónicos desde hace 28 años hablamos sin intermediarios". Entrevista de Servindi, en: <http://www.servindi.org/actualidad/4560>
- 13 Arroyo, Pilar: "La protesta indígena: algunas reflexiones" at Servindi: <http://www.servindi.org/actualidad/4590>
- 14 De Echave, José: "La minería metálica se desplaza hacia la selva alta", at Servindi: <http://www.servindi.org/actualidad/4161>

Jorge Agurto is a social communicator and president of the NGO Servicios en Comunicación Intercultural Servindi. He is promoter and head of Servindi's Indigenous Information Service.

Website: www.servindi.org, e-mail: jorgeagurto@servindi.org

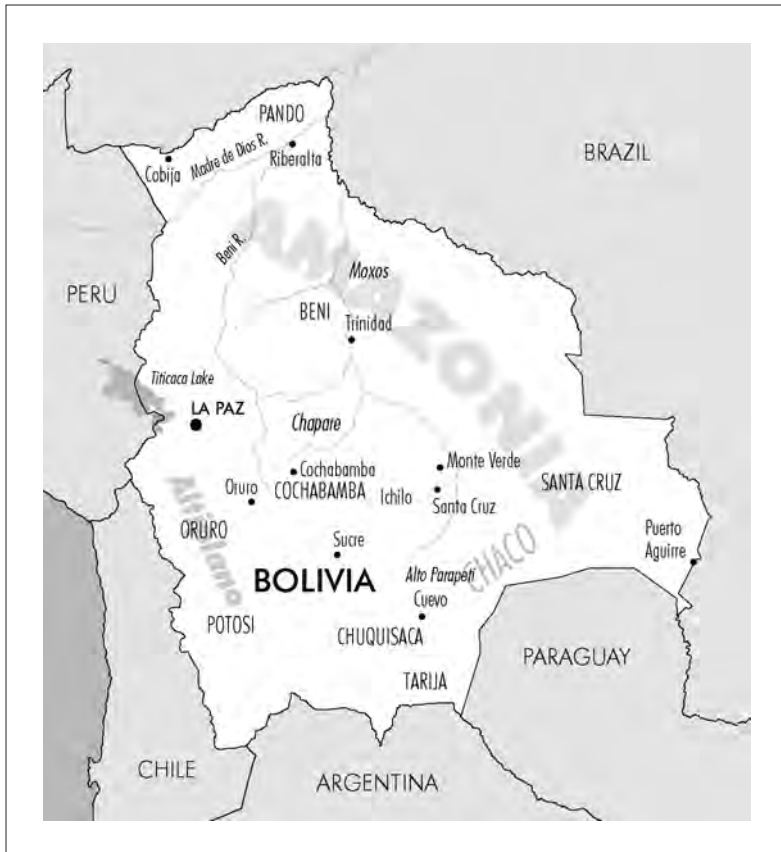
BOLIVIA

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. On 7 November 2007, via approval of Law No. 3760, it became the first country in the world to ratify the UN Declaration on the Rights of Indigenous Peoples. In a referendum held on 25 January 2009, 61.4% of the population approved a new Constitution that makes important progress in indigenous rights and declares Bolivia a unitary, plurinational, communitarian and democratic state.

The efforts of Evo Morales' government and related social movements to get the New Political State Constitution (NCPE) approved encountered fierce opposition from the dominant business sectors in the east of the country, turning 2008 into one of the most violent years since the advent of democracy in 1982.

At the end of 2007 the opposition rejected the NCPE, which had been approved by the Constituent Assembly, and embarked on a strategy of preventing the final stage necessary for its entry into force: a referendum to approve it and resolve the issue of size of landholding.¹ The strategy aimed at getting autonomous statutes of a separatist and



racist nature approved in the departments of the so-called “half moon” (Santa Cruz – Beni – Pando - Tarija) by means of departmental referenda. The statutes were drafted and approved in December 2007 in “pre-autonomy assemblies” made up of MPs, Constituent Assembly members and local opposition authorities in those departments, without any mandate and without any regard for legal norms.²

At the request of Evo Morales’ party (the MAS) and its allies, the National Congress approved the constitutional referendum law in late February 2008, but chose to halt the process as a sign of their openness to dialogue, given the conflict that was arising in the eastern regions. The Prefects and so-called “civic committees”³ in those regions refused

to dialogue, however, and launched a campaign in which the private media played a key role in support of the opposition, in attempting to deceive the population, concealing the true nature of the statutes.

The failure of the regional referenda

The national government, Congress and the National Electoral Court, along with human rights organisations, stated their opposition to the holding of these referenda on autonomous statutes. The National Police refused to put safety measures in place, stating that the process was an illegal one. The social organisations in the east called on everyone to abstain. The first referendum, held on 4 May in Santa Cruz, gave rise to conflict throughout the department. Indigenous peoples, peasant farmers, settlers and the urban civil society sectors resisted the referendum, burning ballot boxes, sealing polling stations and preventing the arrival of electoral authorities and materials. Against this backdrop, the Chiquitano communities of Lomerío declared their autonomy and, exercising their right to self-determination as stated in the UN Declaration on the Rights of Indigenous Peoples, told the Departmental Electoral Court that they would not allow the referendum to take place on their territory.⁴

Although the YES campaign obtained 85.6% of the vote regarding the autonomy statute in Santa Cruz, as opposed to 14.4% NO, the rate of abstention – 38% -, of blank or spoiled votes (2.5% and 2.4% respectively)⁵ and the serious conflicts in the rural and urban polling stations painted a totally different picture to that reflected in the regional media, through which the sectors of powers imposed the referendum. The central government therefore refused to recognise the results of the illegal referendum and called for further dialogue, which was again rejected by the opposition and Prefects, making a negotiated end to the crisis impossible.

Widespread racist acts and humiliation of indigenous peoples

The most entrenched sectors of the opposition took on a higher profile and began a violent and racist campaign. In Santa Cruz, a number of

the walls surrounding the main square where covered in racist graffiti and death threats aimed at various government officials. In the city centre, people who looked indigenous or were allegedly linked to the government party were assaulted and humiliated.

Two events that took place in April and May clearly illustrate this process. On 13 April, a commission made up of the Vice-minister for Lands, Alejandro Almaráz, INRA's (National Institute of Agrarian Reformation) National Director, Juan Carlos Rojas, the President of the Guaraní People's Assembly (APG), Wilson Changaray, and other community members and public officials endured a ferocious attack. The commission was ambushed in Cuevo, 400 kms from Santa Cruz, by ranch owners, local authorities and individuals organised by the Santa Cruz prefecture, as it was on its way to Alto Parapetí to meet the families living in a state of captivity on large estates. The state was about to intervene on the part of these families to release them and return the land to its legitimate owners. The Guaraní lawyer, Ramiro Valle, the Centre for Legal and Social Studies (CEJIS) and IWGIA journalist, Tanimbu Estremadoiro, and the Argentine cameraman, Fernando Cola, who were all accompanying the Guaraní leaders and authorities in order to document the process of releasing the captive communities of the Chaco,⁶ were seized and seriously mistreated.

On the eve of the 25 May holiday celebrations in Sucre, and with the excuse that the conflict over the location of the capital had not been resolved,⁷ violent groups opposed to Evo Morales' visit kidnapped a number of peasant leaders and indigenous authorities from the rural area of Chuquiasaca who had come to see the President of the Republic, and whipped them right in the middle of the main square, humiliating them, making them burn their ponchos and forcing them onto their knees in cruel, inhuman and degrading treatment not seen since colonial times. The images spread around the country and the world, where they were condemned and energetically rejected by all sectors of society.

Demands for a national recall referendum

Bolstered by the Santa Cruz referendum results, the opposition party, Podemos, led by former President Jorge Quiroga, felt it could turn the

situation to its advantage and called for the rapid approval of the draft Law on a Recall Referendum to Revoke the Popular Mandate of the President, Vice-President of the Republic and departmental prefects (the Recall Referendum). Their aim was to weaken the government but, in fact, this initiative had the opposite effect by dividing the opposition, because the eastern regions believed that a recall referendum would destroy their strategy of gaining power through departmental referenda.

The Recall Referendum took place on 10 August 2008. When the polls indicated an imminent victory for the president and the fall of some opposition prefects, the private media and sectors linked to the prefectures and civic committees began to draw attention to the fact that they would interpret the results on a regional basis, in other words, they would reject the national scope of the process and refuse to recognise the authority of the president and government in those regions where the pro-government ticket had not obtained a majority. The conflict was shaping up to continue regardless of the result of the referendum.

The Recall Referendum gave Evo Morales an impressive boost, with 67.4%⁸ of the national vote, 15% more than in the 2005 presidential elections. At departmental level, although the prefects managed to confirm their mandates, the MAS demonstrated a striking increase in popularity in the east, with peaks of more than 20% in departments considered to be bastions of the opposition. The prefects in the departments of La Paz – José Luis Paredes - and Cochabamba – Manfred Reyes Villa -, key allies of the “half moon” prefects, had their mandates revoked. This result sent out a strong message that the public remained committed to democracy and its institutions – albeit weakened – and that the solution to the political crisis would have to be found by means of dialogue and action through the constituted democratic bodies.

The Pando massacre and the failed regional coup

Following this Recall Referendum, the government again called for dialogue with the prefects in the east, on the basis of three proposed agreements: a) a tax agreement addressing the demand for return of the Direct Tax on Hydrocarbons to the regions; b) an autonomy agreement establishing the bases for including the prefects’ demands; and c)

an institutional agreement making it possible to approve the new Constitution. Faced with the impossibility of reaching any agreement because of seemingly irreconcilable positions, the President passed Decree No. 29.691 on 28 August, announcing the constitutional referendum, and also convening elections for all regional authorities.

Towards the end of August, the most entrenched and racist opposition sectors in the east stepped up the pressure, and the conflict spread right across the whole region, challenging the security forces who remained loyal to the central government. In the first week of September, the Chaco region's main roads were blocked, cutting off fuel supplies to the region's towns. The stations that pump natural gas to Brazil and Argentina were forcibly taken over by the opposition. In the towns, paid hooligans and gangs raided and set fire to more than 140 public institutions and state companies; NGO offices were ransacked, including that of CEJIS, in Santa Cruz; and the offices of indigenous organisations such as CIDOB (national organisation) and CPESC (Santa Cruz regional organisation) were destroyed, creating the conditions for a *coup d'état* aimed not only at overthrowing President Evo Morales but at creating a climate of violence that would justify the *de facto* imposition of their autonomous departments, thus consolidating the country's internal division. The indigenous organisations, people accused of being "traitors", had to go into hiding because of death threats and the risk that their homes would be attacked. The government denounced the "civic committee / prefectural coup",⁹ which was supported by the US Embassy. On 10 September, Evo Morales accused the US ambassador, Phillip Golberg, of supporting the coup and expelled him from the country, an unprecedented action in the history of the Bolivian Republic.

In the Amazonian department of Pando, the indigenous and peasant farmers decided to protest at the wave of violence unleashed by the civic committees. On 11 September, two marches heading for the capital, Cobija, were attacked with automatic rifles and machine guns outside of Porvenir and Tres Barracas by prefectural officials and people close to the civic committee, who massacred more than 20 peasants and wounded over a hundred more, including children and pregnant women. Many were finished off from a distance as they tried to escape by swimming across the Tahuamanu River.

Evo Morales immediately announced a state of emergency and, locking up the Pando Prefect, Leopoldo Fernández, in a military unit in La Paz, accused him of being responsible for the tragedy along with a number of prefectural officials identified in the massacre. The government condemned the violence and blamed the eastern prefects for the attempted coup, calling for the immediate return of the public institutions that had been taken by force and ordering them to pay compensation for damages caused. The implicit condemnation of the people of the east, who did not support the paid violence of the civic committees, the military mobilisation throughout the east and the impact of the news of the massacre left the attempted coup without any popular support, thus leading to its failure.

UNASUR's intervention: dialogue and changes to the constitutional text

On 15 September, an emergency meeting of the members of the Union of South American Nations – UNASUR – held in Santiago de Chile, emphatically condemned the violence in Bolivia, particularly the Pando massacre, and stated in the “La Moneda Declaration” that the only government it recognised was that of Evo Morales, although it did emphasise that the crisis had to be resolved by means of dialogue with the opposition.¹⁰

The violence of the Santa Cruz civic committees had caused a “ring” of roadblocks to be put up around the eastern capital on the part of more than 20,000 indigenous and peasant farmers who had marched to within a few kilometres of the city. The government had to enter into intensive negotiations to dismantle this spontaneous action on the part of sectors that had been humiliated over the course of the whole year, so that progress could be made in the dialogue held in Cochabamba from 18 September to 5 October.

On 8 October, negotiations commenced in the Congress of the Republic. The nine departmental prefects joined these negotiations, including those from the east. Other parties involved were former constituent members, MPs, members of the executive and a limited but decisive representation from the indigenous movement of the lowlands and highlands. This first stage concluded, a national march was

organised, headed by the President himself, which travelled across the whole central highlands, reaching the city of La Paz on 21 October, the day when the negotiations were to conclude. These negotiations made 144 amendments to 112 articles of the constitutional text previously approved by the Constituent Assembly, finally leading to the long-awaited approval of the Law on the Constitutional Referendum and the referendum on 25 January 2009.

Indigenous rights and congressional changes to the Constitution

In the negotiations in Cochabamba and within Congress, the indigenous peoples managed to avoid any significant backing down from the historic demands that had been included in the original text approved by the Constituent Assembly in 2007, and also managed to convince institutions that had not guaranteed that these demands would be fully implemented and exercised.

In relation to the indigenous autonomies. Whereas the constitutional text from 2007 was not completely clear with regard to the physical basis of the indigenous autonomies, the new Chapter that emerged from the negotiations establishes that the indigenous autonomies will take the ancestral territories, as well as those territories already in collective ownership, as the basis for their physical demarcation, following a process of land regularisation. The principle that exercise of their self-determination will not be subordinate to or mediated by any other autonomous level was also reaffirmed. The indigenous autonomies will have powers in 37 areas and these will enable them to work towards achieving their economic, social and cultural rights. This is the great challenge now facing Bolivia's indigenous peoples, in the context of the plurinational and communitarian state.

In relation to the composition of the public bodies. Defining the indigenous constituencies and the representatives that will sit on the public bodies (such as the Plurinational Assembly, departmental as-

semblies and municipal councils) was one of the most conflictive and misunderstood issues within the Constituent Assembly.

The Chamber of Deputies remains the same as in the previous constitution, with 130 members, half elected in uninominal – geographical – constituencies and the other in plurinominal constituencies – proportionally elected by department.

The election of indigenous peoples' political representatives will take place according to their own rules and procedures, under the supervision of the Electoral Body (Art. 211 para. II). The electoral system will be provisional for the December 2009 general elections and, when finalised, will need to ensure the consistency and order of these provisions in order to establish how the indigenous peoples will exercise their political rights in the context of the New Constitution.

In relation to the exercise of community justice. Another indigenous demand that was strongly challenged was that of community justice. An amendment was promoted by the opposition. The congressional agreements, to which the indigenous organisations were not party, gave this jurisdiction back to members of the indigenous nations and peoples with regard to issues to be defined by a Law on "jurisdictional division".

In relation to the natural resources and rights to their territories. The congressional negotiations made some changes to the rights of indigenous peoples to the natural resources existing on their territories. This involved three key articles: Article 30, establishing the fundamental rights of indigenous peoples; Article 304 referring to the powers of the indigenous autonomies in relation to natural resources; and Article 394 defining agrarian property. In all of these articles, the state guarantees the use and benefit of renewable natural resources on the condition that rights legally acquired by third parties are respected. This addition, apparently obvious and respectful of legal norms, represents a great threat to the indigenous territories either in the process of being or already consolidated: it means that logging and mining companies, cattle ranches etc. can remain on indigenous lands with a constitutional guarantee that strengthens their presence and prevents effective control of their activities on the part of those who, in the light of the new Constitution, are the authorities on those territories. □

Notes

- 1 Article 398 of the draft NCPE was not agreed between the government and opposition in the Constituent Assembly. This related to the maximum area of land that could be held: 5,000 or 10,000 hectares. A decision on this aspect was referred to popular consultation, along with the complete text of the Constitution.
- 2 See *The Indigenous World* 2008, p.178.
- 3 In the context of regional disputes, *comités cívicos* (civic committees) emerged to articulate and aggregate the interests of cities and departments. The most significant was the Pro-Santa Cruz Civic Committee, founded in the early 1950s by prominent members of that department's elite. During the period of military rule, leaders of the civic committees received prominent government posts. Today they are important allies of the land owners and the strongest opposition to Evo Morales' government.
- 4 See <http://www.eldeber.com.bo/2008/2008-04-01/vernotanacion-al.php?id=080401001726>.
- 5 See <http://www.corteelectoralsc.com/>.
- 6 See *The Indigenous World* 2008, p.183.
- 7 This refers to one of the most violent conflicts to emerge from the Constituent Assembly, the demand of Sucre inhabitants that this city, the seat only of the Judicial Power since the so-called "Federal War" transferred Executive and Legislative powers to La Paz, should once more be the country's full capital.
- 8 See <http://www.cne.org.bo/>.
- 9 Press Conference of the Minister of the Interior, Alfredo Rada Vélez, on 9 September 2008.
- 10 http://www.comunidadandina.org/unasur/15-9-08com_bolivia.htm.

Leonardo Tamburini is a lawyer and director of the Centro de Estudios Jurídicos y Sociales, cejis@scbbs-bo.com

BRAZIL

Brazil has approximately 180 million inhabitants spread across a territory of 8,511,925 km², with indigenous lands occupying 1,100,491 km², or 13% of the national territory. The indigenous population numbers approximately 734,127 individuals, or 0.4% of the national population. 98.61% of indigenous lands are in the Amazon the remaining lands are found in the north-east, south, south-east and central-west regions. As of October 2008, the situation of indigenous land was as follows: 343 registered; 49 approved; 59 declared; 22 identified; 122 to be identified, 216 without a decision; 35 *reservadas*/*dominiais*, being a total of 847. Of the 734,127 indigenous people, 383,298 live in urban areas and 455,883 are illiterate. The indigenous population can be grouped into 227 different ethnic groups. Half of these groups comprise less than 500 individuals and only four peoples have more than 20,000. Forty-six peoples are in a situation of isolation or voluntary isolation.

Brazilian legislation establishes a series of rights for indigenous peoples and Brazil signed ILO Convention 169 in 2004.

Brazil 20 years on from the new Constitution

The 1988 Constitution recognises “the Indians, their social organisation, customs, languages, beliefs and traditions and their original rights to the land they traditionally occupy, it being the Union’s responsibility to demarcate them, protect them and ensure respect for all their assets” (Chapter 8 – On the Indians – Article 231). Article 231 also states in its second paragraph that: “the lands traditionally occupied by the Indians are destined for their permanent possession, enjoying exclusive use of the wealth of the soil, the rivers and lakes within



them". And its fourth paragraph: "The lands forming the object of this article are inalienable and cannot be disposed of; the rights to them are imprescriptible". In other words, the 1988 Constitution broke with the integrationist perspective that had been current since colonial times in Brazil and opened up new prospects for recognising the territorial and cultural rights of indigenous peoples.

Aggressions and omissions on the part of the Brazilian state

During 2008,¹ at least 53 indigenous people were murdered in nine states of Brazil. This was less than in 2007 but the situation remains critical nonetheless. Mato Grosso do Sul (MS), in particular, continues to be one of the worst affected areas, with 40 murders recorded in 2008. The situation in this state is extremely urgent as it is home to the second largest indigenous population in the country – around 60,000 individuals – and is characterised by intense struggles for land. This creates great conflict, both internal and external to the indigenous territories, primarily among the Guarani Kaiowá people, as there were 74 murders or suicides in 2008 out of a population of approximately 40,000.

Minas Gerais state is another serious case, with four indigenous murders among the Xacriabá people.

In the south of Bahía, between 20 and 23 October, a federal police operation in various villages resulted in more than 20 of the Tupinambá people being injured.

Two murders were recorded in Maranhão, one of them a six-year-old Guajajara girl. Cases of aggression against the Guajajara living in this area on the part of the inhabitants of Arame, Grajaú and other towns are constant. In 2008, loggers invaded the Araribóia indigenous territory, and there were two armed attacks on Guajajara individuals, in one of which a couple were wounded.

In Roraima, indigenous people are also suffering attacks because of frustrations over the Raposa Serra do Sol indigenous land dispute (see further below). In one attack, 10 indigenous people were injured and the leader of the rice growers was arrested for several days.

In addition to murders, there were serious cases of aggression against indigenous peoples around the country during 2008. Prejudice and disputes over land for agribusiness (sugarcane, soya, eucalyptus) and hydropower are at the root of these attacks in which the aggressor is sometimes even the state, through the police force.

Territorial conflict

Raposa Serra do Sol is an indigenous territory of 1.8 million hectares with approximately 20,000 individuals from the Macuxi, Wapichana, Ingaricó, Taurepang and Patamona peoples, located in the state of Roraima, on the border with Venezuela and Guyana.

In 2005, Raposa Serra do Sol was authorised and registered by Lula da Silva's government. This was an historic event considered a triumph by all of Brazil's indigenous peoples. It was then a matter of complying with the legal one-year deadline for the withdrawal of the last invaders. And yet resistance has continued, and there has been a great deal of violence against the continuing demarcation of the land. During 2008, the legal ruling for the authorisation and recognition of this indigenous land was stopped and restarted twice. On both occasions this was *following a request for examination* from the ministers of the Federal Supreme Court, Menezes Direito and Marco Aurélio Mello. Finally, this land was recognized in March 2009.

In 1936, the former Indian Protection Department (SPI) demarcated the lands of the Pataxó Hã-Hã-Hãe people in Bahia state. Over the course of the following decade, they were thrown off their territories and their lands sold. At the start of the 1980s, the indigenous peoples organised and took back part of their lands. They have been fighting for the recovery of the whole of their territory ever since. More than 20 leaders have been murdered in the process, but these crimes have gone unpunished.

In 2007, the Guarani Kaiowá people signed a Conduct Agreement (TAC) with the Office of the Public Prosecutor (MPF/MS), by which the state agreed to take responsibility, up until 2010, for part of the land demarcation demand of the approximately 40,000 Guarani in Mato Grosso do Sul. In July 2008, FUNAI published resolutions establishing technical groups that would carry out anthropological agrarian studies to identify the *tekoha* (traditional lands) to be demarcated. However, the estate owners and part of the state government were fundamentally opposed to this decision. This consequently generated great tension between the indigenous and local populations, leading to violence and discrimination.

Both the case of the Pataxó Hã-Hã-Hãe, and that of the Guarani Kaiowá and Raposa Serra do Sol symbolise the impression a large part of Brazilian society still has of the indigenous cause, namely that they still see the indigenous peoples as an obstacle to progress and a threat to national sovereignty, reflecting a completely anachronistic image of the actual reality.

The Guarani-Paraná people, around 60 individuals, including 27 children, are living camped on less than two hectares of land in Terra Roxa municipality – Tekoha Araguaju village – where they have been demanding the demarcation of their lands for more than two years.

Various Tupinambá communities, of the Tupinambá people, have been suffering eviction threats after FUNAI missed the court deadline to present a report identifying the lands of the indigenous communities. The Federal police evicted them from the three areas where they had been living. While the indigenous peoples wait for a solution to their demands, they are suffering from persecution and intimidation on the part of land owners, and are falling into extreme poverty.

Around 50 leaders of indigenous peoples from Pernambuco, who live in communities in Pernambuco state, complained to state and federal government representatives that they were being subjected to threats, murders and persecution on the part of public officials and private individuals.

As described above, the main cause of the violence being suffered by indigenous peoples is due to the state's delay in demarcating their lands. Since the inauguration of Lula da Silva's government, in 2003, only 59 lands have been declared indigenous lands (a total of 12,388,133 ha) and 73 lands have been authorised (13,857,663 ha).

In 2008, as a result of the Brazilian state's indifference to indigenous peoples throughout the country as a whole, there were 19 cases – reported and published in the press – of settler invasions, illegal natural resource exploitation, environmental and biological damage, as well as damage to the belongings of the indigenous communities. This aggression comes from loggers, *garimpeiros* (small-scale miners) and other invaders who, hardly surprisingly, are also aggressive to the communities.

Biofuels and the impact on indigenous populations

The area planted with sugarcane in 2008 was 14.2% greater than the previous year, with 7.01 million hectares stretching across the Cerrado (centre-west region), the Amazon, the Pantanal and Mata Atlantica (Brazilian coastal region, in the north-east). Studies conducted by the Ministry for the Environment and different research centres note the dangers of sugarcane to the environment, water resources and air quality, thus minimising any advantages of burning ethanol instead of petrol in cars.² National production of sugarcane, which in 2007/2008 was 13.9% higher than in the previous year, will need to grow by more than 7.6% in the 2008/2009 period. In 2008 alone, 29 ethanol factories began operating in the central-south region, which includes the south-east, centre-west and south. Since 2005, a total of 81 ethanol factories have opened in the centre-south area.

The engine behind this current expansion is the increase in demand for ethanol. And indigenous workers suffer even more, living isolated from other sugarcane workers, receiving different treatment and suffering subhuman conditions compared to slaves.

Slave labour

In terms of human rights violations, the most serious cases include modern slavery. In terms of workers in the sugarcane and alcohol sectors between 2005 and September 2008 most of them were to be found in the central-south area, where 87.8% of national production is concentrated. In the country as a whole, slave labour affects an estimated 1,863 individuals.

In March 2007, for example, more than 400 workers, many of them indigenous, were released from the Dcoil sugarcane refinery where they were living under conditions tantamount to slavery. Subjecting sugarcane workers to slavery in Mato Grosso do Sul is not the exclusive domain of this company. In November 2007, more than a thousand workers (virtually all indigenous) were released from the captiv-

ity they had been subjected to for sugar cane harvesting by the Debrasa company, Jpessoa group distillery, located in Brasilândia-MS.

Because of this the Public Prosecutor's Office proposed a Conduct Agreement (TAC) for factories hiring indigenous labour.

The situation is similar for the Xacribás of the Paranapanema isthmus, in São Paulo state, where various indigenous people come from other states such as Tocantins, Goiás and Minas Gerais, to find work in the factories of São Paulo. The bad working conditions lead many of them to state that they are faced with a situation of slavery or semi-slavery. Given this reality, the Standing Committee for Research and Monitoring of Working Conditions in MS decided on a number of actions aimed at applying the provisions of ILO Convention 169, ratified by Brazil.

Indigenous Peoples' Social Agenda and Plan for Accelerated Growth (PAC)

On 22 January 2007, Lula da Silva announced his so-called Accelerated Growth Program, known as PAC in Brazil, which calls for private and public infrastructure spending of 504 billion reais (283.3 billion US\$) through 2010 to boost growth in Latin America's largest economy. Most activities of the PAC will take on indigenous lands and that is why President Lula da Silva talks about the Indigenous Peoples' Social Agenda, a project that comprises a series of interministerial actions that are supposed to improve the quality of life of Brazil's indigenous peoples. He has identified three great goals: protection of the indigenous peoples, promotion of the indigenous peoples and promotion of the quality of life of indigenous peoples.

In order to comply with the actions planned in the Indigenous Peoples' Social Agenda, Márcio Meira, President of FUNAI, announced that FUNAI's budget would be increased by 44% in 2008. The priority regions indicated for commencement of the actions would be: Alto Rio Negro, Valle de Javari, in Amazonas, Raposa Serra do Sol and São Marcos, in Roraima. According to some indigenous leaders, such as Davi Kopenawa:

The government did not explain the project properly; it is not clear to me. It simply speaks of works and we don't want works on our land. The government has not invited the indigenous peoples to discuss this and I do not know the institutions that are discussing this project. This is why I am very concerned.

Actions planned by the PAC on indigenous lands

Small hydroelectric plants are planned in the Xingu Indigenous Park. A number of indigenous leaders living in the Park, which is home to 15 ethnic groups, have been calling for greater clarification of the PAC presented by the government. In addition to hydroelectric plants, the PAC also includes road works and actions that will have socio-environmental impacts.

The exploitation of Mato Grosso-MT's hydroelectric potential via the construction of small power stations (PCH) and hydroelectric plants (UHES) in different parts of the state (with great impact on important hydrographic basins, many of them in indigenous territories) will cause irreversible environmental damage and will have a direct and indirect impact on the communities and their territories. One example is the Juruna complex, which anticipates the construction of 8 power stations and 2 hydroelectric plants, directly affecting five ethnic groups – Enawenê-nawe, Nambikwara, Pareci, Myky and Rikbaktsa – in the north-west region.³

The impact of PAC for the Rio Madeira on indigenous peoples living in voluntary isolation is extremely serious, particularly for those living in the environmental reserves of Serra de Três Irmãos, Mujica Nava and the area of the Jaci Paraná and Candeias rivers. The main threats are the Urucu-Porto Velho gas pipeline, loggers, soya producers and the Rio Madeira hydroelectric plant.

According to Marcos Purinã, from the Coordinating Body of Indigenous Organisations of the Brazilian Amazon (COIAB):

For us, hydroelectric plants on indigenous lands are an outrage, a lack of respect. The people who see some enterprises undertaken inside and outside our lands are unaware that the indigenous peoples have not been

*consulted in advance, nor been asked if this would contribute to their quality of life.*⁴

Consequences of the PAC

There has been a 59% increase in deforestation since 2007, an unprecedented rise. The most important factor has been the huge expansion of biofuels and the PAC. Since June 2007, there has been a significant increase in the felling of trees in at least three states of the Amazon: Pará, Mato Grosso and Rondônia, with increases of more than 100% in comparison with the same month of the previous year.

Mining projects

The indigenous Yanomami, meeting in their assembly, rejected future mining activities on their lands. Paraná Yanomami, the main leader of the Xirimihiki community, made it clear to MPs that he would not accept the mining activities on their lands.⁵

Indigenous movements

Abril indígena is considered to be the most important movement of indigenous peoples in Brazil. Around 800 representatives of 230 indigenous peoples signed the final text of *Abril indígena 2008*, which emphasises the urgent need for the Brazilian state to approve the Indigenous Peoples' Statute (held up for 13 years in the National Congress), urgent compliance with ILO Convention 169 (which Brazil signed in 2004) and respect for the UN Declaration on the Rights of Indigenous Peoples, approved in September 2007. They are calling for urgent reformulation of the indigenous health policy; the demarcation and regularisation of all indigenous lands in order to guarantee their protection; the adoption of urgent measures to contain the process of violence and criminalisation; and the implementation of a specialist indigenous school education policy.

The application of ILO Convention 169 in Brazil was the focus of a seminar: "Opportunities and challenges in implementing ILO Convention 169 on indigenous and tribal peoples".⁶ For this Convention to be enforced, the government needs to produce regulations on prior and compulsory consultation with regard to approving laws and projects that could affect indigenous peoples, primarily for works undertaken on indigenous lands by the PAC, which now total 346, largely electricity plants. According to Marcelo Kamayurá, representative of the Xingu Indigenous Association, "The indigenous communities were never consulted with regard to these works". President Lula da Silva's authorisation to establish permanent military bases on indigenous lands along Brazil's border is another violation of ILO Convention 169. This decree is unconstitutional.⁷

Indigenous health and FUNASA

Malaria is on the increase once more in the north of Brazil, bringing total number of positive cases registered in November 2008 up to 599,100. 99.5% of cases are diagnosed in the Amazon.

Indigenous people from villages in the municipality of Guajará Mirim-Rondônia, on the border with Bolivia, were infected with the hepatitis B and C viruses; 12% of the indigenous population studied were carriers of this disease.

One of the most serious outbreaks of malaria and hepatitis occurred in the Javari valley, in the south of the Amazon, resulting in 23 deaths. According to the Indigenous Council of Javari Valley – CIVAJA, the number of people affected could be as high as 25% of the area's indigenous population. The reserve covers 8.5 million hectares and is inhabited by around 3,500 indigenous people. The most common complaints among indigenous peoples are: a lack of medicines and treatment, and the difficulty in accessing health teams.⁸

This reality resulted in a document sent to the government signed by 200 indigenous leaders,⁹ calling for indigenous health to be removed from the portfolio of the National Health Foundation (FUNASA), and a special secretariat with responsibility for indigenous healthcare set up with direct links to the Presidency of the Republic. According to the

president of COIAB, Jacinto Sateré, FUNASA is responsible for “the absolute chaos in indigenous health”.¹⁰

Indigenous education

According to the 2007 education census, Brazil has more than 178,000 indigenous students enrolled in 2,517 indigenous schools in 24 states. This negligible number reflects the inefficiency of public policies aimed at these peoples.

The indigenous organisations are alerting the Ministry of Education and Culture (MEC) to the national education policy offered to Indians. They have produced a document for the Ministry of Education in which they denounce the fact that the MEC has been closing historically-won institutional spaces for dialogue with NGOs, sidelining them from the discussions and from involvement in the national policy on indigenous education. The MEC may have prioritised dialogue but has restricted it to the state Ministers of Education and excluded the indigenous organisations not only from programme formulation but also from programme implementation.¹¹

Visit of the New UN Special Rapporteur on Indigenous Rights

In his first mission, James Anaya, the UN Special Rapporteur, travelled to Brazil where he called for reforms aimed at guaranteeing indigenous rights. His visit was received with suspicion by nationalists and military sectors however, who fear, above all, that his presence will have an influence on the decision of the Federal Supreme Court regarding the Reposa Serra do Sol indigenous land. They maintain that it will open up the future possibility of attacks on national sovereignty by mutilating territories to the benefit of indigenous peoples, fearing that they will set themselves up as independent nations. According to Anaya:

There is nothing to fear; I have not come here to propose the division of Brazil. We need to reflect on the dramatic reality of a majority of indige-

*nous communities, on such injustices, on such poverty. No country has completely managed to overcome these problems.*¹²

James Anaya stated, at the end of his visit, that Brazil's indigenous peoples continued to live in conditions of social inequality. In the opinion of the UN Special Rapporteur, the indigenous peoples often had low health and education indices, and were facing discrimination that could end in violence. Those people worst affected were women and children. He called for reforms to guarantee indigenous rights. In addition, he stated that the country needs a mechanism by which to guarantee indigenous rights when deciding on megaprojects, such as road building, dams and mines that may affect the lives of these peoples in their areas.

*Reforms are needed to ensure that indigenous peoples can exercise their right to self-determination within the Brazilian state and to ensure respect for their diversity." For Anaya, "promoting a national education campaign on indigenous rights could be a way of achieving more inclusion.*¹³

National elections

The October 2008 elections for prefects and local councillors set a precedent in the history of Brazil: a 100% increase in the number of indigenous people elected. Six indigenous individuals were elected as prefects and vice-prefects and at least 74 people were elected as councillors. More than 350 candidates were registered in 150 municipalities, spread across 21 states of the Federation. 70% of the candidates elected competed for posts in small municipalities where indigenous lands are located, with less than 10,000 voters.¹⁴

Conclusion

The above panorama shows that the concern and thus the presence of the Brazilian state in the demarcation of indigenous lands, health and

education depends greatly on rights guaranteed in the 1988 Constitution not to mention respect for international agreements signed by Brazil: ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. What can be expected of a country that does not respect its constitution? □

Notes

- 1 According to information from the Indigenist Missionary Council - CIMI
- 2 www.reporterbrasil.org.br
- 3 www.cimi.org.br
- 4 <http://g1.globo.com>
- 5 www.socioambiental.org.br
- 6 November 2008, Brasilia
- 7 Decree No. 6.513/2008, published on 23 July 2008
- 8 www.agenciaamazonia.com.br
- 9 28 November 2008
- 10 <http://jbonline.terra.com.br>
- 11 www.socioambiental.org
- 12 Folha de Sao Paulo, 25 August 2008
- 13 Folha de Sao Paulo, 25 August 2008
- 14 www.socioambiental.org.br

Maria de Lourdes Alcantara de Beldi is an anthropologist, scientific coordinator of the "Imaginary and Memory Group" and editor of the Revista Imaginário of Sao Paulo University. For the last five years, she has been working with indigenous youth from the Dourados Reserve in Mato Grosso do Sul.

PARAGUAY

The 2002 census of indigenous peoples gave a figure of 87,099 people, representing 1.7% of Paraguay's total population.¹ The National Census, however, through the question on ethnic belonging, recorded another 2,070 people who stated that they belonged to one of Paraguay's indigenous peoples. More than half the indigenous population live in the Western (Occidental) Region, also known as the Chaco.

The indigenous population has been classified into 20 ethnic groups, of which the largest numerically are the Mby'a guaraní, Avá guaraní, Paí tavyterá, Nivaclé, Enlhet norte, Enxet sur and, to a lesser extent, the Manjui, Guaná and Tomaraho ethnic groups.

The situation of extreme poverty in which the indigenous peoples live is reflected in their lack of land ownership. The census indicates that there are 412 indigenous communities in Paraguay, of which 185 have no permanent property titles, 45 in the Western Region (Chaco) and 140 in the Eastern (Oriental) Region.

Paraguay has a legal framework that guarantees and recognises a fairly wide range of rights in favour of indigenous peoples. The approval of ILO Convention 169 should also be noted, transposed into law as Law 234/93.

A public hearing on "Indigenous Peoples and Dictatorship" was organised by the Truth and Justice Commission (CVJ) and the Coordinating Body of Human Rights in Paraguay (Codehupy) on 16 and 17 July 2008 in the bicameral chamber of the National Congress. The aim was to analyse human rights violations during the dictatorship and the transition to democracy "in relation to its main and irreplaceable protagonists, the representatives of indigenous peoples, as well as to

examine solutions and forms of reparation for human rights violations against their members and communities".²

Over the course of the two days, almost 50 witness statements were heard from different indigenous peoples,³ thus raising the profile of, denouncing and saving to the collective memory the serious human rights violations committed over more than 60 years: accounts of genocide, murder, forced labour and a structural denial of rights.

The conclusions presented by the CVJ invoked the state's responsibility for the continuing dispossession of indigenous territories before, during and after the Stroessner dictatorship (1954 - 1989), as part of a state policy based on disregard for indigenous peoples as individuals and as peoples; this was characterised not only by a denial of the right to own their lands and territories but also a denial of fundamental rights such as the right to life, identity, freedom and personal integrity (CVJ, 2008, para. 157).

The document also concluded that, during the Stroessner dictatorship, "there was a total disregard for the human dignity of indigenous peoples" and serious human rights violations were committed, as seen in the civilian and military attacks on communities of the Aché, Ayoreo, Maskoy and Toba Qom peoples, in extrajudicial executions of adults, children and the elderly, as well as rapes of women (CVJ, 2008, para. 158).

In other cases, these violations were expressed in inhuman practices imposed on indigenous peoples such as the removal of indigenous children from their families to work as servants or put for sale, or other forms of servitude as in the case of the Aché people; the forced labour and other practices similar to slavery that were afflicted on the peoples of the Chaco, such as the Enxet and Maskoy; and methods of forced sterilisation to prevent indigenous births, implemented with the state's acquiescence (CVJ, 2008, para. 159).

In addition, the patent discrimination of indigenous peoples was denounced, as expressed in the attempted religious and political assimilation, in the distribution of resources for land purchases (difference between the funds for peasant farmers and those for indigenous lands) and the priority sale of land to foreigners. In addition, "the state's tolerance of racial discrimination on the part of non-indige-



nous society also meant a violation of the right to life and integrity of indigenous peoples on the part of religious organisations” (CVJ, 2008, para.160).

According to the CVJ, these practices were also current during the democratic transition, among other reasons “due to the ongoing absence of a law against discrimination, which is still pending approval in the Senate” (CVJ, 2008, para. 161).

Old threats, new strategies: the new version of landowner “environmentalism”

The ever present danger of attempts to block the indigenous peoples' claims to territory is adopting ever more sophisticated forms, always shrouded in legality and even invoking such fine aims as environmental conservation. This has resulted, in some cases, in those owning the properties claimed as traditional territories requesting that they be declared protected forest areas under private domain, thus making expropriation on the part of the indigenous claimants impossible.

Such is the case of Estancia Salazar, declared a protected forest area under private domain for a five-year period.⁴ This area is located on the ancestral territory of the Xamok Kásek community, of the Enxet people. The decree that gave rise to this “natural reserve” considered in its recitals:

that the technical report for verifying and auditing the present proposal merits approval given the biological importance of the natural conditions of the area, which will enable the preservation of threatened species and those in danger of extinction, given that its location is strategically important for the movement of animals and plants between already existing conservation units in the region (Decree 11804/08).

Despite the technical and environmental rigour of the reports produced by official environmental bodies such as the Department for the Environment (SEAM), which form a scientific body of support for these decrees, the process of producing these regulations is not properly coordinated with other state departments such as National Institute of Indigenous Peoples (INDI) or the National Institute for Rural Development and Land (Indert), thus opening up the possibility for them to become obstacles hindering indigenous territorial claims.

The decree disregards the right of the community to its traditional habitat, which it has claimed for more than 18 years.⁵ In addition, by preventing the community's right to its traditional habitat, the decree violates the guaranteed right to communal property (Art. 64, CN); it transgresses the constitutional hierarchy of Article 137 of the National

Constitution by ignoring the protection stipulated in Law 43/89, Articles 6 and 15 of ILO Convention 169; and is also in violation of the right to implement their own traditional economic and cultural systems, infringing the right to life of the community members.

The indigenous peoples have waited all these years for an official announcement of a return of their lands, according to President Lugo. For the sake of consistency, and honouring the dual sacredness – both of the ancestral indigenous lands and of the norms that guarantee them - that it declaims, the Paraguayan state should produce the required documents and take the necessary measures to remove this obstacle to the indigenous peoples' demands.

Some actions during the first 100 days of government

The 2007 Human Rights Report⁶ noted the state's policy of assistance in emergency situations in order to satisfy minimum rights, such as to the provision of food and water, and the use of double standards when deciding which communities should benefit.

In the first months of 2008, during the run-up to the April elections, there was greater diligence and coverage in terms of food provision to beneficiary communities. However, after the defeat of the Colorado Party government⁷, the institutions in question returned to their old way of working: prioritising communities that have received favourable rulings from the Inter-American human rights system and delaying provisions to others.

In this regard, one of the new government's first actions, aimed at mitigating the indigenous peoples' conditions of extreme vulnerability, was to present and implement a coordinated interinstitutional action plan for children, women, indigenous peoples and vulnerable sectors.⁸ This plan is targeted at indigenous communities, street children and extremely poor sectors of the population.

During its presentation, the concept of "social territories" was officially used to designate population units, which in some cases could be a district or neighbourhood with its own leaders and in which coordinated action is taking place on the part of a number of institutions,

from problem identification through to planning and integral implementation of activities in order to find solutions.

In addition, on 10 September 2008, "the departments of Alto Paraguay, Boquerón and Presidente Hayes, affected by a prolonged drought, were declared in a state of emergency so that mitigation and rehabilitation measures could be taken".⁹

The distribution of drinking water and food to the population were among these mitigation measures. In terms of rehabilitation, actions in the medium-term are planned such as the economic and social reconstruction of Chaco communities that have suffered adverse weather conditions, along with repairs to the existing road infrastructure, the building of new roads, the rehabilitation of water storage and distribution systems, and access to education and housing.

In terms of health, an operations centre will be established in the Chaco, providing healthcare, immunisations, delousing and gynaecological and obstetric care through operational brigades of the Ministry of Public Health and Social Well-being and the Armed Forces of the Nation.

It should be noted, however, that these measures are not sufficient to lift the indigenous communities out of poverty and exclusion and it is therefore hoped that the new government will take further action, primarily via the return of lands and long-term development programs that will guarantee the well-being of indigenous peoples and the enjoyment of all their rights.

Failure to comply with international rulings

During the course of 2008, the Paraguayan state took no concrete actions to ensure compliance with the rulings of the following cases in the Inter-American Court of Human Rights (IA Court) or the Inter-American Commission on Human Rights (IACHR).

Yakye Axa indigenous community vs. Paraguay

Since the ruling of 17 June 2005, the state has limited itself to undertaking symbolic, bureaucratic and time-wasting actions, without deci-

sively setting out to comply with its obligations and honour the commitments made by ratifying the American Convention on Human Rights.¹⁰

Three years after notification of the ruling, the Paraguayan state has still not fulfilled its obligation to return the traditional lands of the Yakye Axa community. A draft bill of law on the expropriation of the claimed lands is currently with the government, proposed by the General Attorney of the Republic, INDI and the Ministry of Foreign Affairs. This bill of law has still not been formalised by means of a communication that must be sent by the President of the Republic to the National Congress, where the fate of this law will finally be decided. In line with his pre- and post-electoral statements, in which a concern for the indigenous peoples' situation of discrimination and marginalisation can be discerned, the new President is now urged to refer this bill of law, giving it the priority it deserves.

Similarly, the National Congress's lack of involvement in this is of great concern, given the importance and significance of legislative tasks in the final resolution, in terms of returning territory to the community and consequently fulfilling the main decision of the ruling.

There has been some progress, albeit insufficient, in creating a fund for the purchase of the land. Currently, and according to INDI, this will comprise 1,600 million guaraníes (US\$ 400,000). This amount will still, however, not cover the value of the properties identified as the traditional lands of the Yakye Axa community.¹¹ In terms of food assistance and water, these people are still not receiving a sufficient nutritional intake; nor is the quantity delivered sufficient, given the frequency of deliveries.

Indigenous community Sawhoyamaxa vs. Paraguay

Following the ruling of 29 March 2006¹², there has been some progress in terms of compliance, one of the most relevant areas being part payment for non-material damage, which does not mean that the supply of goods and basic services will be suspended, as some state officials have been suggesting.

Another area of progress is the agreement regarding the precautionary measure of "not innovating", *de facto* or *de jure*, on any of the

lands claimed by the community, along with the existence of a fund aimed at supporting some purchases, although for an amount far smaller than necessary.¹³

In supervising the ruling, the IACHR indicated that

until the state complies fully and appropriately with the ruling, the lives of community members will be in constant danger [...], as will the very existence of the Sawhoyamaya community, its cultural survival, its development as a community and its [...] future prospects as a group... (IA Court, 2008, recital 35).

As with the Yakye Axa case, the Paraguayan state continues to supply basic goods and services in a negligent, infrequent and insufficient manner. The food delivered still does not satisfy the necessary nutritional requirements, nor is the amount sufficient given the frequency of deliveries. As for the supply of water, the volume of each fortnightly delivery is insufficient.

There has been no progress in the registration and documentation of individuals. Not all children and adolescents have been documented, and the errors appearing in some documents have not been rectified. A permanent mechanism for regularising the documentation of community members, particularly in terms of birth certificates, is still pending. Failure to comply with this point of the resolution places the community members, particularly children and adolescents, in a vulnerable situation and makes it impossible for them to access state protection, leaving them exposed to different forms of abuse and exploitation.

In addition, the state has made no progress in adopting

the legislative, administrative and any other kind of measures that may be necessary to create an effective mechanism for claiming indigenous ancestral rights that would guarantee their right to property and take account of their customary law, values, habits and customs (IA Court, XX, para. 235).

Nor has there been any progress with regard to the publication and radio broadcasting of the ruling of the Inter-American Court, as the state has limited this to publication in the Official Journal.

Indigenous Enxet community of Kelyenmagategma and its members

In *The Indigenous World 2008* it was noted that, in the context of Case No. 12629 before the IACHR,

the petitioners informed the IACHR of a reconciliatory state proposal and that a decision would be taken in the working meeting as to whether a 'friendly resolution' could be commenced or not; in the context of the agreement – a community proposal – a consensus was reached on the points being challenged by state representatives. Feeling that it was impossible to give effective fulfilment to the proposal, however, the state representatives withdrew hours prior to its signing, and so the process for a friendly resolution could not commence. This was the sole responsibility of the state (Barrios Cáceres, 2007, 365).

During the course of last year, the IACHR called a working meeting to examine compliance with the precautionary measures and discuss the possibility of a friendly resolution of the case. On 24 October, in the context of the 133rd period of sessions of the IACHR, a pre-agreement was signed which must now be submitted to a community referendum. If formally approved, it will pave the way for a friendly resolution.

Amongst the actions of President Lugo's government in terms of international court cases, the creation of an Interinstitutional Commission¹⁴ is noteworthy, for the purposes of producing a report on International Arbitration and Cases to which the Paraguayan state is a party.

The cases being considered by the regional human rights protection system have their own defined features: the state's responsibility for human rights violations is being invoked in these and, at the same time, they are markedly different from other cases of a patrimonial nature that the state is defending before other international courts.

For the moment there are indications that the indigenous cases before the Inter-American system will continue along the same lines as with the previous governments: lack of adequate budgets, a lack of internal coordination among the bodies responsible for complying with the resolutions, being limited to symbolic, bureaucratic and time-

wasting actions, without decisively setting out to duly comply with its obligations and honour its commitments. □

Notes

- 1 Dirección General de Estadística, Encuestas y Censos, 2002: *Censo Nacional Indígena de Población y Vivienda 2002*. Available at: www.dgeec.gov.py.
- 2 From the speech by Mario Melanio Medina, bishop, in his position as president of the CVJ, at the opening session of the public hearing, 16 July 2008.
- 3 Some of the peoples represented at the hearing were the Enxet, Ayoreo, Maskoy, Toba Qom, Nivaché, Avá Guaraní, Mbyá, Aché and Pai Tavyterá.
- 4 Art. 1. Decree 11804/08, "by which the reserve known as 'Estancia Salazar' is declared a protected forest area under private domain, dated 31 January 2008 and corresponding to farms N° 1418-13016 and registers N° 3849-9708 respectively, registered in the General Property Register, and which has an area of 12,450 hectares, located in Presidente Hayes department.
- 5 As fully established in the administrative file of Indert No 1272/06, and Report N° 11/03 of 13 March 2003 of the Inter-American Commission on Human Rights.
- 6 Barrios Cáceres, Mario J., 2007: La ordinarización de la excepcionalidad: Pueblos indígenas y agenda estatal en un año de emergencias in: Codehupy (2007): *Derechos Humanos en Paraguay 2007*. Asunción: Codehupy. Pp. 353-368.
- 7 The National Republican Association – Colorado Party was defeated after 61 years in power.
- 8 These actions will be implemented by seven government institutions in the social sector: the Ministry for Social Action, Ministry of Public Health and Well-being, National Ministry for Children and Adolescents, Ministry for Women, Ministry of Education and Culture, Department of Social Aid and Charity and INDI. Available at: <http://www.sas.gov.py>.
- 9 Decree 229, of 10 September 2008. Available at: www.presidencia.gov.py/lista_decretos.asp
During the period of the state of emergency, 266 indigenous communities living in the region are benefiting.
- 10 The State has implemented only nominal actions for the return of community lands, lacking in effectiveness and inter-institutional coordination, endangering their "right to cultural identity and the very survival of the indigenous community and its members".
- 11 Something that itself implies a failure to fulfil Resolution eight of the ruling.
- 12 Such ruling obliges the Paraguayan state to return the land claimed within three years of its enactment and to compensate for the violation of other rights of the community (e.g. to life). See IA Court H.R., Case of the Sawhoyamaxa Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146. Available at: www.corteidh.or.cr/pais.cfm?id_Pais=5&CFID=610799&CFTOKEN=80172456

- 13 Even though they represent a positive step in compliance with the ruling, they are not sufficient to be able to achieve the return of the traditional lands of the community within the three-year deadline established by the IA Court.
- 14 Decree 287 of 19 September 2008. Available at: www.presidencia.gov.py

Bibliography

- Ayala Amarilla, Oscar and Cabello, María Julia, 2006:** Entre la realidad y los avances de la justicia internacional in: Codehupy (2006) *Derechos Humanos en Paraguay 2006*. Asunción: Codehupy.
- Barrios Cáceres, Mario J., 2007:** La ordinarización de la excepcionalidad: Pueblos indígenas y agenda estatal en un año de emergencias in: Codehupy (2007): *Derechos Humanos en Paraguay 2007*. Asunción: Codehupy. Pp. 353-368.
- Truth and Justice Commission, 2008:** *Conclusiones y Recomendaciones al Informe Final*. Asunción: CVJ.
- IA Court, 2008:** *Supervisión de cumplimiento de sentencia. Caso Comunidad indígena Sawhoyamaxa vs. Paraguay. Supervisión de cumplimiento de sentencia*. 8 February
- IA Court, 2006:** *Comunidad Indígena Sawhoyamaxa vs. Paraguay*. Series "C" N° 146. Ruling of 29 March, Resolution N° 12.
- Supreme Court of Justice, 2003:** *Digesto Normativo sobre Pueblos Indígenas en el Paraguay 1811 -2003*. Asunción: Supreme Court of Justice.
- DGEEC 2008:** *Encuesta nacional de hogares indígenas 2008*. Fernando de la mora: Dirección General de Estadísticas, Encuestas y Censos.
- Pojoaju – Asociación de ONG del Paraguay, 2008:** *Un país desestructurado y la oportunidad de cambio con el nuevo gobierno. Contribución de las ONGs para la formulación de políticas públicas del nuevo gobierno de la República del Paraguay 2008-2013*. Asunción: Pojoaju.

Internet sources:

www.dgeec.gov.py
www.sas.gov.py
www.presidencia.gov.py
www.corteidh.or.cr

Mario Barrios is a lawyer and member of the NGO Tierraviva de Paraguay's Lawsuits and Actions Team.

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.

Genocide through omission

The day-to-day life of indigenous peoples in Argentina is in stark contradiction to the legal framework that recognises them as special subjects, as stipulated in the National Constitution and ILO Convention 169. The greatest problem currently facing the communities



and organisations seems to be in applying these standards, and they are forced to embark on long legal battles for their enforcement, particularly in terms of land and natural resources. According to the Minister of the Supreme Court of Justice of the Nation, Eugenio Raúl Zaffaroni, we are witnessing a genocide through omission in the country:

Genocide of the native peoples was not only a practice of the colonialists, it has been practised since independence, with multiple treaties signed with indigenous chiefs that the State has failed to respect. No-one can reverse what has happened [but] we can and must now compensate those who are suffering the consequences of past genocide. This is a legitimate demand and reparation is required [...] improvements in the quality of life of these people, a guarantee of dignified access to citizenship, recognising their territories, preventing the destruction of their natural resources, respecting their cultures and their values.²

Application of Law 26160 “Emergency law on community ownership”

This law, approved in December 2006, envisages two urgent measures: a four-year moratorium on the judicial evictions of communities from their traditional lands and the implementation (in the first three years) of a survey of all indigenous lands in order to conduct their titling. It created a Special Fund totalling ten million dollars to be administered by the National Institute for Indigenous Affairs (INAI), exclusively to cover the costs of the legal/cadastral survey of territories, professional fees in legal and para-legal cases and land regularisation programmes such as the “Programme of Community Strengthening”, which provides the communities with a lawyer to undertake litigation in cases where indigenous lands have been titled to individuals. Two years on from its approval, however, the surveys have still not commenced. Eight provinces, including Salta and Río Negro, signed an agreement with INAI for their implementation but the corresponding activities have not been initiated in any of them. To understand this properly, we have to ask two questions: 1) Have the evictions stopped? 2) Is there any kind of land survey completed or underway? Let’s see.

On 12 August 2008, the Indigenous Advisory Board (CAI) of Río Negro approached INAI's President calling for an urgent halt to the evictions of the Quintupuray de Cuesta del Ternero and Mariano Epulef de Anecón Chico communities. They also complained that they had not been invited by the Implementing Agency for the above law in that province "...to create a space for participation or to agree the broad outlines of work", as INAI's presidency had promised in writing in March 2008. They also complained that the provincial indigenist institute, CODESI (Council for the Development of Indigenous Communities), was concealing information as to the availability and handling of public funds intended for the communities.

On 18 November, the Qullamarka (see below) declared the Indigenous Peoples' Institute of Salta Province unconstitutional and called on the authorities - provincial and national - to transfer the allocated resources to the organisations and communities so that they could rapidly and effectively undertake the identification of traditional lands.

Paradox of an ambiguous policy: some evictions avoided, others authorised

The Supreme Court of Justice of the Nation ordered the courts in Río Negro province to consider the demand that Lof Casiano-Epugmer had been making for more than 20 years for recognition of the right to its traditional lands and a halt to their arbitrary sale on the premise that they are state-owned. The *lof* is the Mapuche people's community unit of civil and territorial organisation. Casiano-Epugmer comprises 30 families on around 7,000 hectares of land recovered in 2000 from the Abi Saad family. The Casiano-Epugmer family settled in the area of Quetrequile, 64 kilometres from Huahuel Niyeu (now Ingeniero Jacobacci) at the end of the 19th century. The current members of the *lof* are the direct descendants of Juan Casiano and Francisca Currual. This is why they have attempted to use the different administrative bodies provided by law to call upon CODECI to recognise their ownership but, according to the CAI, their submissions were either hindered, denied or rejected with various arguments, so they had to turn to the

courts. And, on 15 July, this ruling was passed, which also ruled on the administrative handling of another six cases.³

In Chubut Province, ten kilometres from the town of Esquel, an indigenous/peasant farmer protest resisted the eviction of the Larenas family. Judge Estefanía ordered that Inés Larenas, of El Pedregoso, had to abandon the lands she had lived on since she was born in 1941 and hand them over to someone who claimed to be their rightful owner: a Chubut lawyer called Enrique Korn, whose son is a minister in Governor Mario Das Neves' cabinet. In the 1970s, the logging company Maderera Noroeste SA cleared 34,000 hectares of native forest in the area to plant exotic pines. The lands included those of the Larenas family. Mr Korn was an advisor to the firm at that time and he received payment for his services in logging rights, which became property titles, with the complicity of the government officials. The ruling of Judge Estefanía ordered Larenas to spend six months in prison, to pay legal costs of six thousand pesos to Mr Colabelli, a judge who had previously been removed from office, and to "return" the lands to Korn.

Application of Law 26331 on Forests

November 28 marked the first anniversary of enactment of the Law on Minimum Budgets for the Environmental Protection of Native Forests, which is still awaiting its implementing regulations. This date was also the deadline for each province to have completed the Territorial Regulations established by the law for the first stage of its application. The law stipulates a moratorium on clearances until each province has produced a participatory plan for the sustainable use of native forests. It also creates a Compensation Fund to subsidize owners who protect their native forest. This fund, financed by 0.3% of the national budget and 2% of the taxes on forest and livestock and agricultural exports, has been approved for 2009 and the Head of the National Executive Cabinet has been given powers of allocation. Without implementing regulations governing the law, however, its future remains uncertain.⁴ Some provinces seem to be placing political obstacles in its path in terms of specifically laying down the regulatory texts, as admitted by the Director of Territorial Regulation and Biodiversity Conservation of the federal Ministry for the Environment.

The country's greatest indigenous diversity is to be found in Salta Province, where nine peoples live. Here, logging permits applied for in 2007 covered an area almost six times greater (560%) than the previous year. The Ministry for Environment and Sustainable Development this year authorised the clearing of more than 400,000 hectares of native forest, way more than the average annual deforestation in the whole country. The departments most affected are Anta, San Martín and Rivadavia, where more than 23,000 indigenous people live.⁵ The authorisations issued by the previous administration have been ratified by the current government, and this led a number of indigenous organisations, communities and support NGOs to lodge an appeal for unconstitutionality in 2008. In only ten days, the Supreme Court of Justice had issued a ruling prohibiting the clearing and felling of trees that had been authorised by the provincial government in the last quarter of 2007 in the departments of Orán, San Marín, Rivadavia and Santa Victoria (sic). The appeal for unconstitutionality stated that, in 5 communities of Ballivián (comprising 146 families), 153,000 hectares had been cleared, or 47% of their 324,000-hectare territory. In Bajo Itiyuro, on the borders of Rivadavia and San Martín departments, 21% of the 118,000-hectare territory had been deforested. In Norte Bermejo, 65,000 hectares had been felled, 19% of the total territory of 339,000 hectares. The court also called a public hearing for 18 February 2009 in order for the plaintiffs and defendants to explain the situation orally and in public.

Oil exploitation on indigenous territories

Gas and oil companies continue to operate in both the north and south of the country.

Caraparí Community of the Guaraní People – Salta Province

This community owns its 766-hectare territory, and has an estimated population of 700 people. In 2004, the federal government authorised the Refinor company to build a new stretch of gas pipeline to transport gas from Pocitos (Bolivia) to the power station in Campo Durán (Salta). Thirty metres wide, this stretch of pipeline would cross the communi-

ty's territory for two kilometres. Given the lack of any consultation, and the environmental impact this would have, the community lodged a complaint before the courts to get the work suspended. At the same time, the company took court action to enable it to continue the work and achieve its objective. The court decided in favour of the company. The community appealed against this decision and, when this was rejected, took its case to the Supreme Court of Justice where it was also rejected. The community has therefore turned to the Inter-American Commission on Human Rights, where its complaint was registered on 30 April 2008. It is currently under consideration.

Wentru Tahuel Leufu Community – Neuquén Province

Some 225 kilometres from the town of Neuquén, the provincial government granted the Piedra del Águila oil company a 2,000-hectare concession for oil exploitation. The community opposed its arrival but the company put in place an underhand strategy of buying favours among community members and then hired a group of people who entered the community as private police officers so that the oil company could begin its work. In January 2008, it was reported in the press that the community and the company had reached an agreement. However, the community complained that the mayor of Picún Leufú, the capital of the municipality and government officials had organised a meeting at which they had been pressured to sign a document that they had not been allowed to read.

Autonomous Union of Mapuche Communities

In September 2008, while the companies were negotiating with the Neuquén provincial government over an area of oil concessions, the Autonomous Union of Mapuche Communities denounced the fact that "the concessions are granted on our Mapuche territory", affecting 14 communities.⁶ In October, Repsol-YPF's oil concessions were extended for a ten-year period from 2017-2027, while negotiations for the concession of other areas to the Refinor company (see above) and Brazilian Petrobras continued.

Inexplicable lack of resolution on the part of the IACHR

In March 2008, the Wichí leader, Francisco Pérez, coordinator of the Lhaka Honhat Association of Aboriginal Communities, appeared in person before the Inter-American Commission on Human Rights to state that, until it issued its In-depth Report, the situation of the more than 50 communities that make up Lhaka Honhat would continue to seriously deteriorate. He stated:

The government is dividing us, giving cacique identity cards to leading politicians who simply want to break up our union; the government pays leaders to harm us, the criollos continue to fence off our lands and steal wood from our forests... Our final hope is that the IACHR will issue its in-depth report, and so I have come to ask you: what are you waiting for? When will you do this?

Lhaka Honhat took its case to the IACHR in 1998, denouncing the Argentine state for violation of indigenous rights. In 2000, a process of friendly resolution commenced but this was abruptly suspended by the Salta government. In 2006, the IACHR issued Admissibility Report No. 78 but, since then, no further steps have been taken, namely pronouncing on the rights that the IACHR itself admits could have been violated by the state. In 2007, Lhaka Honhat submitted new proof to the Commission but, inexplicably, it still did not consider the issue and the communities' situation remains dangerously irregular in legal terms.⁷

The indigenous movement

It is against this backdrop that the indigenous movement continues to call for rights that directly affect certain communities. The efforts to establish supra-local organisations has had little success so far. Although the two laws stated above have an impact on each group of communities or organisations as a whole, they tend to focus their struggle more on the problems affecting them in their particular areas,

using different strategies: defensive alliances, land recoveries, demands for sacred places, etc.

March of the Kolla People

The Quillamarka is a Coordinating Body of Autonomous Kolla Organisations in which actions to resolve the problems affecting the Kolla people are discussed, agreed and planned. It comprises the *Unión de Comunidades Aborígenes Victoreñas* (UCAV), the *Comunidad Indígena Pueblo Kolla Tinkunaku* (CIPKT), the *Asociación de Comunidades Aborígenes de Nazareno* (OCAN), the *Consejo Indígena Kolla de Iruya* (CIKDI), the *Indígena Alta Cuenca del Río Lipeo* (CIACRL) community and others.

A march was organised on 18 November to try to resolve the Kolla people's land problems. This march was calling for a) approval of the measurement plans for Nazareno, San Pedro, El Porongonal, Santa Rosa, Arpero, Uchuyoj, Korpusñoc, Tipayoc, San José and Rodeo Colorado; b) the issuing of the community title for the remaining 19,000 hectares at Tinkunaku; c) approval of their proposal within the framework of laws 26160 and 26331. This defines the boundaries of the Quillamarka's territory that must be respected before outlining any land distribution plan in the province.

Quintupuray territorial recovery

On 5 May, the land of the Quintupuray community of the Mapuche People in Río Negro Province was recovered. Fifteen years earlier, following the death of Lucinda Quintupuray, its members were displaced from their ancestral territory without the courts or provincial government taking any interest in investigating the woman's murder. The community waited 15 years for the government to return their lands. Why, they asked, did the Land Department not evict the occupants, as the judge requested on 17 April? And so, as they state in their press release of 5 May:

Tired of all this fumbling around and of the repeated deceptions, and seeing that it is the authorities' intention to legalise and whitewash the evic-

tion, we have decided to enforce our legitimate rights, returning to occupy the territory that belongs to us, which is our history, our life.

The sacred city of Quilmes

In Tucumán Province, an assembly of communities of the Diaguita people that had blocked the entrance to the so-called “ruins of Quilmes” to demand full involvement in the way the sacred city is run finally decided to lift the blockade, give free access to tourism and take physical possession of the place in order to exercise their rights as custodians of the cultural legacy of their people.⁸ □

Notes

- 1 Instituto Nacional de Estadística y Censos (INDEC). Results of the Additional Survey of Indigenous Peoples —ECPI— conducted from 2004 on. http://www.indec.mecon.ar/webcenso/ECPI/index_ecpi.asp
- 2 Interview by Darío Aranda, see <http://www.pagina12.com.ar/diario/sociedad/3-114626-2008-11-07.html>
- 3 More information can be obtained from the Indigenous Advisory Council (CAI) caiandino@red42.com.ar or caijaco@yahoo.com.ar.
- 4 Documento Síntesis Red Agroforestal Chaco Argentina, December 2008. More information from: www.redaf.org.ar/noticias.
- 5 Report of the Social Support Foundation of the Anglican Church of the Diocese of North Argentina (Asociana) in: Fundación Servicio de Paz y Justicia (Serpaj), Native Peoples Team “Informe sobre situación territorial en Argentina 2007-2008”. More information from: serpaj@serpaj.org.ar.
- 6 Unión Autónoma de Comunidades Mapuche - Zapala September 2008 – in Serpaj op. cit.
- 7 More information from: comunicacion@cels.org.ar. Also see: IWGIA, Report N° 1, obtainable from: iwgia@iwgia.org
- 8 More information from: ciquilmes@yahoo.com.ar

Morita Carrasco is an anthropologist, lecturer and researcher at Buenos Aires University and advisor to the Centre for Legal and Social Studies (Centro de Estudios Legales y Sociales - CELS). She is working with the Lhaka Honhat Association of Aboriginal Communities (Asociación de Comunidades Aborígenes Lhaka Honhat) in their struggle for titling of their territory.

CHILE

The population that self-identifies as belonging to the country's indigenous peoples numbers 1,060,786 people, or 6.6% of the country's population. Most of these belong to the Mapuche people (87.2%). The rest identify as Aymara (7.8%), Atacameña or Lickanantay (2.8%), Diaguita (0.8%), Quechua (0.6%), Colla (0.3%); Rapa nui (0.2%); Kawéskar (0.2%) or Yagán (0.1%). 69.4% of the indigenous population live in urban areas and 27.1% of these live in the metropolitan region of Santiago.¹

These peoples suffer different forms of discrimination, the most visible being political exclusion (there are no indigenous representatives in the National Congress) and socio-economic exclusion (according to the same survey, 19% of the indigenous population were living below the poverty line in 2006, in contrast to 13.7% of the non-indigenous population).² Indigenous rights are not recognised in the Constitution. They are regulated by legislation, Law No. 19,253 on "encouragement, protection and development of the indigenous peoples", which dates from 1993. The content of this does not include indigenous peoples' demands, however, and is far below the applicable international law standards. To this must be added Law No. 20,249 establishing the coastal marine space of native peoples, which was enacted in 2008. In September of the same year, the Chilean state ratified ILO Convention 169, which will come into full effect in September 2009.

The current legal framework

Law No. 19,253 has been in force since 1993. It created the National Corporation for Indigenous Development (CONADI) as the governing body for indigenous policy, and recognised indigenous rights to their



lands, languages and cultures. This law does not, however, recognise indigenous peoples as such but simply as “ethnic groups”. It does not recognise their traditional organisations, nor their political (autonomy,

self-management, indigenous justice systems...) or territorial rights (such as to territory or to the right of natural resources), all of which are now internationally recognised. Some sector-based pieces of legislation are also applicable to indigenous peoples, enabling the concession and exploitation of the natural resources located on their lands and territories by third parties.³ To this must be added the Basic Environmental Law (No. 19,300 of 1994), which establishes a system for environmental impact assessments that does not take sufficient account of involving either indigenous peoples or the general public in decisions regarding investment projects that affect their ecosystems.

Legal reforms

Following a long claim process on the part of the Mapuche-Lafkenche people who live in the coastal area of the Mapuche territory to the south of the country, Law No. 20,249 (18/2/2008) was enacted in 2008 establishing the coastal marine space of native peoples. This law amends current legislation to recognise and safeguard customary use of these areas by indigenous communities that are closely linked to the coastal area, thus enabling them to maintain their traditions and natural resource use. This area will be transferred to the indigenous communities and associations by the relevant public bodies by means of an agreement. In line with the law, the area to be included will be that which is necessary to enable current customary use to be exercised. Indigenous rights over this area will be of indefinite duration, provided that management plans that must be submitted to the state are implemented. As of the end of 2008, this law had not, however, received its implementing regulations from the government and had therefore not yet entered into force. This has led to frustration among the Lafkenche communities, whose resources are continuing to come under pressure from the fishing and salmon farming industry.

One debate that finally came to a conclusion in 2008 was that relating to Chile's ratification of ILO Convention 169 on Indigenous and Tribal Peoples. After 17 years of negotiations within the National Congress, this Convention was approved in March. During discussions within the Senate, a number of political sectors attempted to promote

an interpretive declaration that would restrict its scope.⁴ Although the Senate's approval made no note of this declaration, there was an agreement between the government and opposition sectors in this regard. After almost six months, and after clear attempts on the part of the government to ratify Convention 169 with this interpretive declaration included, President Bachelet deposited ratification with the ILO last September, and in October promulgated the Convention without the declaration. This was primarily due to pressure exerted by the indigent representative organisations, as well as the position of the ILO, which did not encourage such a declaration, considering it useless.

Convention 169 establishes a new framework for indigenous rights in Chile. Its provisions regarding protection of indigenous lands, territories and natural resources should enable many of the conflicts caused by investment projects on indigenous lands over the last few years to be resolved. It takes on even greater force when you realise that Article 5 indent 2 of the Political Constitution of the Republic gives human rights laid out in this Convention and other international human rights treaties ratified by Chile constitutional standing. The observations made by the Constitutional Court in its ruling on Convention 169 last April are, however, worrying. In this, although it establishes that the right to consultation (Article 6 N° 1 (a) and N° 2) is a constitutional one, it notes that this cannot be taken as an obligatory negotiation and thus it is not binding and nor does it affect the exclusive powers of the authority. It was the same for the right to participate in development plans and programmes likely to affect them (7 N° 1 (2)). This is of constitutional standing but cannot include exercising sovereignty and cannot take the form of a legally binding referendum.⁵

Still in the area of legislation, debate continued during 2008 with regard to three proposed constitutional reforms relating to indigenous peoples, two of them being parliamentary initiatives and one coming from the government. The year ended without these reforms being passed. The reformulated text sent for consideration to the Senate Constitutional Commission in December stated:

1.- New Article 4.

The Chilean Nation is one, indivisible and multicultural.

The state recognises the existence of, and protects and promotes the rights of, indigenous peoples living on its territory. The indigenous peoples have the right to their development, to preserve and strengthen their identity, culture, languages, institutions, traditions and to freely participate in the political, social, economic and cultural life of the country, in accordance with the provisions of the current Constitution, laws and international treaties ratified by Chile.

The indigenous peoples may organise their community life and resolve their internal conflicts in accordance with their customs, provided this is not contrary to the Constitution and laws.

The state will ensure protection of rights to ownership of land and water use rights on the part of indigenous peoples and communities, in accordance with the provisions of the Constitution and laws.⁶

As in the case of previous constitutional reform proposals considered by Congress in this regard, this amendment was drawn up without any involvement or consultation of the peoples it was aimed at. It is worth noting that, at the start of 2008, a group of organisations representing different indigenous peoples attended this Senate Commission to state their rejection of the proposed constitutional reforms under discussion, calling for their withdrawal and the development of a process of prior consultation of indigenous peoples. The government's failure to do anything about this is a significant one given that, by ratifying ILO Convention 169, the Chilean state is now required to implement the consultation processes stipulated in its Article 6. Although the Convention does not come into full formal effect until one year after its deposition at the ILO headquarters in Geneva, the government has repeatedly indicated that this text will guide its public policy and its actions in this regard. It is therefore ignoring the guidelines it has expressly stated support for on an international and domestic level, and this is an unacceptable contradiction.

In terms of its content, while this proposal does make explicit reference to rights already recognised by the Chilean state through the international treaties it has ratified, it also establishes series of limitations which, in practice, restrict these rights. The concept of indivisibility of the Nation proposed in its first paragraph, for example, entails a denial rather than a recognition, and reveals an unfounded fear of sep-

aration that neither Chile's nor the region's indigenous peoples have ever promoted. After two decades of multicultural policies that have not guaranteed indigenous peoples' rights in the region, the concept of multiculturalism proposed in this text has been rejected by indigenous organizations. The second paragraph of the proposal arbitrarily limits the rights recognised to these peoples in international treaties, including some but leaving others out such as those relating to their lands, territories and natural resources which, according to Convention 169 have a "*special importance for the cultures and spiritual values of the peoples*" (Article 13.1). The proposal limits protection of territorial rights to "ownership of the land" and the exercise of "water use rights", leaving out those rights resulting from the ancestral possession of land as recognised in Convention 169 itself (Article 14.1), as well as those referring to their natural resources (Article 15.1).

Public policies: discourse and practice

Presidential Commissioner for Indigenous Affairs

The crisis within CONADI, the body responsible for indigenous policy, is due among other things to: i) the fact that this agency has become discredited due to the struggle existing between the governing coalition parties with regard to its direction; ii) the fact that the indigenous representatives on the National Council are not truly representative of the peoples; iii) a lack of coordination among the state bodies promoting indigenous policies. All these factors meant that, in January, a Presidential Commissioner for Indigenous Affairs was appointed. This appointment, which went to Rodrigo Egaña from La Moneda (Chile's presidential palace), was announced a few days following the murder of Matías Catrileo, a Mapuche student from Temuco, by members of the police force (see further below). The commissioner has been entrusted with "reinvigorating the dialogue with indigenous communities and their leaders" and "ensuring progress in policies on indigenous peoples". However, this dialogue did not materialise throughout the whole of 2008.

“Recognition: a Social Pact for Multiculturalism”

In April, under the slogan “Recognition: a Social Pact for Multiculturalism”, President Bachelet published the outlines of her government’s action with regard to indigenous peoples for the second half of her term in office.⁷ In her statement, Bachelet repeated her commitment to ratify and implement ILO Convention 169, and to promote the constitutional recognition of indigenous peoples. She also proposed reforms that would ensure indigenous involvement within the different state bodies, from the National Congress right down to the local level, and the legal recognition of indigenous rights to natural resources in “Indigenous Development Areas”.⁸ She stated nothing with regard to the standards recognised in the UN Declaration on the Rights of Indigenous Peoples, however.

In terms of public institutionality, and given the crisis within CONADI, Bachelet proposed establishing a Ministry for Indigenous Affairs within the Ministry of Planning in order to define public policy. She also proposed creating a publicly-funded and representative indigenous body of legal standing that would act as a space for debate and consultation.

Bachelet further proposed prioritising the response to land demands currently being processed by CONADI, the creation of working groups on water resources and the improvement of Indigenous Development Areas, involving indigenous participation. Alongside this she proposed different plans and programmes, including the “Origins” Programme to promote production activities amongst indigenous peoples. She did not, however, address the issue of the ancestral lands of indigenous peoples, taken from them without their consent and which, by virtue of Article 28 of the UN Declaration on the Rights of Indigenous Peoples, should be returned to them or compensation provided.

Finally, Bachelet announced policies aimed at urban indigenous peoples, actions to encourage Chilean society to fully assume its multicultural nature, and the establishment of a Code of Conduct governing investment projects in Indigenous Development Areas. This Code, should, apparently - among other criteria - include indigenous peoples in the profits generated by these projects, in local employment and in compensation for dam-

age caused. It is noteworthy that these rights, guaranteed to indigenous peoples by ILO Convention 169 both in relation to their land and territories in the face of any kind of investment projects, are to be considered only as a "Code of Conduct" limited to Indigenous Development Areas, and not binding upon private companies.

Still on the level of rhetoric, in June 2008 Bachelet issued a Presidential Instruction to implement the initiatives proposed in her "Recognition" policy. In this, she stipulated the creation of an Indigenous Affairs Unit in every Ministry and Council in the country. She noted the need for these departments to adapt their policies and programmes to involve indigenous peoples and to establish mechanisms for informing and consulting indigenous peoples when designing administrative and legislative measures that may affect them, this latter with the aim of ensuring "full compliance with the commitments contained in Convention 169".⁹ With this instruction, at least in theory, the President brought Convention 169 into effect in relation to the right of consultation.

In July 2008, the government signed an agreement with the UN in Chile to implement the "Recognition" policy. It is noteworthy that this agreement does not take account of the work promoted by the Inter-Agency Group on indigenous rights set up by this system with the aim of monitoring (with the involvement of all the indigenous peoples) the recommendations that the UN Special Rapporteur on the rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, made to the Chilean state following his official mission in 2003. This caused outrage amongst the country's indigenous and human rights organisations.

The practice

In practice, however, the government's public policy retains the duality and contradictions so characteristic of previous years. On the one hand it continued with the policy aimed at purchasing, regularising and turning over lands currently held by the state to indigenous peoples. For 2008, 23,314 million pesos (US\$ 44,623) were allocated to CONADI's Lands and Waters Fund, of which 19,555 million pesos (USD 37,428) were to be for purchasing lands on behalf of indigenous peoples or communities.¹⁰ Although there is currently no information

available as to how these resources were used over the year, the characteristic problems of previous years persisted. The state therefore continued to prioritise the titling of individual properties over and above the titling of indigenous communal properties, in line with their custom. Far from encouraging recognition of the previous indigenous territoriality, this policy is simply fragmenting it by relocating indigenous families to new plots some distance from their ancestral lands and granting them different lands to those they were claiming as their historic possession.¹¹

The government also maintained the "Origins" Programme, which it has been implementing since 2001 with public funds and credit from the Inter-American Development Bank¹² with the aim of improving the living conditions of indigenous peoples. According to public information, this programme (which is being co-ordinated by CONADI and promoted in the regions with the greatest indigenous population) has taken on a territorial focus in order to support communities that share the same territorial identity. As in previous years, the communities denounced the fact that its practical application was continuing to fragment the processes of indigenous territorial reconstruction. What's more, it was becoming clear that it was being used politically, co-opting indigenous leaders opposed to government policies and damaging their organisations' cohesion.

In addition to the above, the government's support for large investment projects being undertaken by third parties on indigenous territories, against the will of the communities that are living there and with serious social, cultural and environmental impacts, remained unchanged from previous years. In the case of the Andean peoples of northern Chile, the expansion of mining activity has had a great impact both on their lands and on their surface and underground waters. Some examples of this are: i) the extraction of underground waters in the Pampa Lagunilla sector by the Cerro Colorado mining company, drying up the lake, meadows and wetlands of the Aymara community of Cancosa; ii) the exploitation of the underground waters of the Michincha and Coposa lakes by the Doña Inés de Collahuasi mining company, also causing it to dry up; iii) the destruction of archaeological sites through the expansion of the Talabre tailings pool owned by CODELCO, on the ancestral territory of the Atacameña or Lickanantay

community of Chiu Chiu; iv) the loss of indigenous water rights in the Loa River basin due to the exploitation of water resources by large mining (CODELCO and SQM) and sanitation companies (ESSAN S.A.), leading to the depopulation of the basin; v) the industrial exploitation of the Tatio geysers (Geotermica del Norte S.A.), ancestral site of the indigenous communities of Toconce and Caspana, recently granted as a concession to these latter for tourist management; vi) the Pascua Lama mining projects on the ancestral territory of the Diaguita community of Huascoaltino. This project is compromising the Tatio glaciers (Guanaco, Toro I, Toro II and Esperanza), which supply water to the hydrological system (Estrecho and Chollay rivers) that sustains the Diaguita territory of Huascoaltino; vii) the Pampa Puno project, by means of which CODELCO North Division has obtained the rights to exploit up to 400 litres of underground waters per second from aquifers rising in eight wells on the already saturated Loa River, compromising the habitat of the communities that live there; viii) the request submitted by the Collahuasi mine to the General Water Agency (DGA) to obtain rights of use for up to 900 litres of underground waters per second from aquifers protected by international and national regulations, as is the case of the Salar de Huasco Lake, the ancestral territory of communities of Aymara shepherds.¹³

In the south, investment projects affecting the Mapuche include: i) the plans by SN Power, a company with Norwegian backing, to build four “run-of-the-river” hydroelectric power stations of between 34 MW and 320 MW, in Liquiñe, Coñaripe and Rupumeica (Los Rios Region), each flooding between 100 and 300 hectares of land. It should be noted that SN Power obtained rights to the water in 1999, to the detriment of the community’s traditional rights of use. To this must be added the electricity concession recently obtained from the state, despite the communities’ opposition; ii) the planned hydroelectric power stations being promoted by ENDESA/Spain and Colbun in the Bio Bio and Los Rios regions, affecting the ancestral and current lands of the Mapuche communities;¹⁴ iii) the establishment, on Mapuche territory in Araucanía Region, of chemical plants to treat wastewater, threatening the communities’ environment through discharges of chlorine and other chemical waste into the rivers and water sources, in addition to the impact of discharges on nearby Mapuche communities;¹⁵ iv) and

the pollution of rivers by cellulose plants (CELCO S.A., Celulosa Arauco), the most well-known being the contamination of the Cruces River Ramsar Site on the territory of the Mapuche Lafkenche communities. It should be noted that the contamination of the Cruces River culminated in one of the worst environmental disasters ever experienced in Chile, causing the death of plants and wildlife protected by the Ramsar Convention. During 2008, CELCO proceeded apace with its proposal to build a pipeline to the sea to discharge polluting waste, affecting the Lafkenche communities of Mehuin, Misisipi, Maiquillahue, Chan Chan and Qillalhue, in the Los Rios Region. In violation of the rights to prior consultation and public involvement stipulated in the environmental law, CELCO signed an agreement with the fishing unions, ensuring their support of the project in return for payment. In order to ensure there would be no problems in constructing the pipeline, CELCO established mining concessions in order to benefit from the protection granted to concession holders by the Mining Code.¹⁶

Human rights defenders

Alongside the government's efforts to incorporate the indigenous territories into the global economy via extraction investment projects, the political persecution of Mapuche human rights defenders, denounced in previous years, continued throughout 2008.¹⁷ One of the most serious situations during the year was the murder of Matías Catrileo at the hands of the police, a young Mapuche university student who died on 3 January 2008 after being shot in the back by the *Fuerzas Especiales de Carabineros de Chile* police unit in Vilcún commune, near Temuco. The case was taken to the military courts but no responsibility has yet been apportioned nor the perpetrators punished. This policy also became clear in approximately 20 cases of torture, cruel, inhumane or degrading treatment by police officers against members of Mapuche communities in conflict, including children, throughout the year.¹⁸

Also during 2008, contradicting the commitment made by President Bachelet in 2006 with regard to the fact that the anti-terrorist law (No. 18,314) would not be used to pursue incidents related to the Mapuche social protest, the Public Prosecutors' Office again used this

legislation in October 2008 against sympathisers of the Mapuche cause supposedly involved in illegal actions of social protest.¹⁹

Conclusion

2008 ended with no significant changes in the way in which the Chilean state treats its indigenous peoples. Although ratification of ILO Convention 169 has opened up important prospects for the protection of indigenous rights in the country, the current constitutional framework still fails to recognise these peoples and their rights. The state is continuing to promote a contradictory policy in relation to indigenous peoples. In addition to being ineffective and insufficient, its land policies and development support policies have not managed to counter the adverse impact of investment projects imposed on indigenous territories against the will of the communities. Nor the injuries caused by the policy of persecuting those who are defending the rights of these peoples, in particular the defenders of the Mapuche people. Unfortunately, Chile continues to ignore recommendations made to it by various human rights organisations in this regard, including the UN Special Rapporteur on indigenous peoples (2003), the UN Human Rights Committee (2007) and the UN Committee on the Rights of the Child (2007). □

Notes

- 1 Government of Chile, Casen Survey 2006
- 2 *Ibid.*
- 3 Including the Water Code (D.F.L. No. 1,222 of 1981), the Mining Code (Law No. 18,248 of 1983) and the General Fisheries and Agriculture Law (No. 18,892 of 1991), and the Law on Geothermic Energy Concessions (No. 19,657 of 2000).
- 4 The declaration referred to Article 35 of Convention 169 which states: "*The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.*" This was aimed at preventing application of the UN Declaration on the Rights of Indigenous Peoples in Chile, approved by the General Assembly in 2007 with Chile voting in favour.
- 5 Ruling of 3 April 2008 (Roll 1050)

- 6 Available at: www.senado.cl
- 7 http://www.mideplan.cl/final/especiales_detalle.php?idesp=91
- 8 "Indigenous Development Areas" is a concept created in the 1993 Law to focus the action of public bodies on indigenous development. (Article 26 Law 19,253)
- 9 Presidential Instruction 005, 25 June 2008.
- 10 Chile's Report to the UN Committee for the Elimination of Racial Determination, 23 June 2008.
- 11 During 2008, for example, conflicts that had arisen in previous years with the "Carimán Sánchez y Gonzalo Marín" and "Manuel Contreras" communities, in Araucanía region, continued. They claimed their ancestral lands through CONADI, which purchased them and then handed them over to Mapuche communities from other areas.
- 12 The budget for 2006 -2010 totals 59 million pesos (US\$ 113 million). The total number of beneficiary communities up to 2010 will be 1,206, or approx. 34,000 families
- 13 Yáñez, Nancy y Raúl Molina, *La gran minería y los derechos indígenas en el norte de Chile*, Santiago, Lom, 2008.
- 14 It should be noted that, in Chile, ENDESA owns 88% of rights over water reserves and enjoys preferential treatment in Chilean legislation (reform to the Water Code, Law No. 20,017 of June 2005), which exempts it from paying taxes for not using the water rights for its hydroelectric projects in the Aysén region.
- 15 This led to Mapuche and environmental organisations in 2007 submitting a complaint to the UN Committee for the Elimination of Racial Discrimination.
- 16 During 2008, the communities opposed to the project lodged a demand before the Civil Court to nullify requests for mining concessions presented by CELCO. This legal action is still under consideration.
- 17 See presentation before the IACHR re. the situation of the Mapuche people's human rights defenders, March 2008, at www.observatorio.cl
- 18 Actions of police violence 2008, at www.altoahi.cl
- 19 This related to students Félix Delgado and Jonathan Vega from the Anthropology Department of the Universidad Católica de Temuco, both 21 years of age, who were taken to the town's prison where they remained for the eight months that the investigation lasted. To this must be added a 16-year-old who was kept under house arrest. At the start of 2009, this legislation was applied once again, this time against Mapuche people supposedly involved in actions of violence against land owners in Araucanía Region.

José Aylwin, lawyer, co-director of the Observatorio Ciudadano (www.observatorio.cl). He is a lecturer in law and indigenous peoples in the Faculty of Legal and Social Sciences of the Universidad Austral de Valdivia, Chile.



AUSTRALIA,
NEW ZEALAND
AND THE PACIFIC

AUSTRALIA

Indigenous people have occupied the Australian landmass 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 people lived in all parts of Australia. Today the majority live in regional centres (43%) or cities (32%), although some still live on traditional lands.

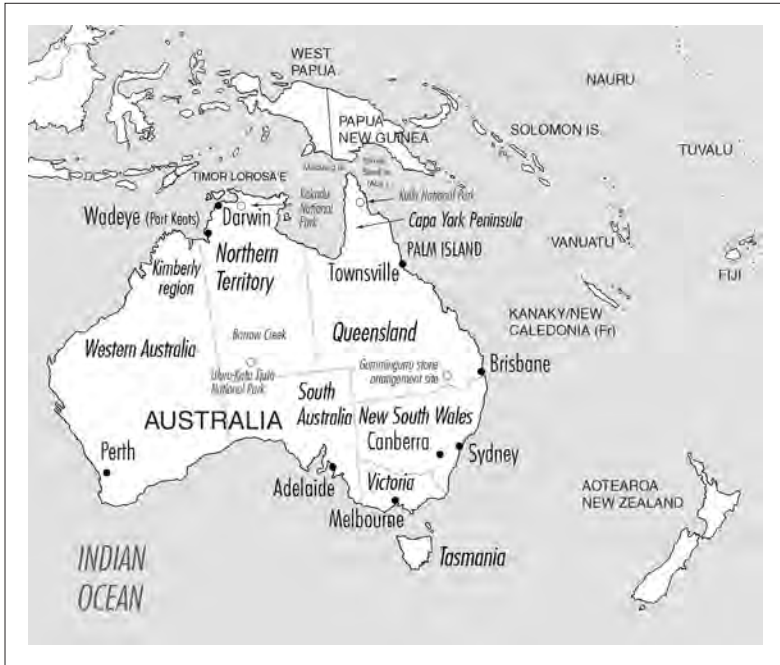
Despite recent improvements, the health status of indigenous Australians remains below that of other Australians. Rates of infant mortality amongst indigenous Australians remain unacceptably high at 10-15%, and life expectancy for indigenous Australians (59 for males and 65 for females) is 17 years less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

Although indigenous Australians have a number of special needs, particularly in relation to health and education, there is little legislation relating specifically to indigenous issues, other than heritage protection and Native Title. This reflects the general population's view that indigenous Australians should not have any "special treatment", a view which is at the heart of the issues addressed in this paper.

Apology to the Stolen Generation

Since the time of first European settlement there have been conflicts between Australia's indigenous populations and the settlers.

In 1928 there was a dreadful massacre of Aborigines at Coniston, near Barrow Creek in the Northern Territory.⁴ The massacre was a reprisal against the murder of Fred Brooks by Aboriginal people. Fred Brooks was a (white) dingo hunter who stole an Aboriginal woman



and then camped at Yurrkuru, a sacred waterhole, both actions being against Aboriginal law. Brooks was murdered by Kamalyarrpa Japanangka (“Bullfrog”) in accordance with Aboriginal law. The subsequent reprisals against the entire Aboriginal population involved a series of massacres over a large area, and resulted in the deaths of at least 31 Aboriginal men, women and children. In response to the massacre, A.P. Elkin, an advocate for Aboriginal welfare, proposed a new policy, which he termed “assimilation”. He argued that:

*Aborigines and whites had to adapt to each other. ... The group that had to make the greater adaptation was the Aborigines. ... They had been conquered. They were the smaller group.*⁵

In 1939 the government adopted Elkin’s model, claiming that assimilation would allow Aboriginal people to share the advantages and opportunities of modern Australia.⁶ The reality, however, was that as-

similation would bring the destruction of Aboriginal culture through absorption into white society.⁷ Many Aboriginal people refused to be integrated into mainstream society, and because they were seen to be “denying” their children the opportunity to be educated as white Australians, their children were forcibly taken from them and sent to institutions to learn white ways. These children, who were never again allowed to see their parents, are known as the Stolen Generation.⁸

Assimilation remained government policy until 1972, with the last reported forced removal of children occurring in 1969. In 1997 a report into the Stolen Generation recommended that an apology be offered to them and their families.⁹ The Australian government at that time resisted giving such an apology, with former Prime Minister, the Hon. John Howard, saying:

*I do not believe ... that one generation can accept responsibility for the acts of an earlier generation. ... In some cases, children were wrongly removed; in other cases, they were removed for good reason; in other cases, they were given up; and in other cases, the judgment on the removal is obscure or difficult to make.*¹⁰

In November 2007 the Australian people elected a new government, and on 13 February 2008 the new Prime Minister gave the apology that Aboriginal people had been seeking:

*We apologise for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians. We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country. For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry. To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.*¹¹

Although many regard this apology as purely symbolic, its importance lies in the fact that it closes the door to assimilationist policies. For the Australian nation to truly move forward, however, the symbolism of the apology must manifest itself in tolerance of other ontologies. The

next two issues identified in this chapter demonstrate that Australia still has a long way to go in this.

Indigenous hunting

“Hunting towards oblivion” was the newspaper headline in April 2008. The caption to the main photograph, showing an Aboriginal man jumping into the sea to spear a dugong, read: “It’s in the bag: Indigenous hunting of sea turtles and dugongs in far north Queensland and the Northern Territory has led to a dramatic drop in the animals’ populations”.¹² The implication was that indigenous over-harvesting is the *sole* cause of dugong and turtle population decline. Scientific evidence suggests that animals such as dugongs and turtles are being harvested by indigenous Australians at unsustainable levels¹³. Consequent recommendations suggest that indigenous hunting should be banned or dramatically curtailed.

Hunting plays a vitally important role in indigenous culture and society.¹⁴ In the Torres Strait, people have hunted dugongs for over 4,000 years.¹⁵ The meat is considered essential for ceremonies and is used as a means of maintaining social relationships. A moratorium on hunting would negatively impact on Torres Strait Islander cultural and traditional knowledge.

Nevertheless, the Torres Strait is considered “the most important dugong habitat in the world”¹⁶ and the species is listed as vulnerable to extinction. This places immense pressure on resource managers to ensure the long-term viability of this species. It is therefore essential that accurate data are used to measure dugong population numbers and rates of dugong capture.

Management of dugong is based on scientific models developed from population data collected from aerial surveys. Recent research by Bigge,¹⁷ and by McNiven and Bedingfield,¹⁸ has challenged these data and their conclusions. Aerial surveys are notoriously inaccurate – a fact acknowledged by the scientists themselves, who recognise that dugong migratory patterns have a significant impact on the number of dugongs counted.¹⁹ Because population modelling is based entirely on aerial surveys, if the data are incorrect, so too are conclusions of unus-

tainable harvest yields. McNiven and Bedingfield analysed dugong bones from an archaeological site on Mabuiag Island, Torres Strait, and discovered that dugong hunting rates in the past were between 80 and 100 dugongs per year at this one site alone. If these data are extrapolated across the whole of the Torres Strait, then an annual harvest of 1,000 dugongs has been a sustainable practice in the Torres Strait for at least 400 years. There are clearly factors other than indigenous hunting that are adversely affecting dugong numbers in Australia today.

Threats such as land degradation from land clearing and mining - which leads to run-off into marine habitats that destroys sea-grasses, the dugongs' only food - flooding, boat strikes, gill and mesh nets, tourism, and even climate change all contribute to dugong population decline in some way.²⁰ Calling for a moratorium on indigenous hunting is politically acceptable to the wider public because indigenous hunting is highly visible and emotive, and is easy for governments to control; it is less controversial than limiting tourism activities or prohibiting commercial fishing and land clearing. Yet a moratorium on hunting is unlikely to curb the dugong population decline.

The management of endangered wildlife in Australia has become both a cultural and a political issue. The majority of Australians perceive that modern indigenous peoples have lost contact with their traditions and therefore have no role in resource management, and the notion that dugong and turtle hunting is detrimental to species management simply reinforces this view. This attitude has caused problems for indigenous aspirations to be involved in protected area management more generally.

Indigenous involvement in protected area management

In many parts of Australia, governments have developed formal agreements with indigenous communities that allow indigenous peoples, under limited circumstances, to be involved in the management of natural and cultural resources in national parks that have been created over traditional lands and waters. Formal agreements for joint management of protected areas usually require indigenous people to "lease back" the land to the government - that is, indigenous land is formally

returned to the traditional owners on the proviso that the land is immediately leased back to the government. The aim of joint management agreements is to ensure that the interests of a range of stakeholders, including traditional owners, are addressed.

In 2007 the Queensland government enacted the *Cape York Peninsula Heritage Act 2007* (QLD). The Queensland government claimed that this Act proposed a new form of jointly managed protected area, different from those developed elsewhere in Australia. In July 2008 the first of these new types of protected areas was gazetted: KULLA National Park (Cape York Peninsula Aboriginal Land - CYPAL). The Queensland Minister for Natural Resources and Water, the Hon. Craig Wallace, MP, claimed that this new national park type would have an underlying tenure of Aboriginal freehold land managed as a national park under joint arrangements between the state and indigenous owners of the land.²¹ The creation of KULLA National Park is an historic and important development in Queensland. It is the first jointly managed national park in this state and the move signals that the Queensland government recognises the indigenous connection to country.²²

Despite these positive steps towards recognition of indigenous rights in protected area management, joint management agreements in Australia have a long history of privileging Western-style management requirements over indigenous laws and traditions.

Australia's best-known jointly managed national parks are Uluru-Kata Tjuta National Park and Kakadu National Park in the Northern Territory. The Northern Territory *National Parks and Wildlife Conservation Act 1975* provides for the establishment of Boards of Management with majority Aboriginal membership. Although this would seem to allow for Aboriginal control of the management of the parks and their resources, this does not occur in practice. Section 14D of the Act makes it clear that authority for decision-making rests with the Director. Any dispute between the Board majority and the Director is to be resolved by the government or through the courts,²³ and not using principles and practices of Aboriginal law and knowledge.

Many of these problems carry over into the *Cape York Peninsula Heritage Act 2007* (QLD). This is most clearly seen in regulations relating to the identification, declaration and management of "indigenous community use areas". Indigenous community use areas are parts of CYP-

AL national parks that are suitable for agricultural activity, aquaculture, animal husbandry or grazing activities and that are desired by traditional owners for these purposes. Such areas can only be gazetted as indigenous community use areas if approved by two formal advisory committees established under the Act. Although the *Cape York Peninsula Regional Advisory Committee*, which has the role of advising the Minister on the declaration of areas of international conservation significance and indigenous community use areas, is to have at least 50% Aboriginal representation, and it *may* have an advisory role relating to land management (Section 20[b]), the primary management responsibilities under the Act lie with the *Cape York Peninsula Region Scientific and Cultural Advisory Committee*. This is a committee comprised entirely of experts chosen by government ministers (Section 22) – not traditional land owners. The role of this committee is to advise the Minister on all matters relating to natural and cultural values on CYPAL land, including indigenous community use areas – matters which are at the forefront of indigenous aspirations to be responsible for traditional land or “country”. As a consequence of these administrative provisions in the Act, indigenous community use areas are not only subject to approval by the two Advisory Committees (Section 15) but cannot be approved unless other (non-indigenous) stakeholders agree (Section 16), and the Aboriginal community submits business and management plans that meet Western bureaucratic requirements (Sections 18-19).

Despite the rhetoric that National Parks (Cape York Peninsula Aboriginal Land) will be “a new class of protected area to enable national parks to be created over Aboriginal land without the need for lease-back arrangements”,²⁴ implying that Aboriginal people will have control over their traditional lands, it is clear that management of these national parks will be dominated by Western land managers.

Conclusion

The Australian Prime Minister’s apology to the Stolen Generation was an important and significant symbolic step along the pathway to reconciliation between black and white Australians. However, practical

reconciliation is clearly still a long way off. Genuine examples of reconciliation are rare, and tend to be generated by indigenous communities rather than by mainstream Australians²⁵. Ill-informed claims about the detrimental effects of indigenous hunting of endangered but culturally significant animals demonstrate that a high level of misunderstanding persists about the important role cultural traditions still play in modern indigenous communities. Resource management strategies that ostensibly create opportunities for traditional owners to exercise their rights and responsibilities to country under traditional law and custom but which in reality privilege Western management systems, demonstrate the strength of the epistemological divide between Western ways of understanding the world and indigenous knowledge. Until these misunderstandings and barriers are dismantled, indigenous disadvantage will continue. The Prime Minister's apology is only a first step in this process. □

Notes

- 1 Many Aboriginal people believe that they were created when 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 of 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 29 January 2009
- 4 **Wilson, B. and O'Brien, J., 2003:** "To infuse a universal terror": a reappraisal of the Coniston killings. *Aboriginal History* 27:59-78.

- 5 **Wise, T., 1985:** *The self-made anthropologist: a life of A.P. Elkin* Sydney. George, Allen and Unwin. p. 120.
- 6 *Ibid* p. 144.
- 7 **Rowse, T., 2000:** *Obligated to be difficult: Nugget Coombs' legacy in Indigenous affairs.* Melbourne, Cambridge University Press.
- 8 Commonwealth of Australia. 1997. *Bringing them home: National Enquiry into the separation of Aboriginal and Torres Strait Islander children from their families.* Canberra; Australian Human Rights Commission.
- 9 *Ibid*
- 10 Nothing to say sorry for: Howard. *Sydney Morning Herald* 12 March 2008. Available at http://www.smh.com.au/news/national/nothing-to-say-sorry-for-howard/2008/03/11/1205125911444.html?s_cid=rss_news . Accessed 30 January 2009.
- 11 Hansard, Australian Parliament, 13 February 2008. Available at http://www.aph.gov.au/HOUSE/Rudd_Speech.pdf. Accessed 13 February 2008.
- 12 Roberts, G. 2008 Hunting towards oblivion. *The Weekend Australian* 26-27 April 2008. p.19. Available at <http://www.theaustralian.news.com.au/story/0,25197,23597963-5013172,00.html>. Accessed 30 January 2009.
- 13 **Heinsohn, R., Lacy, R., Lindenmayer, D., Marsh, H., Kwan, D. and Lawler, I., 2004:** Unsustainable harvest of dugongs in Torres Strait and Cape York (Australia) waters: two case studies using population viability analysis. *Animal Conservation*. 7: 417-425; **Marsh, H., Lawler, I., Kwan, D., Delean, S., Pollock, K., and Alldredge, M., 2004:** Aerial surveys and the potential biological removal technique indicate that the Torres Strait dugong fishery is unsustainable. *Animal Conservation*. 7: 435-443; Roberts 2008, *op cit*.
- 14 **McNiven, I. and Bedingfield, A., 2008:** Past and present marine mammal hunting rates and abundances: dugong (*Dugong dugon*) evidence from Dabangai Bone Mound, Torres Strait. *Journal of Archaeological Science* 35: 505 – 515.
- 15 **Crouch, J., McNiven, I., David, B., Rowe, C., and Weisler, M., 2007:** Berberass: marine resource specialisation and environmental change in Torres Strait dugong the past 4000 years. *Archaeology in Oceania* 42: 49 – 64.
- 16 Heinsohn *et al.* 2004 *op cit.* p. 417.
- 17 **Bigge, C., 2008:** *Counting Dugongs: Hunting vs Conservation in the Torres Strait.* Unpublished B.A. Honours thesis, University of Queensland.
- 18 McNiven and Bedingfield. 2008. *op cit.*
- 19 Marsh *et al. op cit.*:442. Marsh *et al.* state: '... unfortunately the magnitude of the effects of emigration or immigration on the size of a dugong population cannot be disaggregated from the effect of population depletion from over-harvesting. Thus the recent trends detected by aerial surveys are not a reliable index of the status of the Torres Strait dugong population' (emphasis added).
- 20 McNiven and Bedingfield 2008 *op cit.*
- 21 Hansard, Queensland Legislative Assembly, 15 May 2008.
- 22 Understanding the role of country in living indigenous communities is a vital first step to recognising the role of resources management in Aboriginal culture. Queensland has lagged behind other Australian States in this regard. **Bradley,**

- J., 2001:** Landscapes of the mind, landscapes of the spirit: negotiating a sentient landscape. In R. Baker, J. Davies and E. Young (eds). *Working on Country: contemporary Indigenous management of Australia's lands and coastal regions*. pp. 295-307 Oxford University Press, Melbourne; **Godwin, L. and Weiner, J., 2006:** Footprints of the ancestors: the convergence of anthropological and archaeological perspectives in contemporary Aboriginal heritage studies. In B. David, B. Barker and I.J. McNiven (eds). *The Social Archaeology of Australian Indigenous Societies* pp.124-138. Aboriginal Studies Press, Canberra; **Ross, A. and Pickering, K., 2002:** The Politics of Reintegrating Australian Aboriginal and American Indian Indigenous Knowledge into Resource Management: The Dynamics of Resource Appropriation and Cultural Revival *Human Ecology* 30(2):187-214.
- 23 **Wellings, P., 1995:** Management considerations. In T. Press, D. Lea, A. Webb and A. Graham (eds) *Kakadu: Natural and Cultural Heritage and Management*, Australian Nature Conservation Agency and North Australia Research Unit, The Australian National University, Darwin.
- 24 *Cape York Peninsula Heritage Act—what does it mean for the Indigenous community?* Department of Natural Resources and Water Fact Sheet. Available at <http://www.nrw.qld.gov.au/factsheets/pdf/land/1157.pdf>. Accessed 30 January 2009.
- 25 One example of practical reconciliation activities occurs at the Gummingurru stone arrangement site on the Darling Downs c. 100 km west of Brisbane, Queensland. Here a once secret and sacred men's initiation site, abandoned when traditional owners were forcibly removed from their country in the 1950s, is being revived as a place of learning for all Australians. School groups are regularly brought to the site to learn about Aboriginal culture and to share experiences of being on Aboriginal land. **Ross A., 2008:** Managing meaning at an ancient site in the 21st century: the Gummingurru Aboriginal stone arrangement on the Darling Downs, southern Queensland. *Oceania* 78:91-108; **Ross, A., in press:** Defining cultural heritage at Gummingurru, Queensland, Australia. In: H. Allen and C. Phillips (eds) *Indigenous Voices*. AltMira Press; **Ross, A. and Ulm, S., 2008:** Documenting Gummingurru - an evolving site on the Darling Downs, southern Queensland. Paper delivered to 2008 Australian Archaeological Association annual conference, Noosa, Queensland.

Dr Anne Ross is an anthropologist and archaeologist at the University of Queensland, Brisbane, Australia. Her primary research interests are Aboriginal Australian heritage and indigenous knowledge relating to natural and cultural resources management. She is currently undertaking research on the Darling Downs west of Brisbane, Moreton Bay to the east of Brisbane, and in Marovo Lagoon, Solomon Islands. Charlotte Bigge graduated with Honours in Anthropology from the University of Queensland in 2008. Her Honours thesis investigated claims of unsustainable indigenous harvesting of dugongs in the Torres Strait.

AOTEAROA (NEW ZEALAND)

Maori, the indigenous people of New Zealand, represent approximately 17 percent of the total population of 4 million in Aotearoa New Zealand. The majority of Maori retain a strong indigenous identity, despite many of them now residing in urban centres and being highly integrated into the wider national economy. The disproportionate disadvantage experienced by many indigenous peoples is, similarly, a significant issue for Maori. The gap between Maori and non-Maori is pervasive. Indicative measures include: Maori life expectancy almost 10 years less than non-Maori, household income 72 percent of the national average; and only 4 percent of Maori having successfully completed tertiary education. Maori rights are sourced in the Treaty of Waitangi, the international instrument through which sovereignty was acquired by the British in 1840. The Treaty of Waitangi is not recognised by the courts or Parliament as holding formal legal status; accordingly, the framework protecting Maori rights is largely dependent upon political will, leading to the *ad hoc* recognition of the Treaty in statute.

New Zealand is one of only four states that voted against the UN Declaration on the Rights of Indigenous Peoples. Maori are organizing to mount public pressure for a reversal in 2009, two years after its adoption at the UN.

In 2008, Maori celebrated the 30th anniversary of important land struggles and occupations such as that of Takaparawhau (Bastion Point). This anniversary commemorates Maori rising up to reclaim the land. Originally inhabited by Ngati Whattu, the New Zealand government built a military outpost at this strategic position over



Waitemata Harbour. When no longer needed for defense, these ancestral Maori lands were handed over to Auckland City Council. The catalyst for the land struggle was the motion to develop high-income housing instead of returning the land to its rightful owners, in line with the historic agreement. The peaceful occupation lasted 507 days. While the New Zealand government used the military and police force to remove the hundreds of protesters, they also formally apologized in the 1980s, returning the land.

Maori also organized to create a culture of *tino rangatiratanga* (self-determination) in Aotearoa.

National developments

The year was dominated by the national election, which was held on 8 November. The Maori Party returned five seats to the House of Representatives. In late November, they entered into a "Relationship and Confidence and Supply Agreement" with the National Party, New Zealand's largest centre-right political party. Eleven other Maori are represented in various other parties in New Zealand's parliament.

Leading up to the election, the Labour government finalised a large number of Treaty of Waitangi settlements. Two of the largest of these were the following: in June, an agreement between seven Central North Island tribes and the Crown for the return of significant areas of forest land and NZ\$ 500 million (US\$ 265 million). The second largest agreement came in August with a Deed of Settlement signed between Waikato-Tainui and the Crown regarding the Waikato River, which included NZ\$ 50 million (US\$ 26.5 million) to the Waikato Raupatu River Trust, NZ\$ 20 million (US\$ 10.6 million) to the Sir Robert Mahuta Endowment and NZ\$ 1 million (US\$ 530,290) every year for 30 years to the Waikato Raupatu River Trust.

In July, the New Zealand government signed a "free" trade agreement with China despite almost non-existent consultation with Maori and active opposition from the Maori Party. Negotiations for a "free" trade agreement with the US are in the initial stages and Maori opposition also exists with regard to that proposal.

National deal regarded as racially discriminatory on many levels

A Deed of Agreement was also signed between one particular tribe, Ngati Porou, and the Crown relating to the management of the foreshore and seabed under the Foreshore and Seabed Act 2004. The introduction of the Foreshore and Seabed Act was widely opposed by Maori as breaching the 1840 Treaty of Waitangi, as well as national and international human rights laws and standards. The Act was also criticised at UN level (including by the Special Rapporteur on the situation of

human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, and the Committee on the Elimination of Racial Discrimination) as containing “racially discriminating aspects” and needing amendment or repeal.¹ Ngati Porou has stated that they oppose the Foreshore and Seabed Act but they are also testing its limits.

The issue of the ownership of water is ongoing. Recent government moves to privatise water have led Maori to once again highlight the unresolved nature of the issue of ownership and that the Crown cannot privatise something it does not own. Maori argue that they still own the water according to Maori customs and that it is a treasure, as guaranteed for Maori in the 1840 Treaty of Waitangi.

Maori continued to demand the return of their lands throughout the year. In May 2008, Mauao (Mt. Maunganui) in the Bay of Plenty was returned to the indigenous peoples. However the government retained national historic reserve status, with the Minister of Conservation still holding the rights of freehold owner.

“Anti-terror” raids in indigenous communities

October 2008 marked the first anniversary of the “anti-terror” raids in which Maori communities were shut down. The dawn raids on October 15, 2007 by more than 300 police officers still haunt many indigenous communities. The raids were quite significant, reminding many of the violence of centuries past. Using the recently passed Terrorist Act, the military and police invaded homes and communities using substantial force. The image of heavily armed police officers terrorizing an entire Maori township remains imprinted on the indigenous psyche. Meanwhile, no evidence of a so-called terrorist plot was ever revealed. Although 17 people were arrested in the raids across Aotearoa, including indigenous peoples from Tuhoe, Te Atiawa, Maniapoto and Nga Puhi, the Solicitor-General denied the police permission to proceed under the Terrorism Suppression Act (TSA). All were released on bail one month later. Yet on February 19, 2008, the state-sponsored terrorism continued with further police raids on properties, arresting three more people. All were released the same day, under strict conditions. On April 17, 2008, one more person was arrested. The

difficulties continue and indigenous peoples still complain of being under surveillance. A potential civil lawsuit is being explored by the group that suffered the harassment and violence of the raids.

The indigenous communities are alarmed at the use of force and at the way in which elders and children were treated during the raids. As Teanau Tuino, a Maori victim of the state actions noted, "We are not a strong gun culture. The police seized an entire Maori village, pulling people out at gunpoint. It was a traumatic experience."² One important casualty was the Indigenous Peoples' Portal, which provides first-hand information from indigenous peoples around the world. The server was hosted in Aotearoa but it was confiscated during the raids and has yet to be returned. The server is now based in Mohawk territory in Canada. MP Hone Harawira spoke out in parliament against the use of the Terrorism Act to target indigenous peoples: "Do you really think it is acceptable behavior for the state to use armed masked gunmen to blockade communities at gun point, frighten children with guns, arrest and hold people without bail, and suppress all information on those cases?"³ Many Maori maintain that the 2002 Terrorism Suppression Act is akin to the 1863 Suppression of Rebellion Act.

Neoliberal practices stress financial incentives rather than self-determination for indigenous peoples

The neoliberal procedure for providing material compensation without taking into account the moral claims for constitutional change in order to recognize the *tino rangatiratanga* (self-determination) of the Maori peoples continues apace. The Waitangi Tribunal, created in 1975 and amended in 1985 to hear claims relating to events since the 1840 Treaty of Waitangi, continues to make rulings.

On June 24, 2008, the New Zealand government signed its biggest settlement deal of NZ\$ 400 million in forestry assets to seven *iwi*. The *iwi* will receive 176,000 hectares of commercial forestry land worth more than NZ\$ 196 million. They will also receive NZ\$ 223 million in accumulated rents and yearly rental payments. The land includes the country's largest forest of Kaingaroa. The fiscal compensation is contested by many Maori, openly expressing concerns at the corporate

structures that have been established to receive the compensation, which could subvert the traditional community leadership. Many Maori still believe the Waitangi Tribunal can investigate historical abuses and issue opinions on current challenges such as WAI262, a claim to protect traditional knowledge. Unfortunately, no ruling has yet been made on this claim, first brought in 1991. Maori still wish to perpetuate the practices of *rongoa*, the multiple reference of both the practice of traditional Maori medicine and the body of traditional knowledge behind the practice. As Maui Solomon noted, "The claim is about ensuring that appropriate recognition, protection and provision is made for the exercise of Maori rights and responsibilities in relation to their *taonga* (cultural gifts). This includes indigenous flora and fauna, their special relationship with those *taonga*, and the knowledge and intellectual property rights that flow from that relationship."⁴ Maori hope for a ruling in the Waitangi Tribunal that will recognize, in this consumer-focused, commercial world, that the sacred relationship with *taonga* is protected. No decision was forthcoming in 2008 with regard to WAI262.

The New Zealand government hopes to finalize deals on remaining Maori claims by 2020. Maori maintain that the main focus is one of constitutional change, not small pennies offered through the process; one of increasing recognition of the right to self-determination. □

Notes

- 1 United Nations Committee on the Elimination of All Forms of Racial Discrimination. Decision 1(66): New Zealand Foreshore and Seabed Act 2004 (11 March 2005) CERD/C/66/NZ/Dec 1.
- 2 "Liberators Not Terrorists," *Hawaii State Capitol*, 13 March 2009.
- 3 "Liberators Not Terrorists", *Hawaii State Capitol*, 13 March 2009.
- 4 **Maria Bargh, ed., 2007:** *Resistance*. Aotearoa: Huia Press.

Maria Bargh is from Te Arawa (Ngati Kea/Ngati Tuara) and Ngati Awa. She has a PhD in Political Science and International Relations from the Australian National University and is currently a lecturer in Maori Studies at Victoria University in Wellington. She recently edited Resistance, An Indigenous Response to Neoliberalism. Joshua Cooper is the director of Oce-

ania HR, a regional movement to protect and promote human rights in the Pacific. Cooper is also co-director of the Centre for Indigenous Leadership & Peacemaking and a board member of the Pacific Justice & Reconciliation Center. He serves as the director of the Hawai'i Institute for Human Rights. He also is a lecturer in Political Science at the University of Hawaii – West O'ahu and Leeward Community College focusing on nonviolence, ecological justice, international human rights law and indigenous peoples' struggles for self-determination. Cooper assists NGOs and advises Pacific Island states on human rights and climate change at the United Nations human rights treaty and charter bodies.

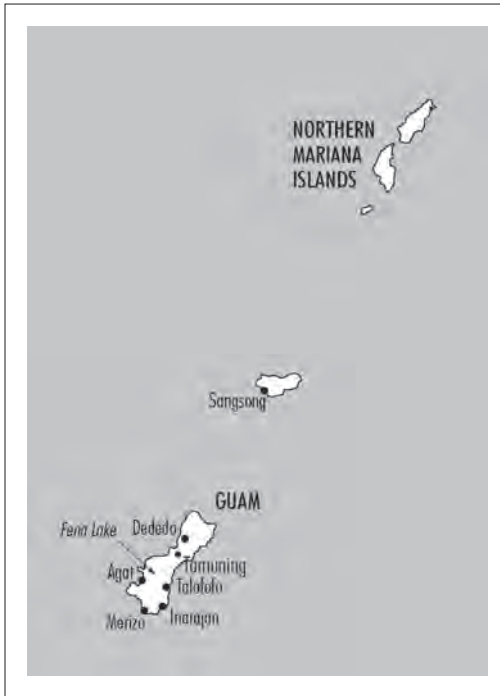
GUAM

Guam covers 212 square miles and is the largest and southernmost island in the Mariana Islands chain—the ancestral homeland of the indigenous Chamoru people for the last 4,000 years. Guam was cut off from its natural archipelago in 1898 when it was ceded to the United States after the Spanish American War.¹ Despite this relatively recent political divide, the Chamoru people of Guam and the northern Mariana Islands—now politically organized under the Commonwealth of the Northern Mariana Islands (CNMI)—are one people with one language, culture, and history. Today, Guam is an unincorporated territory of the United States. Guam does not have its own constitution. Its government was drafted without the input of the indigenous Chamoru people and was established by the U.S. Congress through the Organic Act of 1950. Although the Organic Act provided the basic framework for civilian government by establishing a Government of Guam consisting of the three branches (i.e., executive, legislative, and judicial), the Organic Act granted Guam only the illusion of self-government,² as “The Congress of the United States reserves the power and authority to annul [all laws passed by the Territory of Guam].”³ In reality, Guam remains under the purview of the U.S. Department of the Interior.⁴ As an unincorporated territory, the U.S. Constitution, on its own, does not apply in Guam. Instead, the U.S. Congress has broad powers over the unincorporated territories, including the power to choose what portions of the Constitution apply to them. All residents of Guam, indigenous and non-indigenous, are denied both the right to vote in U.S. presidential elections and effective voting representation in the U.S. Congress. In 1946, the United States placed Guam on the U.N. list of Non-Self-Governing Territories (NSGTs), or colonies whose people

have yet to exercise the fundamental right to self-determination. Accordingly, the colonized people of Guam have a right to self-determination under international law that the United States, at least in theory, recognizes. As Guam's Administering Power, the United States accepted as a "sacred trust" the obligation to guide the people of Guam toward self-government. Today, the Chamoru people make up 37% of the entire population of Guam, estimated in 2008 at roughly 175,000 people. Current U.S. plans to hyper-militarize the island threaten to further dilute the Chamoru population. It should also be noted that both "Chamoru" and "Chamorro" are used to describe the indigenous people of the Mariana Islands.

"All of the Pentagon road maps lead to Guam": on military build-up

During 2008, the United States was readying Guam for the largest military build-up in recent history, a build-up in part premised by the United States' concern over any potential altercation with China.⁵ The United States plans to transfer a military-related population estimated at 59,000 people to Guam, which includes 19,000 military personnel, 20,000 of their dependents, and roughly 20,000 foreign workers on construction contracts.⁶ These 59,000 people will join the roughly 14,000 military-related people already living in Guam,⁷ giving a total U.S. military-related population of 73,000. Put plainly, by 2014, this population will outnumber the entire indigenous Chamoru population, estimated in 2008 at roughly 65,250.⁸ In addition, six nuclear submarines may be added to the three already stationed in Guam.⁹ While the U.S. Navy plans to enhance its infrastructure, logistic capabilities and waterfront facilities,¹⁰ the U.S. Air Force plans to develop a global intelligence, surveillance and reconnaissance strike hub at Andersen Air Force Base,¹¹ and the U.S. Army plans to place a ballistic missile defense task force in Guam.¹² Although massive, this build-up only complements the impressive Air Force and Navy show of strength, occupying a third of Guam already.¹³ Indeed, as foreign policy analysts



report, "all of the Pentagon road maps lead to Guam."¹⁴

Hence the Chamoru people are gravely concerned that this enormous military build-up will irreversibly obstruct decades of struggle at the local, national and global level to exercise self-determination in accordance with the U.N.-endorsed decolonization process.

Although the military build-up was first announced in late 2005, and has been fiercely criticized by Chamoru self-determi-

nation activists ever since, it was not until 2008 that the Guam government built up enough nerve to even slightly misbehave. Though the local government had repeatedly insisted that it had a partner in the U.S. federal government, indeed, that the two entities were "working closely" to make the build-up a "win-win" situation, in late October, departing from his typically cordial attitude toward the U.S. Department of Defense, Guam Governor Felix P. Camacho complained that Guam was being left out of the loop in military build-up planning. Incredibly, this admission remains the closest thing to resistance coming from the top. Only very recently, Guam Lt. Governor Mike Cruz reluctantly admitted in an interview with B.B.C. Australia that the only "power" Guam possessed was that of persuasion, which he then, in an almost tragic way, suggested was a power to be reckoned with.

Despite the lack of long-term vision from the top, Chamoru scholars and activists on the ground have been working to expose the unre-

solved colonial U.S.-Guam arrangement. To take but one example, in April 2008, a representative of *I Nasion Chamoru*, or the Chamoru Nation, presented Guam's first-ever intervention to the U.N. Permanent Forum on Indigenous Issues, highlighting the trend toward colonial accommodation within the U.N. decolonization apparatus, and urging the Forum to interface with the Special Committee on Decolonization to formally examine the situation of the indigenous peoples of the non-self-governing territories. The Forum made the recommendation, and an expert seminar on this matter was tentatively scheduled for June 2009. However, due to lack of funding, among other things, the seminar has been postponed until sometime in 2010. In other U.N. bodies, Chamoru activists submitted related testimony decrying the current U.S. military build-up of Guam as an irreversible impediment to the exercise of Chamoru self-determination. Indeed, the Chamoru presence at the United Nations has increased and deepened every year since 2005.

Solid waste and schoolchildren

In 2008, it was almost as if Unresolved Colonialism had laid itself out over the entire local landscape to show what it could do. For the sake of brevity, and taking due account of the tragic character of the events that transpired this year, only a handful of headlines will be recounted.

In March, the U.S. District Court of Guam issued an order that placed the Guam Department of Public Works' Solid Waste Management Division under federal receivership. Judge Frances Tydingco-Gatewood appointed Gershman, Brickner & Bratton, Inc. (GBB) as the receiver tasked with bringing Guam into federal compliance. At the same time, the court granted the receiver's request that the local government be required to deposit \$20 million by January 2009 as a part payment to begin the construction of a new landfill in Guam. The government of Guam has been under pressure for years to close the island's one and only civilian dump, which is on the U.S. National Priorities List of highly contaminated sites, and which reached capacity in the 1990s.¹⁵

Here's the rub that's a mantra by now: there is no money. The government of Guam does not have the millions to comply with the order. So, true to form, the government is out on the bond market again trying to borrow money it will not be able to pay back. Guam's attempts thus far to secure investors have been unsuccessful. Ironically, Guam was originally sued by the U.S. Environmental Protection Agency for its inability to control discharges from the dump and to construct a new landfill in compliance with federal and local law. What should be remembered, but is largely forgotten, is that the dump was originally a U.S. military creation, and the environmental hazards began on its watch, not ours. Most importantly, however, is that the area in and around the selected site for the new landfill has a number of rivers and tributaries flowing through it, and is capable of producing a sustainable flow of nearly 8 million gallons of fresh water per day, enough to provide for 23% of Guam's residents. The new landfill being bullied into construction will severely damage this precious natural resource of the Chamoru people, who already endure the insult of watching our colonizer retain control of Guam's only freshwater reservoir, Fena Lake, which the United States was supposed to transfer to the local civilian government but did not. Adding insult to injury, in late October the *Pacific Daily News* reported that the court-appointed federal receiver, GBB, had cut a deal, on its own authority, with the U.S. military offering the landfill for the latter's solid waste needs. The sting is sharp. As if this were not enough, as of February 2009, the whole situation took on a new air of absurdity. A federal court judge has now ordered the government of Guam to begin paying \$1 million a week towards the \$159 million cost of closing the old dump and opening the new one.¹⁶

In early 2008, the local Office of the Attorney-General went hunting to address—with an authoritative posture not seen in years—the deplorable conditions of the Guam Public School System (GPSS). It started in March when a task force created by the Attorney General shut down Southern High School citing various health and safety violations. The task force's work led Guam Governor Felix Camacho to issue an emergency declaration, making \$26 million in bond money available to mitigate the health citations so that public schools could open in time for the new school year. But, as the newspaper

Marianas Variety reported, this money was not enough to save John F. Kennedy High School in the village of Tamuning. To cut a long story short, the school was shut down and its more than 2,000 students were re-routed to another local high school, George Washington High School. The result of this double session has been an alarming drop in student attendance at both schools, as well as a sharp increase in fights among students. Meanwhile, the United States' unwritten "Separate but Equal" policy remains fully intact; in Guam, there remains one well-funded system for military schoolchildren, and one poorly-funded system for all of the other children outside the military gates.

The U.S. federal takeover of the Commonwealth of the Northern Mariana Islands (CNMI)¹⁷

In brief, in the late 1970s the CNMI entered into a covenant for a commonwealth-type political relationship with the United States, which ended the U.S. formal trusteeship over the islands.¹⁸ Under this covenant, while U.S. federal law applies to the CNMI generally, federal immigration and labor law, including the minimum wage law, were largely locally controlled, at least until recently. It started in May 2007, when the U.S. federalized the minimum wage law in the CNMI. By 2008, pressure from the U.S. Department of the Interior for an overall federal takeover of the CNMI proved too strong, and the CNMI government could no longer stay the inevitable. On May 8, 2008, U.S. President George Bush signed into law S.2739, a law bringing CNMI immigration under federal control and establishing a position for a non-voting CNMI delegate to the U.S. House of Representatives similar to the effectively non-voting Guam delegate to the House. By June 2009, as per the new law, there will be no limit on the number of foreign workers who can enter either the CNMI or Guam on temporary work visas. While some in business circles applaud this measure, under the rationale that it will help ease an alleged labor shortage caused by the military build-up, this is in reality another stain on the image of the United States as a legitimate democracy. Although the United States claims that it can unilaterally apply its own immigration and naturalization laws to the CNMI, the latter is well aware that if it has no power to retain control of

the only two major pieces of local decision-making, then any “power” it has is illusory at best. Hence, in September, CNMI Governor Benigno Fitial filed a lawsuit in the U.S. District Court of the District of Columbia, alleging that the U.S. federal takeover of the CNMI violated the promise of self-government and economic development detailed in the U.S.-CNMI Covenant.¹⁹

2008: a crash course in the colonial condition?

If the events of 2008 have anything to offer the Chamoru people by way of instruction, it is this: we cannot afford to fall asleep in the prison of thinking that, somehow, and despite all the facts to the contrary, we are “partners” at the proverbial table, “part” of the decision-making processes that really, really matter. The decision to hyper-militarize our homeland was made unilaterally by our colonizer, and in glaring defiance of the U.N. General Assembly’s repeated reminder to the U.S. that the presence of its military bases in Guam constitute a “major obstacle” to facilitating the decolonization of the island, and despite the fact that 2010 marks the end of the Second International Decade for the Eradication of Colonialism.

But the tide may be beginning to turn. Only two days into the new year (January 2, 2009), the *Marianas Variety* reported that Guam was gearing up to sue the U.S. government for the more than \$400 million it owes Guam in “Compact Impact” funds; that is, money the United States owes to Guam for social services rendered to Freely Associated States citizens over the last twenty years, pursuant to an earlier U.S. arrangement. In response to the suit, Attorney and Former Deputy Assistant Secretary of the U.S. Department of the Interior, David B. Cohen, callously remarked that, as a matter of law, Guam was owed nothing.²⁰ What is more interesting, what is more than merely oppressive—indeed what would be comical if it were not so tragic a construction of “power”—Cohen declared that Guam should pursue the matter with the U.S. federal government using a moral argument.²¹ Cohen further suggested that Guam should also use a moral argument in approaching the federal government about helping the island shoulder the costs associated with the U.S. current unilateral military build-up of Guam.²²

It is something indeed when the oppressed—those whose most fundamental and inalienable human rights have been strategically denied—are called upon by their oppressor to rely exclusively on morality to advance an argument for their right to exist.

Hopefully, we know what to do with *this* trash. □

Notes

- 1 See Treaty of Peace, U.S.-Spain, art. II, Dec. 10, 1898, 30 Stat. 1754.
- 2 **Joseph F. Ada & Leland Bettis, 1996:** The Quest for Commonwealth, The Quest for Change, in *ISSUES IN GUAM'S POLITICAL DEVELOPMENT: THE CHAMORRO PERSPECTIVE* 128. The authors note:
Organic Act citizenship is limited in that it does not provide full rights and benefits; it also does not provide full protection of the U.S. Constitution . . . Guam's self-government is limited because the 'self' and the 'government' came with major qualifications. Washington reserved the power to overturn or undo any law or action taken by the newly-created civilian Government of Guam.*Id.*
- 3 48 U.S.C. § 1423i.
- 4 CIA World Factbook, Guam (territory of the US), <https://www.cia.gov/library/publications/the-world-factbook/geos/gq.html> (last visited Nov. 22, 2008).
- 5 Al Pessin: "Tiny Guam Key to US Pacific Military Strategy", *VOICE OF AM. NEWS*, 23 August 2006.
<http://www.globalsecurity.org/military/library/news/2006/08/mil-060823-voa12.htm> (last visited Nov. 23, 2008).
- 6 Special Committee on Decolonization, *Guam: Working Paper Prepared by the Secretariat* ¶¶ 42, 54, U.N. Doc. A/AC.109/2008/15 (Mar. 19, 2008), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/277/49/PDF/N0827749.pdf?OpenElement> [hereinafter *Guam: Working Paper Prepared by the Secretariat*].
- 7 *Id.* at ¶ 42.
- 8 CIA World Factbook, Guam (territory of the US), <https://www.cia.gov/library/publications/the-world-factbook/geos/gq.html> (last visited Nov. 22, 2008).
- 9 Megan Scully: "Pentagon Begins Military Buildup on Guam", *CONGRESS DAILY*, 17 November 2005, available at <http://www.govexec.com/dailyfed/1105/111705cdam1.htm>.
- 10 **BRIAN J. LEPORE, 2008:** *DEFENSE INFRASTRUCTURE: PLANNING EFFORTS FOR THE PROPOSED MILITARY BUILDUP ON GUAM ARE IN THEIR INITIAL STAGES, WITH MANY CHALLENGES YET TO BE ADDRESSED*, available at http://energy.senate.gov/public/_files/LeporeTestimony050108.pdf.
- 11 *Id.*
- 12 *Id.*
- 13 Blaine Harden: "Guam's Young, Steeped in History, Line up to Enlist: U.S. Territory Pays High Cost in War Deaths", *WASH. POST FOREIGN SERVICE*, 27 January 2008, at A15.

- 14 Joseph Gerson: U.S. Foreign Policy Analyst and Author, Address at the No Military Bases Network Launch Conference (Mar. 5, 2007).
- 15 In brief, the facts are as follows: the Ordot Dump has been a dumping ground since the 1940s. After the U.S. recaptured the island from Japanese occupation at the end of World War II, the U.S. Navy continued to use the dump for waste disposal. The dump was later transferred to the government of Guam in 1950, and has been operated ever since as a dump by the local Department of Public Works (DPW). The dump, however, was never properly lined or capped and, in 1982, the U.S. Environmental Protection Agency (USEPA) initiated a formal investigation of the Ordot Dump for possible non-compliance with environmental regulations. Since the late 1980s, the USEPA has been issuing orders requiring the government of Guam to address environmental problems at the dump. Then, in 2002, the USEPA sued Guam in the federal district court alleging that Guam had violated the Clean Water Act in its continued use of the dump. The parties eventually reached an agreement and signed a Consent Decree requiring the DPW to submit a list of at least three potential sites for the new landfill. Ultimately, the DPW and Guam EPA identified the Dandan area in the southern village of Inarajan for the new landfill. At the time of this writing, the projected cost to close the old dump and open the new one is just under \$160 million.
- 16 Agnes E. Donato: "Contempt Charges Possible: Judge gives Gov Guam one week to answer order", in *PACIFIC DAILY NEWS*, 4 March 2009, available at <http://www.guampdn.com/article/20090304/NEWS01/903040337&referrer=FRONTPAGECAROUSEL>.
- 17 It is appropriate to include a word about the Commonwealth of the Northern Mariana Islands (CNMI), as the ancestral homeland of the Chamoru people is the entire Mariana Islands chain, which includes Guam and the CNMI. Guam is the largest and southernmost island in the Mariana Islands chain, and was ceded to the United States after the Spanish American War. Meanwhile, the CNMI was lumped into a larger political entity that included the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Belau (Palau), known collectively as the Trust Territory of the Pacific Islands, under U.S. trusteeship. Despite this relatively recent political divide, the Chamoru people of Guam and the CNMI remain one people with one language, culture and history.
- 18 See Trusteeship Agreement for the Former Japanese Mandated Islands art. 3, July 18, 1947, 61 Stat. 3301, 8 U.N.T.S. 189.
- 19 See Stefan Sebastian and Agnes Donato, "Fitial files lawsuit against feds", *SAIPAN TRIBUNE*, 15 September 2008, available at <http://www.saipantribune.com/news-story.aspx?newsID=83476&cat=1>.
- 20 See Therese Hart, "Guam gears up for suit vs feds: New law appropriates funds for legal expenses", *MARIANAS VARIETY*, 2 January 2009, available at http://guam.mvarietynews.com/index.php?option=com_content&view=article&id=3642:gum-gears-up-for-suit-vs-feds&catid=1:guam-local-news&Itemid=2.
- 21 *Id*
- 22 *Id*.

Julian Aguon is an indigenous Chamoru son of Guam, human rights writer-activist and respected speaker throughout the Americas and the Asia-Pacific region on issues of self-determination, demilitarization, indigenous rights and international law. He is currently a third-year law student and the author of three books, "Just Left of the Setting Sun" (2005), "The Fire This Time: Essays on Life Under U.S. Occupation" (2006), and, "What We Bury At Night: Disposable Humanity" (2008). He writes against the aggressive militarization and corporatization of Guam, convinced that these forces threaten to destroy those life-affirming values that bind and sustain indigenous communities. In October 2007, GU Magazine honored him as 'The Advocate' in its Most Influential People of Guam campaign. He has represented Guam before the U.N. Fourth Committee and the U.N. Permanent Forum on Indigenous Issues.

WEST PAPUA

West Papua covers the western part of the island of New Guinea, comprising the Indonesian provinces of Papua and Papua Barat. 52% of its 2.4 million inhabitants are indigenous. The remaining 48% are Indonesian migrants, many of whom have been brought to West Papua by the Indonesian government's large-scale transmigration program.

Within Indonesia, West Papua is a territory of extremes. On the negative side, it is the region with the lowest development index. Forty percent of its population is poor (compared to the national average of 16.6%). The maternal mortality rate is the highest in Indonesia (1,025 per 100,000 live births compared to 307 for the nation as a whole) and HIV/AIDS prevalence is the highest in the country (a case rate of 67.55 out of every 100,000 people).¹ Papua is the province with the widest variation in HDI (Human Development Index). It ranges from a very low 47 in the rugged highlands of Jayawijaya where mainly indigenous peoples live to 73 in the port city of Sorong with a big transmigrant community.²

On the positive side, it can be reported that West Papua is the most geographically and culturally diverse of Indonesia's provinces, with more than 250 Melanesian indigenous ethnic groups. West Papuan forests cover 42 million hectares, 24% of Indonesia's total forested area and West Papua is home to 54% of Indonesia's biodiversity.

One of the big challenges is to find a way in which the natural resources can be used to improve the livelihoods of the indigenous peoples.

Forests for life

Both the provincial authorities and the Papuan NGOs are increasingly focussing on the potential that can be drawn from West Papuan assets. The main asset appears to be the forests, on which Papuan livelihoods mostly depend, and which have been attracting the increasing attention of the international community in its search for opportunities to mitigate climate change. However, when Greenpeace toured the coastal area of West Papua with its ship *Esperanza* in October 2008, it issued an urgent warning that Papuan forests were in danger because of the expansion of oil palm plantations as well as illegal logging.³

Governor Bas Suebu is a promoter of the potential of Papuan forests, which he refers to as "Forests for Life". One of the main challenges is to adapt currently existing climate change mitigation approaches to the rights, needs and aspirations of indigenous communities, paying attention to their position in ecological and social systems. Suebu's administration is on a path of forest governance reforms in which the key elements are: recognition of customary rights, participatory mapping, redesignation of concessions, a ban on export of logs, value-added processing, monitoring and law enforcement.⁴ The Indonesian government in Jakarta, however, is keen to promote bio-fuel production, and there are indications that it will require Papua to set aside 2 million hectares of forest for palm-oil plantations. Suebu is challenging Jakarta on the basis of the Special Autonomy for Papua, which clearly states that responsibility for resource management is decentralised.

In March 2008, President Yudhoyono and forestry businessmen appealed to the two Papuan provinces' authorities to allow wood of certain trees to reach the plywood industry in Java but the two governors replied that the new forestry management system remained effective and the two provinces would not allow the marketing of unprocessed logs.⁵

In December 2008, the parliament of Papua Province completed the draft of a key forestry law. Its main feature is that the forests belong to the Papuan peoples (and not to the state, as in the Indonesian Forestry Act No. 41 of 1999), that the province itself and not the Indonesian Ministry for Forests, will determine the function of the forests (protection,

and forestry instruments, they are currently confronted with a run on mineral and forest resources. The case of the US-owned Freeport mine in the land of the Amungme has been widely discussed for the protection money it paid to the Indonesian army, which consequently committed serious human rights violations. But even more hidden are the smaller Indonesian, Malaysian and Chinese businesses that do not allow any interference from local communities in their pursuit of profits from Papua's natural wealth. In the logging and mining operations, military and civil servants - as stakeholders - do not hesitate to use intimidation and violence against communities and supporting NGOs that want to protect the indigenous lands from the devastating exploitation activities that undermine the communities' livelihoods.

Another reason for the lack of security in Papuan communities is the arbitrary behaviour of Indonesian troops. In Teminabuan, south Sorong Regency, a man was shot dead by police officers allegedly under the influence of liquor at midnight on 31 December 2008. Angry villagers protested at the killing and, in the ensuing violence, a police officer was left dead. Unable to control the situation, the police instead went out and destroyed houses. More villagers were injured and an 8-year-old boy was reportedly killed.⁶

Dialogue

Since the Second Papua Peoples Congress in June 2000, the Indonesian government has been urged to enter into a dialogue with the Papuan people and their representatives. Up until now, Jakarta has not shown any openness to this although it has been called upon to do so by many different sides. In January 2008, the leaders of all religions in West Papua (Catholics, Protestants, Muslims, Hindus and Buddhists), called upon the government and the indigenous Papuans to engage in a peaceful dialogue, facilitated by a neutral third party.⁷ In February, two senior members of the US Congress, Donald Payne and Eni Faleomavaega, sent a letter to UN Secretary-General Ban Ki-Moon urging for the appointment of a senior official with responsibility to pursue the creation of a senior-level dialogue between the government of President Yudhoyono and the Papuan government and civil society leaders,

to be mediated by a UN Security Council representative. They expressed their deep and growing concern at the increasing reports of human rights violations in West Papua and the tight restrictions placed upon journalists, human rights activists and diplomats trying to obtain access to West Papua. They said the key issues to be addressed in the dialogue were the demilitarisation of Papua, Papuan self-determination and the ongoing transmigration of Javanese into Papua.⁸ In July, the Indonesian Institute of Sciences (LIPI) published the "Papua Roadmap, Negotiating the Past, Improving the Present and Securing the Future".⁹ LIPI also called for a dialogue to resolve the contradiction between Papua and Jakarta regarding history and political identity and suggested a process along the lines of the dialogue that took place in Aceh. In October, leaders of nine Christian churches in West Papua again urged the government to hold a dialogue with the Papuan people to find the best solution for the ongoing dispute over the 1969 people's self-determination vote.¹⁰

The Dewan Adat Papua (DAP - Papua Customary Council) recognises the space created by the Special Autonomy Law and the UN Declaration on the Rights of Indigenous Peoples. Despite the assurance and support given by central government and the diplomatic corps to the UN DRIP, the lack of knowledge and understanding of these instruments within the state apparatus, the army, the police and intelligence services will make it impossible to improve the situation of indigenous Papuans.

On August 9, the DAP organised a celebration of the UN World Indigenous Day in Wamena. Police used live ammunition to fire what police claimed were "warning shots" after some members of the crowd raised UN and Indonesian flags, as well as the banned Morning Star flag, and one bearing the letters "S.O.S.". Opinius Tabuni was shot dead. Amnesty International placed the incident in the context of a deteriorating human rights situation in West Papua over the past few years.¹¹ On September 17, DAP organised a protest at the killing of Tabuni. DAP official Fadel Al Hamid said Opinus was one of thousands of Papuans who had been shot and killed but whose cases were left unresolved. "Today, it is Opinus. Tomorrow, the next victims could be you or me, all Papuans."¹² The DAP announced that August 9 from now on would be called "Opinius Tabuni Day". The social, economic

and cultural rights of the indigenous peoples of Papua are core to further development. Dewan Adat Papua will grow and gain increasing respect for its role and responsibility in leading processes in Papua for the betterment of the indigenous peoples and other communities in Papua. □

Notes

- 1 See UNDP Annual Report 2007, <http://www.undp.or.id/pubs/docs/UNDP%20ANN%20REP%20EN.pdf>
- 2 See Indonesia Human Development Report 2004, *The Economics of Democracy, Financing Human Development in Indonesia*, http://hdr.undp.org/en/reports/nationalreports/asiathepacific/indonesia/indonesia_2004_en.pdf
- 3 See article: Greenpeace warns deforestation in Papua. *The Jakarta Post*, 19 October 2008.
- 4 See "Lessons from Papua Province, Indonesia", Barnabas Suebu, Governor of Papua Province at World Conservation Congress in Barcelona, October 2008, http://cmsdata.iucn.org/downloads/wcc_suebu.pdf
- 5 See article: No unprocessed logs to come out of Papua: Official. *The Jakarta Post*, 27 March 2008.
- 6 See Asian Human Rights Commission Urgent Appeal Case 006-2009, <http://www.ahrchk.net/ua/mainfile.php/2009/3098/>
- 7 See article: Turning Papua into land of peace, *The Jakarta Post*, 3 January 2008 by Neles Tebay, lecturer at the Fajar Timur School of Philosophy and Theology in Abepura, Papua. The religious leaders also recommend that, instead of creating new provinces or regencies in Papua, the government should prioritise the implementation of the autonomy law. As part of conflict prevention policies, the religious leaders called for the government to reduce the number of military stations and troops, of which there are many throughout Papua. The government's policy of establishing new military stations and deploying ever-more combat troops throughout Papua, in the eyes of the religious leaders, has been a source of restlessness among civilians in Papua. The newly deployed troops know nothing of local cultures, and tend to misunderstand the local population and apply a militaristic approach in dealing with the indigenous peoples. The troops use "separatism" as an excuse to silence Papuans who criticize arrogance and developments they do not want in their own land. A month later, the religious leaders asserted, "the OPM (Free Papua Movement) issue is kept and maintained and used by the government for their own interests. In fact, there is a strong assumption that those who claimed themselves as members of OPM were trained and prepared by the Indonesian military and police". See West Papua Report March 2008, <http://etan.org/issues/wpapua/0803wpap.htm#Religious>
- 8 See Radio New Zealand International, 18 February 2008, <http://www.rnzi.com/pages/news.php?op=read&id=38082>

- 9 See http://www.arts.usyd.edu.au/centres/cpacs/docs/PAPUA_ROAD_MAP_Short_Eng.pdf
The roadmap describes three more activities to solve the Papuan conflict: 1) Affirmative policy of recognition in order to empower the Papuan people. 2) New paradigm of development that focuses on improving public services and welfare for Papuan people living in the *kampung*s (villages). 3) Reconciliation, the convening of human rights courts and revelation of the truth for Papua, in particular for the victims, their families and Indonesian citizens in Papua in general.
- 10 See article: Papuan church leaders call for peaceful talks to end dispute, *The Jakarta Post*, 10 October 2008.
- 11 See Amnesty International Public Statement ASA 210172008, Indonesia : Investigate Police Shooting of Peaceful Papuan Protester, 18 August 2008, <http://www.amnesty.org/en/library/asset/ASA21/017/2008/en/0b76887e-6d33-11dd-8e5e-43ea85d15a69/asa210172008en.pdf>, in which is stated that AI recognises the numerous Papuans convicted of or awaiting trial for displaying the banned Morning Star flag in a peaceful manner as "Prisoners of Conscience"
- 12 See article "Papua council urges police to solve fatal shooting", *Jakarta Post*, 18 September 2008.

Editor's Note: West Papua is included in the section on the Pacific as we take ethnographic regions as our point of departure rather than following strict state boundaries. This is in line with indigenous peoples' world-view and cultural identification which, in many cases, cut across state borders.

Viktor Kaisiëpo Msn is international representative of the Dewan Adat Papua – the Papua Customary Council, and director of Papua Lobby.

TUVALU

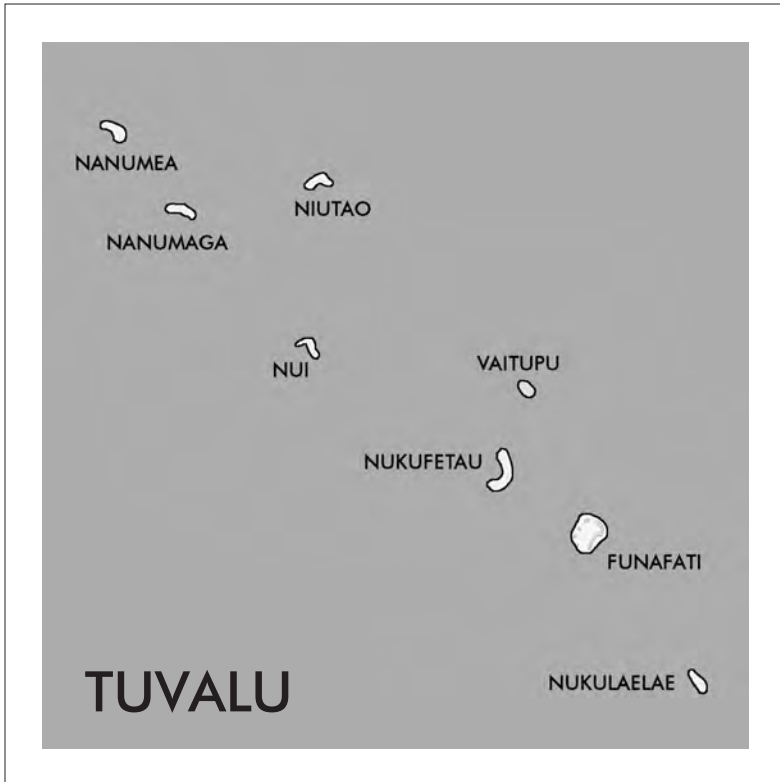
Tuvalu voted to separate from the Gilbert Islands in 1974. On 1 October 1978, the island nation became independent. The four reef islands and five atolls, consisting of a mere 26 sq. kilometres, is one of the most densely populated independent states in the United Nations. The Polynesian nation is also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

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. Tuvalu is a constitutional monarchy. Prime Minister Apisai Ielemia took office in August 2006.

Subsistence farming and fishing are the primary economic activities. One of the main sources of revenue is the sale of its domain name "TV" for commercial use.

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).

In 2008, the government of Tuvalu mobilized the nation to respond to climate change. A National Workshop on Climate Change was organised, bringing together representatives from government and civil society to create a National Blueprint on Climate Change. A National Adaptation Programme of Action was also created, identifying the most urgent and immediate needs for Tuvalu.



The human rights violations of the indigenous peoples of the Pacific are on the global agenda not because of gross violations by their governments but rather due to the already apparent impacts and projected problems of climate change in Oceania. In the inaugural round of the Universal Periodic Review (UPR) at the United Nations Human Rights Council in December 2008, Tuvalu defended its record. Enele S. Sopoaga, Permanent Secretary for Foreign Affairs and Labour, noted in his opening statement that the main challenge the government was facing in terms of promotion and protection of human rights was linked to "...its unique vulnerability to challenges, particularly those posed by climate change and sea-level rise."¹

Tuvalu is the fourth smallest country in the world, and the most serious threat to the human rights of the people of Tuvalu is the environmental vulnerability of the four reef islands and five coral atolls. According to scientific research, the people of Tuvalu were expected to have between 35 and 50 years before they would have to begin evacuating. However, based on the latest research data, there is a growing consensus that there is little time left because the earth's climate has reached its tipping point earlier than predicted.

Climate change has already produced some severe storms, with super-size waves causing coastal flooding, and shoreline erosion is already becoming visible. People are beginning to think the unthinkable – that they will have to flee their homes.

The human rights of the indigenous peoples of Tuvalu continue to be eroded as the sea levels rise. Ultimately, their right of self-determination will be violated, as the citizens of Tuvalu become environmental refugees, forced to flee their homelands. Over the years, there has been a gradual increase in human rights violations caused by environmental damage, such as the violation of the right to water and food. Tuvaluans will no longer be able to continue their traditional customs and practices. Without a land base, their political status will be in legal limbo. The people will no longer be able to freely dispose of their natural wealth and resources. Depending on the severity and frequency of damage caused by climate change, they could also be deprived of their own means of subsistence.

Tuvalu citizens have always lived in harmony with their natural environment. However, the right to a clean, healthy environment is being eroded as a result of climate change. Their right of self-determination has been exercised for three decades since independence in 1978. For the foreseeable future, climate change will leave the indigenous government unable to guarantee the most basic rights to its citizens. The issue of climate change illustrates the interconnectedness of all rights – the right to life, food, health, water, property, spirituality, culture and, ultimately, self-determination. As Sopoaga explains,

Tuvalu is exerting every effort to cope with the adverse effects of the climate change and sea level rise from which we believe we are already suffering. The continuing loss of vital land, destruction of food crops and

contamination of ground water supply due to sea-water intrusion create additionalities which are now seriously undermining the capacity of the State to preserve and protect the fundamental human rights of its citizens to survive.²

Climate change will make cultural survival practically impossible. The right to life will deteriorate with the already evident intensification and frequency of the annual king tide storms in February. The decline in production of the staple crop, taro, is also a good example of a violation of this right. Saltwater is rising throughout the atolls and the salinization of groundwater is destroying the taro crop. The indigenous farmers are therefore planting closer to the surface. And yet saltwater is still bubbling up and stunting crop growth, if not entirely destroying it. This impediment to the agricultural capacity of Tuvalu means the health of the people is suffering as they are forced to supplement their diet with Western canned goods. There are already indicators that the health of the Pacific Islanders is deteriorating.

Their sacred connection to the earth is also being threatened by the rising waters. The people of Tuvalu are being forced to consider relocating to a place that provides greater security, and this will mean losing their cosmology. To leave their homeland would amount to cultural genocide for the people of Tuvalu. They will lose the spiritual connection to their land that has provided them with their purpose in life and also their livelihood, through subsistence models of living in harmony with nature. Economic, social and cultural rights are becoming more difficult to guarantee. As Prime Minister Apisai Ielemia stated at the UN General Assembly in September 2008:

With limited land, poor soils and salt-water intrusion from rising sea levels our ability to grow crops on a sustainable basis is already extremely limited. We are becoming more reliant on the import of basic food items such as rice, flour and sugar. Being an isolated island nation, the cost of transport for these commodities continues to rise, further placing a significant burden on our ability to ensure access to basic foodstuffs.³

Tuvalu also successfully raised the issue of climate change throughout 2008 at the major United Nations bodies, from the General Assembly to the Security Council, putting the case of the all-encompassing effect it is having on the essence of Tuvalu civilization.

Indigenous leaders have also worked diligently, supporting the first ever debate on the impact of climate change on peace and security. On 17 April, the UN Security Council session was chaired by the UK's Foreign Secretary, Margaret Beckett. She maintained that climate change was a security issue related to "our collective security in a fragile and increasingly interdependent world."⁴ Sopoaga closed his comments to the Universal Periodic Review in Geneva as follows:

*Consideration of human rights protection and the effects of climate change is paramount in the minds of the government of Tuvalu, as we are one of the most vulnerable countries in the world to the impacts of climate change. We have cosponsored UN General Assembly resolutions on this very issue of climate change, including a resolution in the Security Council to bring home the urgent necessity to address security dimensions of climate change.*⁵

Prime Minister Apisai Ielemia's intervention at the opening debate of the UN General Assembly in September 2008 warned the world:

*The next 12 to 18 months are crucial in the context of negotiating a new international agreement on climate change... While we call for urgent action to reduce emissions, we know the impacts of climate change are upon us. For a highly vulnerable country like Tuvalu the consequences of the impacts of climate change are frightening. The survival, peace and security of our entire nation is under threat.*⁶

The bundle of human rights recognized in international law are beginning to be unravelled in the dawning of climate change in the islands. The indigenous peoples of Tuvalu are eager to perpetuate the existence of their culture in their sacred homeland and not let the sun set on their unique cosmology.

At the UN Human Rights Council, Tuvalu was asked about ratification of the UN's nine core human rights conventions, including the

UN Refugee Convention. Tuvalu responded as follows: "The only relevance perhaps is the fact that our people, due to the actions of industrialized countries are already refugees in our own islands because of the constraints and additionalities caused by the impacts of climate change and sea level rise."

While there is usually little room for joking when discussing global justice, the question concerning reports of torture in Tuvalu prompted this response: "Obviously, there has been misreporting. The only act of torture that we are aware of in Tuvalu is the regular slaughtering of pigs for feasting." This drew smiles and laughs around the chamber.

Tuvalu's message is reaching the highest level of global leadership. The UN Secretary-General Ban Ki-moon has noted, "Climate change affects us all, but it does not affect us all equally."⁷ While only 12,000 people will be impacted, it will be the loss of an entire civilization of Oceania. Equally significant is the moral argument of Tuvalu's message for the world, which is that they are just the first victims of a global catastrophe that will impact on many indigenous peoples and industrial societies. Tuvalu is the canary in the climate change coal mine crisis. Tuvalu is one of the first civilizations struggling to maintain its unique culture and daily living practices in the Pacific. Yet, climate change - as it reaches the tipping point - will trigger massive human rights violations on every continent. □

Notes

- 1 Enele S. Sopoaga, Tuvalu Statement on 11 December 2008, Geneva, Switzerland. From the author's notes. See also the Report of the Working Group on the Universal Periodic Review at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/TV/A_HRC_10_84_Tuvalu_E.pdf
- 2 Notes of the author at the UN Working Group of the Universal Periodic Review, Geneva, Switzerland, December 2008.
- 3 Author's notes of Apisai Ielemia, Tuvalu Statement to the 63rd session of the UN General Assembly. September 26, 2008 New York. http://www.un.org/ga/63/generaldebate/pdf/tuvalu_en.pdf.
- 4 Security Council Holds First-Ever Debate on Impact of Climate Change, Department of Public Information, Security Council 563rd Meeting. 17 April 2007.
- 5 Author's note of Enele S. Sopoaga, Tuvalu Statement on 11 December 2008, Geneva, Switzerland.
- 6 Ibid.

- 7 Barbara Cosette, "Antarctica to Bali: Ban Becomes the Environmental Secretary-General". *The Interdependent*. P. 11, Vol. 5. No. 4, Winter 2007/2008.

Joshua Cooper is the director of Oceania HR, a regional movement to protect and promote human rights in the Pacific. Cooper is also co-director of the Centre for Indigenous Leadership & Peacemaking and a board member of the Pacific Justice & Reconciliation Center. He serves as the director of the Hawai'i Institute for Human Rights. He also is a lecturer in Political Science at the University of Hawaii – West O'ahu and Leeward Community College focusing on nonviolence, ecological justice, international human rights law and indigenous peoples' struggles for self-determination. Cooper assists NGOs and advises Pacific Island states on human rights and climate change at the United Nations human rights treaty and charter bodies.

KIRIBATI

Kiribati comprises 33 islands, with one raised island (Banaba), covering almost 4,000 km of the Pacific Ocean straddling the equator. The area is equivalent in size to that of the continental United States of America. The majority of the atolls are little more than six metres above sea level. The three main groups are the Gilbert, Phoenix and Line Islands. Approximately 90% of the population inhabit the Gilbert Islands. The Phoenix Islands Protected Area is one of the world's largest marine reserves in the world.

The 112,850 inhabitants of Kiribati are 99% Micronesian, with the majority engaged in subsistence and sustainable economic and ecological practices, farming copra, taro, breadfruit and sweet potatoes.

The House of Assembly (Maneaba) is a unicameral body of 45 members. Each member serves a four-year term. Most candidates present themselves as independents, campaigning through informal meetings in traditional meeting houses.

Ieremia Tabai was the first President (*Te Beretitenti*), serving the maximum three terms. Teburoro Tito was the second president. The third president, Anote Tong, has been very active in the Pacific Islands Forum on environmental and sustainability discussions since his re-election in October 2007.

Kiribati became a member of the United Nations in 1999 but does not maintain an ambassador at the UN headquarters in New York. Kiribati's vote is usually cast by New Zealand via a proxy arrangement.

The indigenous peoples of Kiribati are proposing drastic measures to prevent human rights violations that are jeopardizing their very

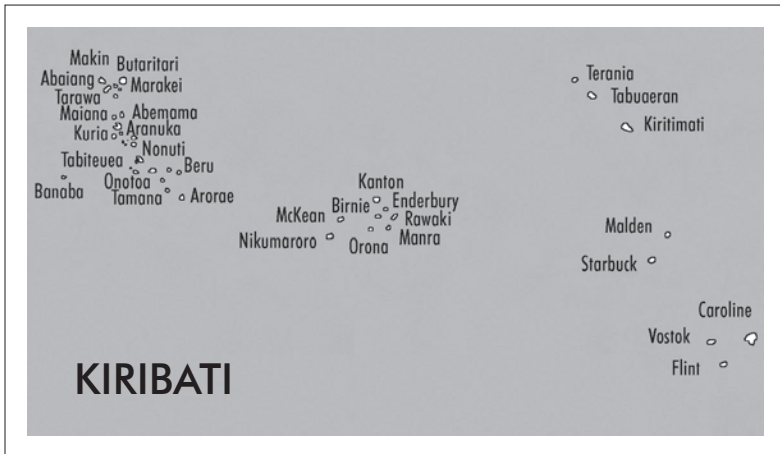
existence on earth. There is an immediate infringement of their right to water, to food, to housing and, ultimately, to self-determination as the indigenous peoples believe they are doomed to abandon their homeland for higher ground.

The 33 coral atolls are only a couple of meters above the rising seas. Two have already disappeared under the waves in 2008. The impact of climate change on Kiribati is occurring faster than originally forecast and there are indications that the indigenous homeland will become uninhabitable even before the land is actually submerged by the rising sea. Freshwater wells, for example, are being polluted with salt water, becoming inadequate for human consumption.

The right to food is also a concern. The people of Kiribati live from traditional crops and marine life. However people are being forced to abandon their farmland as freshwater is mixing with the saltwater seeping through the soil. In the spring of 2008, tides washed away valuable farmlands necessary to sustain the population. At the same time, the coral bleaching that is taking place in the reef is impacting on their fisheries.

The spiritual trauma Kiribati people are currently experiencing will become more severe in the future. This relates to their relationship with the land, which is being submerged by rising sea levels. The land is a living archive for the indigenous peoples, constituting the base of the Kiribati people. Alienation from the land will lead to the fundamental disintegration of indigenous culture. The rhythm of nature is being destroyed, creating disharmony between humanity and nature. The sacred homeland is already going through unheard of changes. Relatives buried in Kiribati are being unearthed and moved further inland, even the resting places of ancestors are being moved due to the rising sea level, and entire villages are being relocated from their centuries-old sites on the shoreline. During the annual king tide season, the waves now crash over the retaining walls and into the houses of Kiribati citizens. In 2008, even a hospital was flooded.

Kiribati is increasingly recognizing the difficulty of guaranteeing basic economic, social and cultural rights to its citizens. President Anote Tong, a graduate of the London School of Economics, has claimed that climate change "is not an issue of economic development; it's an issue of human survival."¹



The United Nations Environment Program's Executive Director, Achim Steiner, understands the hardship and, ultimately, the human rights violations that will be experienced by indigenous peoples forced to abandon their sacred island state. Steiner has said, "It's a humbling prospect when a nation has to begin talking about its own demise, not because of some inevitable disaster...but because of what we are doing on this planet."²

At World Environment Day in 2008, President Anote Tong admitted that Kiribati was already planning the unthinkable: moving its citizens to another land base. The massive departure of citizens from their homeland would cause severe strain on the human condition of the people of Kiribati. On the deepest level, the severance of the spiritual connection from their origin would be devastating. If they find a new piece of land to inhabit it will provide temporary security from the rising seas. However, their core identity will be stripped as they lose their connection with their homeland. This would sever the spiritual connection with the place of cosmological origin in a land that guarantees security while stripping the people of their core identity connected with their homeland.

"We are the face of the victims," President Tong has claimed. The indigenous leader insists there are few options left to him and his people except migration. "The alternative is that we die, we go extinct."³

At a public lecture at the Harvard University Center for the Environment, Tong claimed that climate change is “the most fundamental moral challenge for humans in this century. The future of real people is on the line...There is a real need for direct attention to the human dimension.”⁴ □

Notes

- 1 Rising Oceans May Force Evacuation of Kiribati, *Honolulu Advertiser*, A10, February 9, 2009.
- 2 Kiribati Likely Doomed by Climate Change: President, AFP, 4 June 2008.
- 3 Rising Oceans May Force Evacuation of Kiribati, *Honolulu Advertiser*, A10, February 9, 2009.
- 4 Alvin Powell, Island Nation President Plans for Extinction, *Harvard University Gazette*, 25 September 2008.

Joshua Cooper is the director of Oceania HR, a regional movement to protect and promote human rights in the Pacific. Cooper is also co-director of the Centre for Indigenous Leadership & Peacemaking and a board member of the Pacific Justice & Reconciliation Center. He serves as the director of the Hawai'i Institute for Human Rights. He also is a lecturer in Political Science at the University of Hawaii – West O'ahu and Leeward Community College focusing on nonviolence, ecological justice, international human rights law and indigenous peoples' struggles for self-determination. Cooper assists NGOs and advises Pacific Island states on human rights and climate change at the United Nations human rights treaty and charter bodies.



EAST &
SOUTHEAST ASIA

JAPAN

The two indigenous peoples of Japan live in 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.

Okinawans live in the Ryukyu Islands, which now make up Japan's present-day Okinawa prefecture. Japan forcibly annexed the Ryukyus 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. The US relies on Japan's continued denial of Okinawans' self-determination to maintain its military forces there. Currently, 75% of all US forces in Japan are located in Okinawa prefecture, a mere 0.6% of Japan's territory.

Japanese Government recognizes the Ainu as indigenous peoples of Japan

Today, the Ainu still continue to face oppression on both an institutional and individual level. The Japanese Government has a long history of denying the Ainu their identity as an indigenous people of Japan, and thus their right to self-determination. The Japanese Gov-



ernment has always insisted that the Ainu enjoy rights as Japanese citizens.

A first step away from this assimilationist policy was the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Tradition of the Ainu and the Ainu Culture, passed in 1997.

Finally, on June 6, 2008, the Japanese Diet (House of Representatives) passed a resolution calling for the recognition of the Ainu as an indigenous people of Japan.

A first indicator of the changing government position was the fact that on September 13, 2007, its representative at the General Assembly of the United Nations voted in support of the adoption of the UN Declaration on the Rights of Indigenous Peoples.

Following the adoption of the UNDRIP, the Ainu organizations, including the Ainu Association of Hokkaido, petitioned the Japanese Diet to implement the Declaration domestically. Ainu organizations have demanded the Japanese Government carry out the following:

1. Recognise the Ainu people as an indigenous people.
2. Establish a deliberative governmental body on Ainu rights and policies; and
3. Implement comprehensive measures concerning the Ainu people.

This resulted in the passing of the above mentioned resolution by the Japanese Diet, which called upon the government to take the two following measures promptly:

1. Drawing on the United Nations Declaration on the Rights of Indigenous Peoples, the government should recognize the Ainu people as indigenous to the northern part of the Japanese archipelago, and especially Hokkaido, and recognize that, as an indigenous people, they possess a unique language, religion and culture.
2. Taking the adoption of the Declaration and referring to its relevant provisions, the government should consider the opinions of a high-level panel of expert advisors and, based on these opinions, should further promote current Ainu policies and work toward establishing comprehensive measures.

The high-level panel of experts is supposed to come up with a final report in summer 2009.

At grassroots level, there were intensive discussions among the Ainu both before and after the Resolution. The main concerns of the Ainu clearly relate to their right to access social welfare, and their rights as indigenous peoples in general.

The news of the official recognition of the Ainu as an indigenous people was highlighted domestically and internationally and shared among various indigenous and non-indigenous networks with great delight. The fact that the G8 summit was going to be held a month later in Hokkaido, which is the Ainu's ancestral land, drew even more public attention to the Ainu and their recognition as an indigenous people.

Is the Japanese government backtracking?

On June 24, however, the situation changed somewhat. After the resolution had been adopted, a question was submitted to the Japanese Government by a Diet member regarding the legal status under international law of the recognition of the Ainu as an indigenous people of Japan. In its response, the Japanese Government surprisingly took the position that it was unable to come to a conclusion as to whether the Ainu could be recognized as an indigenous people of Japan in accordance with international law standards. In the response paper, the Japanese Government expressed the view that the current situation prevented a conclusion as to whether the term "indigenous peoples" used in the Diet resolution was synonymous with "indigenous peoples" under UNDRIP because the UNDRIP lacked a defining clause.

This implies that the statement of the Chief Cabinet Secretary on recognition of the Ainu as an indigenous people does not mean that they are recognized in accordance with international law, i.e. the UNDRIP. This has created considerable confusion among society as to the resolution, as well as the statement of the Chief Cabinet Secretary. Even though, domestically and internationally, there is a prevailing understanding that the Ainu are recognized as an indigenous people in full accordance with the UNDRIP, this discussion showed that the Ainu still face challenges in pursuing full recognition and respect of their rights as an indigenous people.

Indigenous Peoples' Summit in Ainu Mosir

An Ainu summit was held in Toyako, Sapporo, on Hokkaido, which the Ainu call their "Ainu Mosir" (Ainu home land), from 1 to 4 July. It was hosted by the Ainu Association of Hokkaido, the largest Ainu organization located only in Hokkaido. The summit was held with the purpose of discussing environmental issues such as climate change, and the rights of indigenous peoples. The aim was to submit a proposal to the G8 leaders, who were going to meet in Hokkaido later that same month.

There were more than 600 participants, including Ainu from all over Japan, indigenous representatives from Ryuku (Okinawa islands in the south of Japan) and 24 other indigenous delegates from the rest of the world. The summit was a remarkable event because it further fed a growing political and cultural awareness in Japan with regard to the Ainu and other indigenous issues in general.

The Okinawans

The presence of US military forces on their territory remains the central source of the Okinawans' most pressing problems. Daily violations of Okinawans' indigenous rights as well as their rights as Japanese citizens characterize their experience of US military presence.

The past year saw the continuation of the Okinawans' 12-year long struggle against a joint plan by the US and Japanese governments to construct several new facilities, including a massive offshore air base and naval pier in Okinawa's Henoko and Oura bays, in exchange for the closure of a number of ageing facilities. The struggle against the new military complex intensified when the Japanese and US governments ignored the results of a 1997 citizens' referendum rejecting the plan. The campaign has since grown into a multi-pronged struggle, involving litigation in Japan and the US, formal condemnation in international fora, and sustained non-violent civil disobedience at the proposed site of construction.

Complicating the issue is the US government's insistence that the new military complex be completed before the Marine Corps' Futenma



Air Station, located dangerously in the center of Okinawa's crowded Ginowan City, is closed. The fiery explosion of a large transport helicopter from Futenma crashing into a small university campus in Ginowan in 2004 highlighted the danger of keeping Futenma in operation. But the US has steadfastly refused to de-link the closure of Futenma from the completion of the new air and naval facilities at Henoko. Instead, US leaders appear

to be leveraging the physical and psychological hazards that Futenma poses to Ginowan residents in their pursuit of the new military complex. A more recent arrangement between the US and Japan to move 8,000 US Marines from Okinawa to the US colony of Guam (see article on Guam in this issue) has also become a part of the bribe: the US has stated that a troop reduction will happen only if Okinawans accept the construction of the new military complex.

It is important to note that the popular movement to stop the construction has so far successfully prevented any real progress in construction at Henoko. In fact, the campaign forced the US and Japanese governments back to the negotiating table in 2005. Instead of abandoning the project, however, in late 2006 the two governments announced a revised plan that added another runway and a deep-water naval pier alongside the air base.

A great deal of concern surrounds the anticipated ecological and social impact that several new military facilities would have on Okinawa's more rural northern region. Constructing the air and naval complex at Henoko Bay involves massive landfill in the pristine coastal waters. This area is widely acknowledged as being the primary habitat of the critically endangered Okinawa dugong (sea manatee). A

large section of neighboring Oura Bay will also be filled in to create a deep-water naval pier and to provide land for hangars, maintenance buildings and access to the pier. The sighting of a dugong in Oura Bay in March 2008 delayed the start of a year-long environmental impact survey by the Japanese Government. Legal experts have highlighted inconsistencies and a lack of detail in the government's social and environmental assessment practices surrounding the construction project so far.

Related to the offshore air base project is the military's plan to build several helipads in nearby Yanbaru Forest (also a habitat to indigenous and critically endangered species). Local residents are concerned not only at the influx of thousands of military personnel into the rural community but also at the dangers that the new base will pose once it is in operation. Marine biologists have warned that toxic run-off into the surrounding sea will irreparably harm the coral reef ecosystem. Because the US Government's plans to locate its controversial and crash-prone MV-22 Osprey aircraft at the new complex, residents fear the kinds of accidents and health problems that plague communities next to other bases on the island.

Opposition to the new military complex also stems from recognition that the construction signals US and Japanese plans to maintain a US military presence in Okinawa indefinitely. The targeting of ageing facilities for closure in exchange for new, state-of-the-art facilities highlights the two governments' overall aim of strengthening and modernizing US military capabilities on the islands. So while the struggle against the Henoko project has dominated grassroots politics for over a decade, concerns about unending US military presence stem more directly from the ongoing, day-to-day problems surrounding US military presence on the island. This past year saw continued sexual violence and other crimes committed by US servicemen. Thousands of Okinawans took to the streets calling for an end to US presence after a Marine kidnapped and molested a 14-year old girl in February 2008, followed only a week later by an assault on a Filipina.

Hopes that the 2006 plan might be revisited under the new Obama administration were dashed soon after the new president took office. US Department of Defense officials reiterated America's commitment to the bilateral agreement. President Obama sent Secretary of State Hil-

lary Clinton to Japan in February 2009 to sign an accord reaffirming the agreement. □

References

- Ainu Resource Centre, 2008:** Additional information in relation to the fifth Japanese report submitted under Article 40 paragraph 1(b) of the International Covenant on Civil and Political Rights, September 8, 2008
- Ann-Elise Lewallen, 2008:** Indigenous at last! Ainu Grassroots Organizing and the Indigenous Peoples Summit in Ainu Mosir. http://www.japanfocus.org/_ann_elise_lewallen_Indigenous_at_last_Ainu_Grassroots_Organizing_and_the_Indigenous_Peoples_Summit_in_Ainu_Mosir_/. Posted at Japan Focus on November 30, 2008
- Galdu. Resource Centre for the Rights of Indigenous Peoples:** Japan: Declaration of the 2008 Indigenous Peoples Summit in Ainu Mosir. <http://www.galdu.org/web/index.php?odas=2981&giella1=eng> Accessed on 2009-01-15
- Uzawa, Kanako 2008.** Ainu Today: Challenge in the Process of Self-Recognition. (What it takes to be recognized as Ainu). Draft report prepared for the ILO Project to Promote ILO Convention No.169
- International Labour Organization website:** Indigenous and Tribal Peoples. <http://www.ilo.org/public/english/indigenous/index.htm>

Kanako Uzawa holds a Masters in Indigenous Studies from the University of Tromsø. She was an intern with ILO in Geneva working on the project to Promote ILO Policy on Indigenous and Tribal People. As a member of the Rera Association, she is active in cultural preservation and furthering the indigenous rights of her people, the Ainu. She currently works as free-lance consultant on Ainu issues. Kelly Dietz is a professor in the Department of Politics at Ithaca College in New York, and a board member of the Shimin Gaikou Centre. Her research and activism is focused on militarization, especially within minority and indigenous territories.

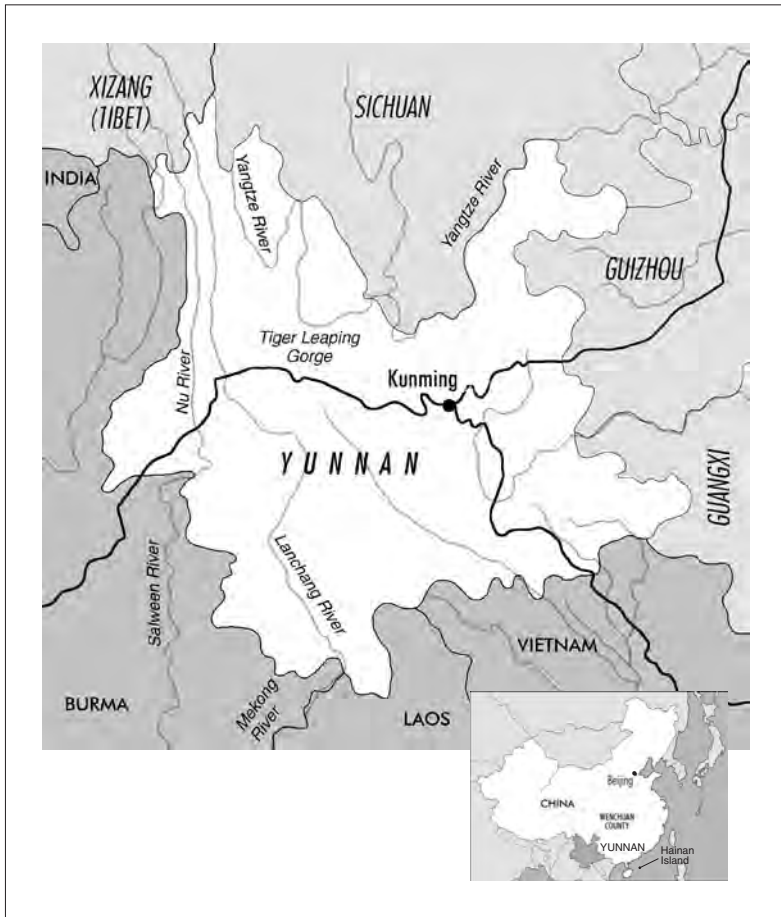
CHINA

According to the last census of 2000, there are 105,226,114 people belonging to ethnic minority groups, and they comprise 8.47% of the total population of China. The government officially recognizes 55 ethnic minorities. There are 20 ethnic minority groups in China with populations of less than 100,000 people and, together, they number about 420,000 people. The Chinese Government does not recognize the term "indigenous peoples". Although it has not been clearly established which of the ethnic minority groups can be considered as indigenous peoples, it is generally understood that they mainly comprise the ethnic minority groups living in the south-west of the country and a few groups in the north, east and on Hainan Island. Many of these belong to the category of small ethnic groups mentioned. They are mostly subsistence farmers belonging to the poorest segment of the country and they have illiteracy rates of over 50%.¹

There were two major events in China in 2008 that had a significant impact on the ethnic minority peoples, and which also grabbed worldwide attention: – the catastrophic Sichuan earthquake in May, and the Beijing Olympics in August.

The earthquake in south-west China

A huge tremor shook the south-west region of China on the morning of May 12. The earthquake, measuring 8.0 on the Richter scale, had its epicenter within Wenchuan County, in the Aba Tibetan-Qiang Autonomous Prefecture of Sichuan Province (in China it is also known as the "Wenchuan Earthquake"). The neighboring provinces of Yunnan and



Guizhou, and also the Tibetan region, suffered varying degrees of damage. However it was Sichuan, especially the areas inhabited by ethnic minority peoples, that suffered the most serious devastation.

Among the minority peoples, the ethnic Qiang people, descended from ancient Tibeto-Burman groups, suffered the most severe consequences, as they lived near the epicenter. Many of their traditional stone towers and village houses collapsed or were damaged beyond repair. A few of these Qiang communities were in the process of obtaining approval as UN World Cultural Heritage Sites. Untold num-

bers of ethnic Qiang people's artifacts, traditional crafts and other precious cultural items were destroyed. Among the dead and seriously injured from the earthquake were many Qiang elders and individuals who are the possessors and practitioners of traditional knowledge. The form the rebuilding efforts after the earthquake take will therefore have a direct consequence on the life or death of this ethnic minority group. It is important to monitor the efforts to rebuild and preserve, to see if enough protection and respect are being given to the core cultural values of the Qiang people and their traditional way of life. This will also test the wisdom of the Chinese Government – whether the authorities can find a balance between cultural preservation and the drive towards modernization or not. The government must handle it properly, so that the Qiang people will not suffer further from the rebuilding and renewal development plans, or be further marginalized towards cultural extinction.

China's General Office of the State Council announced the "Overall Rebuilding and Recovery Plan for the Wenchuan Earthquake" on September 23. It contained a total of 15 major sections, with clear directives and policies on financing, taxation, banking, land, industry, family subsidy and social assistance. There were clear guidelines on monitoring of capital investment, infrastructure projects and material goods. Unfortunately, policies regarding ethnic minority peoples and their development take a subordinate position in the overall planning. Only one reference is found, in Section 12, where it states,

Efforts must be made to recover and repair the cultural artifacts, literature and historic manuscripts, and those precious items and information that are of intangible cultural heritage. Efforts must be made to recover and protect those intangible cultural heritage having great historic values, and ethnic cultural characteristics. The planning must cultivate those with knowledge of ethnic culture and folk culture, for passing on to the next generation.²

For those working with ethnic minority peoples, we know that more needs to be done than simple recovery and preservation of cultural artifacts. In the process of rebuilding and recovery of ethnic cultures, the development of the peoples themselves and the living communities are more important and must be approached with care and sensi-

tivity. If the Qiang people's traditional culture, the way in which they develop and transfer their knowledge to the new generation, are not properly considered in the planning, then any recovered buildings, artefacts and tools will be nothing but "dead culture". Only through a revival of their language and a re-orientation of the education system can the Qiang people consolidate their common ethnic identity and strengthen local communities. Then the ethnic minority groups will be able to reach out from their cultural roots and link up to the drive towards modernization. Earthquake devastation is also an opportunity for rebuilding and development. This will be a bellwether indicator of the Chinese Government's understanding of the intent and practical application of the laws on ethnic minority peoples.

The impact of the Olympic Games

The world's focus in August was on the Summer Olympic Games in Beijing. During the run-up to the Olympics, there was a series of protest actions and riots in China. These fanned the simmering ethnic conflicts between the dominant Han Chinese and the Uighurs and the Tibetans – the two largest ethnic minority groups in China. It was international media attention on the Beijing Olympics that gave rise to the protests and riots. The Uighurs and the Tibetans used the opportunity of China being in the world's spotlight to voice their longstanding grievances. They took personal risks to bring attention to and challenge the Chinese Government's policies on ethnic minorities and the violations of the human rights of the ethnic minority peoples. Their actions were aimed at improving the protection of their rights and the overall conditions for ethnic minority peoples. However, due to press restrictions and limitations on news transmissions, the ethnic protests and rioting were downplayed in the national and local media. They were quickly swept under the rug, their voices heard little during the Beijing Olympics or afterwards.

The protests by the Uighurs and Tibetans had revealed the hidden crisis facing the Chinese Government. Nowadays, the numerous ethnic minority communities living throughout China receive information and hence new knowledge and ideas from a wide range of sources and through non-traditional media. The old style of central planning

and rigid control of the information flow on the part of the government, with an emphasis on and promotion of "China - the Great United Motherland" is increasingly being challenged. We shall soon find out how the Chinese Government intends to respond to this, and if the old ways of management and political control can continue to hold sway over the ethnic minority peoples of China.

A revealing incident during the Beijing Olympics was the opening ceremony, when a dance troupe of 56 child performers presented the cultural diversity and multi-ethnic nature of the "Chinese Family of Ethnic Minority Peoples". Dressed in a variety of colors and styles of traditional ethnic costumes, the happily smiling children represented each of the 56 recognized ethnic groups of China. It was an often used symbolism, showcasing to the world the different ethnic minority groups of China, and how they are celebrating their happiness and content at being "family members" of the Chinese nation.

However, Chinese Olympic officials afterwards admitted, on being questioned by foreign journalists, that these children were not ethnic minorities at all but Han Chinese children from Beijing City. This false representation led to a big furore, and was widely reported and criticized in the international press. There was also much discussion among the Chinese, once the news was reported in the local media. It became a public embarrassment for the government and the Beijing Olympics organizing committee. Once again, deceiving the public revealed the extent to which the Han Chinese are dominating and misrepresenting the culture and identity of ethnic minority peoples. It indicated the serious nature of the social marginalization and fabricated portrayal of ethnic minority groups in the Chinese state system. Some foreign media took the opportunity to criticize China for using the Olympic Games to obscure the tensions between the central government and the ethnic minority peoples.

Chinese government presents human rights report on ethnic minority peoples

Perhaps it was due to the publicity and worldwide attention surrounding the Beijing Olympics that the Chinese authorities presented a me-

dia report on the human rights situation of China's ethnic minority peoples. The event took place at the International Press Center of the Beijing Olympic Games on August 16. This was probably the first time the Chinese authorities had ever organized a media event to report on and discuss the human rights issues of the ethnic minority peoples. Presenting the report was the Vice-Chairman of the State Nationalities Affairs Commission, Wu Shimin. He asserted that China has now set up a systematic framework to protect the human rights of ethnic minority peoples. There are four main cornerstones to this scheme:³

1. The ethnic minority peoples are members of the Chinese nation. They enjoy equal rights in all aspects of politics, economic development, culture, education and social affairs.
2. Legal mechanisms have been put in place to protect the specific rights of ethnic minority peoples. These include ethnic minority language and writing systems, ethnic cultures, traditional customs, freedom of religious belief, training of cadres from ethnic minority groups etc.
3. Starting with economic and infrastructure projects, social and economic enterprises are being developed in ethnic minority regions. These will promote the development and progress of ethnic minority peoples' human rights.
4. Under the central leadership of the state, autonomous governance is being promoted in ethnic minority regions. Mechanisms and institutions are being set up to implement ethnic autonomy, and thus protect the human rights of ethnic minority peoples.

The above report by the Chinese authorities painted a rosy picture of the government putting much effort into doing the right thing for ethnic minority peoples, especially for their economic development. However, Vice-Chairman Wu Shimin had to face much questioning from both the Chinese and international press, along the lines of, "If the government has done so much, why is there still so much trouble and problematic issues in Tibet and Xinjiang?", "Will the rioting and violent attacks affect the relationship between the different ethnic groups?", and "In the protection and preservation of ethnic languages, what consideration is given to the educational institutions of ethnic

minority peoples?" Vice-Chairman Wu's replies focused mostly on the government's strategy of improving the situation through economic development. He emphasized that if economic development goes smoothly, it can help to resolve many problems among the ethnic minority groups. He also mentioned that the Western media had been exaggerating the recent riots and violence but that they seldom reported on the government's support for development projects and financial subsidies given to ethnic minority groups to alleviate their poverty. Wu took the example of the on-going 11th Five-Year Plan, in particular the sections dealing with ethnic minority affairs. He explained that the targets for the national plan were to boost the income level of ethnic minorities, increase their enrolment in public education, reduce infant mortality, help publish books and magazines in ethnic languages, etc. When the gap between cities and rural areas is reduced and the disparity between the rich and the poor has decreased, he said, the problems of the relationship between ethnic groups will be diminished, and the ethnic minority peoples will then have happy and prosperous lives.

“Creating unity” through education

Economic development may not be the “magic bullet” to solve all the problems of China's ethnic minorities, however. True, the Chinese Government did provide support and subsidies to those ethnic groups with small populations, and those living in remote areas, which led to an improvement in their economic situation. There have also been new public infrastructure projects in the ethnic minority regions that have enhanced road access, benefiting local business, promoting trade and stimulating the tourism industry. Compared to previous years, there are also better projects aimed at developing the institutions and enterprises of ethnic minority peoples. However, there are frequent reports of dissatisfaction and complaints at the local level.

Problems of agitation and of tense relationships between the state and ethnic minority peoples still persist, and there are also strained relationships between the different ethnic groups. In order to address this problem, the Chinese Government last year distributed an “Instruction Guide on Ethnic Unity Education in Schools”, which was

jointly published by the Ministry of Education and the State Nationalities Affairs Commission.⁴ Considered one of the “ten biggest new events of ethnic minority peoples”, this instruction guide - launched for trial testing in the schools - demands that special educational classes be established to teach “ethnic unity” in all primary and secondary schools. It is interesting to note that “ethnic unity” has become the responsibility of the school, to be taught as an educational concept, imposed top-down by the state. Since it obviously does not address the root causes of dissent and tensions between ethnic minority peoples and the majority Han, nor between ethnic minorities themselves, it is not likely to have any positive impact. □

Notes

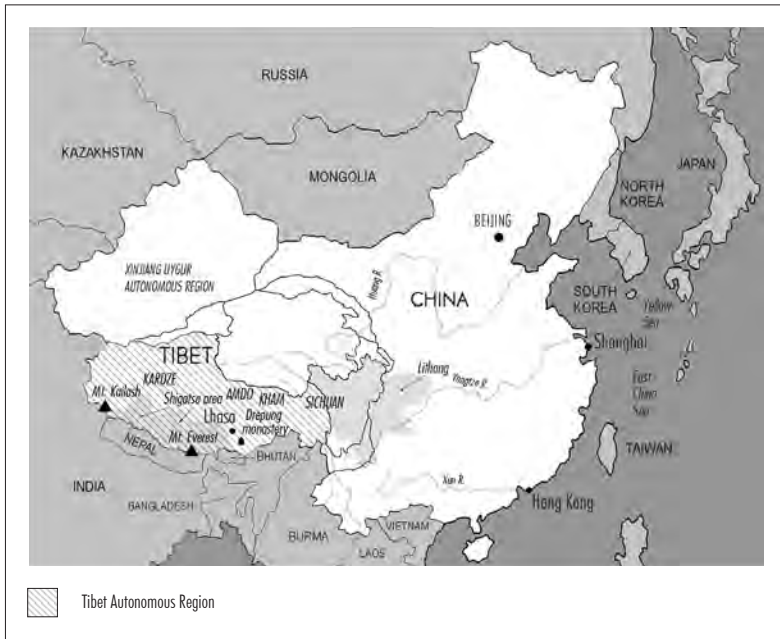
- 1 When the PRC was established in 1949, a national project on “Ethnic Minority Identification” was initiated. At that time, Yunnan reported to the national government that there were around 260 “ethnic groups or minority peoples” within the province. On a national level, a total of 400 groups were reported. The government simplified this complexity by merging and classifying various ethnic groups into the 55 ethnic groups that were subsequently officially recognized. Yunnan also has the highest number of “autonomous prefectures” and “autonomous counties” in the country.
- 2 “Overall Rebuilding and Recovery Plan for the Wenchuan Earthquake” (translated from Chinese), report retrieved from the Chinese Government’s news website at: http://big5.china.com.cn/policy/txt/2008-09/24/content_16524422.htm
- 3 “Press Conference on the Development of Human Rights for Ethnic Minority Peoples” (translated from Chinese), article retrieved from the Chinese Government’s news website at: http://www.china.com.cn/zhibo/2008-08/16/content_16223336.htm
 “Ten Biggest News Events of Ethnic Minority Peoples in 2008 as Reviewed by National People’s Congress Committees” (translated from Chinese), article retrieved from the Chinese Government’s news website at: http://www.gov.cn/gzdt/2008-12/24/content_1186283.htm

Huang Chi-ping is a lecturer in ethnology at the National Cheng-chi University in Taiwan, where she is currently also studying for a Ph.D. Her article was translated from Chinese by Jason Pan, an indigenous Ping-Pu Pazeh writer and journalist from Taiwan.

TIBET

Tibetans consider themselves an occupied nation rather than an indigenous people. Tibetans, however, share many characteristics with indigenous peoples. Tibet was brought under the control of the People's Republic of China in 1959 after the popular uprising in the capital Lhasa on 10 March 1959. This led to the flight of Tibet's spiritual and political leader, the 14th Dalai Lama and, with him, thousands of Tibetans into exile, primarily in India and Nepal. Hundreds of thousands of Tibetans are believed to have died as a result of the occupation, imprisonment and starvation. An estimated 120,000 now live in exile.

Currently Tibetans number an estimated six million, half of whom live in the Tibetan Autonomous Region (TAR) while half live in the Eastern provinces of Amdo and Kham, which have been forcibly incorporated into Chinese provinces. Tibetans are outnumbered by an increasing Chinese immigrant population in urban areas. Tibetans are considered a national minority, a status that in principle allow them a certain degree of autonomy and social and cultural rights. In reality, Tibetans are marginalized and oppressed in their own country and their right to freedom of expression and self-determination is denied. Any questioning of the Chinese occupation has serious repercussions and China's human rights record in Tibet continues to be a matter of international concern. Despite the unrelenting efforts of the Dalai Lama and his Government in Exile, China has not shown genuine interest in solving the Tibet issue or allowing real autonomy in Tibet.



Protests and repercussions

2008 was a turbulent year for the Tibetans, both inside and outside of Tibet. Tibetans and exiled Tibetan supporters had looked forward to the year in anticipation of the Olympic Games that were to take place in Beijing, despite protests and concerns over China's infamous record of human rights abuses and the occupation of Tibet. Many were hoping and planning for increased attention on Tibet, including the International Tibet Support Network (ITSN) with more than 150 member organisations, which planned and carried out a large international Olympics Campaign. Despite increased focus on Tibet, the protests that started in Lhasa around 10 March, Tibetan National Uprising Day, seemed to take everyone by surprise. For weeks on end, international media showed protesting Tibetans burning shops and cars and other unlikely images from a place that normally sees little in the way of public protest due to the strict political control and high police and

military presence. The protests quickly spread to other parts of Tibet, including Eastern Tibet.

Protests apparently began with a peaceful demonstration of monks from the Drepung monastery near Lhasa. Around 300 monks demanded that eight monks who had been imprisoned because they celebrated the bestowing of the US congressional gold medal on the Dalai Lama should be released from prison. This was soon to be followed by many other seemingly independent protests.

As the protests in Tibet abated, more than 125 demonstrations and other protest actions took off in more than 50 different locations, most of them peaceful. Hundreds of Tibetans disappeared or were arrested. Foreign media and human rights observers were denied access to Tibet, despite numerous requests from organisations, human rights advocates and politicians from around the world, including the UN High Commissioner for Human Rights and the Dalai Lama who, on 28 March, sent an appeal to the Chinese people to help dispel the misunderstanding between the two communities. He asked for an independent international body to be sent to investigate the unrest and the underlying causes, as well that the media and an international medical team should be allowed to visit the affected areas. Their presence would not only reassure the Tibetan people but also exercise a restraining influence on the Chinese authorities. This was denied. The sealing off of Tibet to the outside world is one reason why reliable information about what actually happened during and following the protests was and is hard to come by and verify.

Almost simultaneously with the protests in Tibet, demonstrations against the Olympic torch that was to be carried through a number of cities around the world caught the attention of an international public. In the US, in particular, Tibetan protesters clashed with Chinese sympathizers who had come out in their hundreds to show their solidarity with the official China. In China itself, foreign activists unfurled the Tibetan flag on the Great Wall and at other locations and further increased the attention on Tibet, which suddenly became a top story in the media and a matter of debate among experts, politicians and others. Exiled Tibetans in India engaged in a month-long march towards the Tibetan border, solidarity demonstrations with the victims in Tibet, and hunger strikes in an attempt to alert the world to the situation in

Tibet. Unfortunately international media and public attention did not continue and Tibet and the fate of the many Tibetans who risked their lives in the protests were almost forgotten by August when the Olympic Games took place.

Increase in human rights abuses

According to the Tibetan Centre for Human Rights and Democracy (TCHRD),¹ 2008 witnessed unprecedented violations of Tibetan human rights and freedoms, a ruthless crackdown and a high number of deaths from torture. The Centre received information on more than 120 known Tibetans who were killed and more than 1,200 wounded in the protests. There were reports of Tibetans having been beaten to death or shot simply for raising slogans in support for the Dalai Lama, while others committed suicide due to repression and torture.

More than 6,700 Tibetans were arrested or disappeared, and the whereabouts of approximately 1,000 people is still unknown. Tibetans accused of having cooperated with Tibetan organisations in exile were given long prison sentences while the producers of the film "Leaving Fear Behind", which was taken secretly in Tibet and consists of interviews with local Tibetans, were arrested and disappeared. The best known Tibetan writer, Woese, was taken into custody and interrogated during a visit to Lhasa in August, accused of having taken photos in the street. She was forced to delete all photos showing military officers or policemen. Seven Tibetans are known to have been sentenced to life imprisonment while 90 were sentenced to 10 years or more for their participation in the protests.

Control of monasteries was strengthened immediately after the beginning of the protests. In some areas of Eastern Tibet, it was declared that each monastery was to have a police station by the end of 2008. Journalists who visited Tibet after it had been almost completely sealed off to the outside world described a heavily controlled Lhasa as having become like a prison, and that Kardze looked like a war zone. It is also reported that in many areas numerous new police stations had been built to deter protesters. In November, the UN Committee against Tor-

ture reported a "climate of fear" in Tibet, with hundreds of arrests. Racism and discrimination also seem to have increased.

There was still no information on the 11th Panchen Lama and his family, who have been missing for 13 years, and there were numerous examples of increasing political control. By way of example, Tibetan Party members were given a two-month ultimatum to bring back their children, whom they had sent to school in India.

As a result of the protests tourism virtually came to a halt and did not reach the 2007 height. Non-Chinese foreign tourists were denied access during and after the unrest. Those who came in later in the year told of an extremely visible and increased military presence and monasteries that were closed to the public.

Reasons behind the protests

Analysts have various explanations for the sudden outburst of protest after 20 years of relative calm, which the International Campaign for Tibet (ICT) calls in its recent report "the most significant uprising against Chinese rule in almost 50 years" with "untold political significance for China and Tibet".²

While the official China tends to put the protests down to the influence of the Dalai Lama and his "international clique", Tibet observers argue that they are the result of long growing social and political tensions between Tibetans and Chinese because of the Chinese migration into and control of Tibet, aggravated in the Eastern Tibetan areas by the fact that Tibetans there believe that the whole of Tibet and not only TAR is occupied and suffers repression and a lack of self determination. The Dalai Lama and many others argue that this problem will not disappear, no matter how much China emphasizes that Tibetans are Chinese citizens. The rapid economic growth in Tibetan areas, which increases social and economic inequality, contributes to further marginalization of the majority of Tibetans. As a result of low education, lack of fluency in Chinese and overall discrimination, around 86% of young Tibetans face great difficulties in participating in the rapid economic growth in Tibetan cities. They are forced to compete with Chinese immigrants for jobs, including examinations in Chinese for gov-

ernment jobs. Chinese immigrants receive subsidies and other encouragements to migrate to Tibet and develop their businesses. Despite the fact that the large-scale immigration of Chinese into Tibet is a reason for tensions, the Chinese government continues to encourage Chinese to settle in Tibet in an attempt to further assimilate the region. For example, China plans to expand Lhasa by 60% in the coming years. The increase in population will almost certainly come from China. ICT's report "Tracking the Steel Dragon" shows the alarming impact of the recently constructed railway on Tibet's land and people.³

The growing political control, especially of the monasteries, has undoubtedly also contributed to the frustration of Tibetans and resentment against the Chinese, as has the continuing massive resettlement of nomads, which deprives them of their traditional lifestyles and, in many cases, of their only means of subsistence. Sichuan Province is, for example, expected to spend more than 700 million USD over the next four years to resettle 470,000 nomads in the region in permanent brick houses. The nomads have no say in this development. The Chinese authorities launched a two-month "Patriotic Education Campaign" in April directed at all parts of Tibetan society. A large number of Tibetans were, according to TCHRD, arrested because they opposed the campaign and refused to denounce the Dalai Lama.

Mining and infrastructure development continued at a high pace and without popular control or benefit, partly with the involvement of non-Chinese foreign companies. The official Chinese news agency Xinhua announced that the Chinese government plans to invest 3.1 billion USD in a number of infrastructure projects up to 2013, including the extension of the railway. New potential for the extraction of Tibet's large mineral reserves was identified and several projects initiated.

Political developments

The year also saw two meetings between representatives of the Tibetan Government in Exile and the Chinese Government. The meetings did nothing to instil hope as they, like in the past, gave no reason to believe in a solution to the continuously aggravated situation in Tibet. Some observers argue that the Chinese government does not want a genuine

dialogue but rather to draw out the process until the Dalai Lama dies. Even the Dalai Lama himself seems to have lost hope. In November he called for a meeting of exiled Tibetans to discuss his government's future strategy and his Middle Way Approach which, though widely acclaimed, has failed.

In December, the Dalai Lama was invited to speak to the European Parliament. In his speech, given on 4 December, he said that his maxim was to hope for the best and to prepare for the worst. The widespread attention on Tibet in the spring has not had any repercussions on China and there is little attention given to the harsh treatment of protesters, nor the increased political control. In March 2009, Tibetans around the world will commemorate the 50th anniversary of the uprising in Lhasa while the Chinese government has announced the date as a public holiday to celebrate the "liberation of Tibet". It remains to be seen whether this will again bring international attention to the plight of Tibetans and serious pressure on China to find a solution. □

Notes

- 1 **Tibetan Centre for Human Rights and Democracy 2008:** Annual Report 2008. Retrieved from the TCHRD website at: http://www.tchrd.org/publications/annual_reports/2008/ar_2008.pdf
- 2 **International Campaign for Tibet 2008:** Tibet at a Turning Point. Report retrieved from the ICT website at: http://72.32.136.41/files/documents/Tibet_at_a_Turning_Point.pdf
- 3 **International Campaign for Tibet 2008:** Tracking the Steel Dragon. How China's economic policies and the railway are transforming Tibet. Report retrieved from the ICT website at: <http://72.32.136.41/files/documents/TrackingTheSteelDragon.pdf>

Charlotte Mathiassen, social anthropologist and development advisor, has been involved with Tibet for more than 20 years. She is the chairwoman of the Association for a Free Tibet, Denmark, and Nordic representative in the International Tibet Support Network (ITSN).

TAIWAN

The officially recognized indigenous population of Taiwan numbers 484,174 people (2007), or 2.1% of the total population. Thirteen indigenous peoples are officially recognized. In addition, there are at least nine Ping-Pu (“plains or lowland”) indigenous peoples who are denied official recognition.¹ Most of Taiwan’s indigenous peoples live in the central mountains, on the east coast and in the south.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and very little political or economic influence. A number of national laws protect their rights, including the Constitutional Amendments (2005) on indigenous representation in the Legislative Assembly, protection of language and culture, 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.

Political developments

For Taiwan’s indigenous peoples, the most significant event of 2008 occurred in the political arena. The Council of Indigenous Peoples (CIP), the top government ministry responsible for indigenous affairs,

underwent a whole-scale change. The shift in policies, new directions and re-arrangement of priority tasks at the CIP was to have far-reaching effects and consequences for the indigenous communities.

The change was due to the result of Taiwan's national election in March. The KMT (Kuomintang or Nationalist Chinese) party's presidential candidate Ma Ying-Jeou defeated the DPP (Democratic Progressive Party) candidate Frank Hsieh. Mr. Ma thus became the president of Taiwan, taking over from Mr. Chen Shui-bian (of the DPP). In Taiwan's parliamentary election, power also went to the KMT as they won a clear majority in the legislature (hence replacing the DPP, which had been the party in power for the past eight years). With the governing mandate, the KMT ruling party began to set up a new cabinet, under which Ms Chang Jen-Hsiang was appointed minister for the CIP. Ms Chang (an indigenous person of the Amis people) had been a long-time indigenous legislator for the KMT. , Mr. Watan Kiso (Chinese name Wang Jing-Fa) of the Tayal people was chosen as vice-minister of the CIP. These and other new appointments, along with changes in staff, were to bring about a change of guard within the government body in charge of all indigenous affairs.

Under the previous eight-year administration, the DPP had initiated several actions within the "New Partnership Agreement" between the national government and indigenous peoples, and had overseen the passing of the "Indigenous Peoples Basic Law" in 2004. For the most part, the DPP government had significantly improved the situation with respect to indigenous peoples' rights, such as the right to land and natural resources, and rights to education and cultural development, among others.

Now, with a return to power of the KMT party, there are fresh appointments and new policy directions at the CIP. Taiwanese people and indigenous communities will have to follow the implementation of the CIP's indigenous policies. It remains to be seen if the new CIP administration will build upon the past foundations and maintain the important indigenous rights protection. Observers will examine decisions on a number of key policies closely, such as "Indigenous Autonomy", and "Restoring Indigenous Lands and Traditional Territories".

A breakthrough occurred in the government civil service this past year. An Amis scholar, Chen Jin-Li was appointed vice-chairman of the Control Yuan. The Control Yuan is one of the five government admin-



istration bodies in Taiwan. It is a watchdog responsible for investigating corruption and instigating judicial probes in both public and private sectors. Mr. Chen has served two terms (four years each) as a Control Yuan member. He was the first Taiwanese indigenous person to achieve a Ph.D. degree, obtaining a Doctorate in Agriculture from Kyushu University in Japan. Chen has thus been promoted to the highest position in the civil service so far for Tai-

wan's indigenous peoples.

All the governing administration bodies, including the executive branches, the legislature, the civil examination agency, and the Control Yuan must by law appoint indigenous persons to fill a designated proportion of their committee positions and members. However, there has been a lack of indigenous candidates to the judicial body, and there is no indigenous person among the high court judges yet. This indicates the severe deficiency of indigenous representation in the judicial system, and there remains a gaping hole for the better protection of indigenous peoples' human rights.

Ping Pu Aborigine Peoples push for official recognition

In 2008, the Ping Pu (plains or lowland) Aborigine Peoples of Taiwan stepped up their efforts to get their "indigenous people" status offi-

cially recognized by the government. The Ping Pu Aborigine Peoples are nine indigenous peoples living in the lowland plains and coastal regions of Taiwan. However, unlike the 14 highland groups that have official recognition, their status as indigenous has so far been denied. They are not even recognized as an ethnic group by the Taiwanese government.

It was the Siraya people, one of the Ping Pu Aborigine Peoples inhabiting the lowland plains of southern Taiwan, who made an official request to the CIP in 2008 to restore their status as an "indigenous people". Even though the Ping Pu Aborigine Peoples have generally been under much greater pressure to assimilate than the highland groups, many Siraya communities still follow their cultural customs and traditional practices, such as ancestral worship and other ritual traditions. Most of the Siraya people live in Tainan County of southern Taiwan. The local Tainan County Government had already established its own "Ping Pu Siraya Indigenous Affair Council" in 2006. This was an important step towards recognising the Ping Pu Aborigine Peoples in general.

According to the Siraya people and Tainan County Government, several government edicts and documents issued in the 1940s and 1950s show that the Taiwanese government (under the KMT at that time) did not make proper efforts to register the Ping Pu Aborigine communities. The government at the time also did not follow the edicts correctly to register Ping Pu Aborigine Peoples as "lowland indigenous people", neither did the Siraya people and residents in Tainan County receive proper notice of the registration drive in the 1940s and 1950s. Researchers now conclude that the Siraya people, and most of the Ping Pu Aborigine Peoples, did not willingly give up their original "lowland indigenous people" status but that they instead lost it through administrative neglect.

The Siraya people and Tainan County Government, backed up by key evidence, are now challenging the CIP, demanding the restoration of the Siraya's indigenous status. They are joined by other Ping Pu groups and indigenous rights activists in a concerted campaign. The response of the CIP to the Siraya's request will be important for all Ping Pu Aborigine Peoples. Two indigenous groups, the Thao people and the Kavalan people, have received indigenous status in recent

years, despite the fact that they live in the plains and were thus considered one of the Ping Pu Aborigine Peoples.

Protests over weak implementation of Indigenous Peoples Basic Law

The CIP's failure to assert the Indigenous Peoples Basic Law in relation to the conflicting Wildlife Protection Law has led to protest on the part of the Puyuma people in eastern Taiwan. After concluding a major hunting festival, the Puyuma of Chi-Pen village traveled to Taipei City in a rally against the CIP in December 2008. They were protesting at police actions detaining Puyuma hunters, in a case from 2007. At that time, the annual Puyuma hunting festival was being staged. A number of local indigenous men wanted to hunt game in their traditional hunting territory. They were stopped by the forest-patrol police, and prevented from hunting. A protest headed by Chi-Pen village was joined by other Puyuma people and many other indigenous communities, such as the Tayal, Bunun and Paiwan. Drawing on the "Indigenous Peoples Basic Law", they sought permission from the CIP to hunt in 2008. However, the CIP responded by following the national "Wildlife Protection Law", and told the Puyuma people to apply for a hunting permit from the local county government. The Puyuma people saw this decision as weakness on the part of the CIP, and in contravention of the Indigenous Peoples Basic Law, with the CIP leaving the control of forests and natural resources to other government agencies. This case exposed a contradiction in existing laws, the inherent grey areas and overlapping of jurisdictions in the Indigenous Peoples Basic Law, many of the provisions of which still need to be defined more clearly. This set of laws did not make much progress after being passed in 2005, and has led among other things, to problems in the hunting and gathering practices of indigenous peoples. Clarification of the provisions and jurisdictions of the Indigenous Peoples Basic Law is one of the most important tasks for the CIP in the coming years.

Another prominent protest was over the economic and tourist development in the Ali Shan mountain area, which is famous for its natural scenery and is a major tourist destination. The indigenous Tsou

people, who live near the Ali Shan mountains, organized protest rallies in 2008 against Taiwan's national Forest Bureau. The Forest Bureau had granted the Hungtu Construction Co. permission to develop the Ali Shan forest area with an amusement park, hotels and tourist recreational projects, including the right to operate the existing Ali Shan mountain railroad system. For the Tsou people of Ali Shan area, the development projects are within their traditional territory. Tsou activists and leaders said that, according to the Indigenous Peoples Basic Law, the government had to consult with and obtain the agreement of local indigenous communities regarding the use of land and natural resources on their traditional territories. For the Tsou people, the Forest Bureau did not take the provisions of the law into account, and so they launched protest actions to publicize the case and to stop the exploitation of their land.

The Forest Bureau had given the right to develop and operate the business to the said private corporation for a period of 30 years. Negotiations between the government's Forest Bureau and the company (Hungtu Construction Co.) regarding the terms of the development project had been concluded and an agreement reached in 2008. The conflict arising from this case once again revealed the weaknesses in interpreting and implementing the Indigenous Peoples Basic Law, the fact that various government agencies have overlapping jurisdictions and that they generally do not follow the provisions of this law.

Indigenous peoples' access to media

Another area of concern is indigenous peoples' access to media and news broadcasting. The Taiwan Indigenous Television (TITV) network has been up and running with public funding since 2005, operating under various arrangements with, and technical support from, private television companies. In 2007, TITV was incorporated into the Taiwan Broadcasting System (TBS), a state-owned and operated public television corporation, where a unit of indigenous news programming (almost entirely run by indigenous journalists and indigenous executives) had already been broadcasting since 2001. The benefit was a strengthening of TITV with the greater resources of TBS (which has a mandate

to operate four public television channels), while combining the two separate indigenous media units into a single and larger working team.

In the aftermath of the national election, the change of political party in power and a new ruling government also resulted in a shift in policies on state-run television. In the latter months of 2008, a number of decisions were made by the new government, in concert with legislators and the CIP, on how the TBS was to be run and operated – with considerations on budget, review process, new board of management and decisions on news and programming. It was the new government's "hands-on approach" – taking a more active role, leading and making decisions for Taiwan's public television network, which now includes TITV. Due to difference of opinion among policy-makers, in December the legislature voted to freeze the TBS budget, pending further review. One of the requirements was that new TITV programming projects had to be subject to assessment by the management board, whose approval is needed for the allocation of the budget.

In response to these policy changes by the government, the TITV indigenous journalists responded with protest rallies and petitions to the CIP, demanding that indigenous media rights be respected. They perceived the new form of TBS management as an infringement on indigenous peoples' rights to media access and the right to independent programming and news reporting. This movement for indigenous media rights is still on-going. It is part of the wider struggle by media workers and journalists within the public television system to assert freedom of the press and independent news reporting.

Move to promote indigenous knowledge

A major project on indigenous knowledge was initiated by the CIP and indigenous organizations in 2008. With funding and support from the CIP, the Association of Indigenous Professors is responsible for setting up this "Indigenous Knowledge Framework". This program will be run by indigenous researchers and scholars with the aim of studying and preserving indigenous traditional knowledge, reversing the current situation of neglect, marginalization and the prejudices against it

within Taiwanese society. An “indigenous college” has already been founded at National Donghua University in Hualien County. More funding and human resources are needed for a better organization, classification, interpretation and study of the traditional systems of indigenous knowledge. Some universities and colleges in Taiwan are now beginning to offer courses on indigenous peoples and related issues. The civil service entrance examinations now also include tests on indigenous laws, indigenous art, indigenous literature, indigenous history and geography, among other things. □

Note

- 1 The officially recognized groups are: the Amis (aka Pangcah), Tayal, Paiwan, Bunun, Pinuyumayan (aka Puyuma or Punuyumayan), Tsou, Rukai, Saisiyat, Tao (aka Yami), Thao, Kavalan, Truku and, since January 2007, Sakizaya. The nine non-recognized Ping Pu groups are: Ketagalan, Taokas, Pazeh, Kahabu, Papora, Babuza, Hoanya, Siraya and Makatao.

Professor Pasuya Poiconu is from the indigenous Tsou people of central Taiwan. He teaches at the Taiwan National Chung Cheng University, and his research focuses on indigenous literature and mythology. He has published a number of books on these subjects. He was previously the director of the Taiwan National Museum of Prehistory and is currently also serving as a committee member of the government agency responsible for civil service examinations.

PHILIPPINES

Of the country's current projected population of 90.4 million,¹ indigenous peoples are estimated to comprise some 10%, or around 9 million. There has been no accurate comprehensive count of Philippine indigenous peoples since 1916. They generally live in isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities. They are usually the people with the least education and the smallest income. An abundance of valuable natural resources in their areas makes them vulnerable to development aggression.

The different indigenous groups in the northern mountains of Luzon (Cordillera) are collectively called Igorot while the different groups in the southern island of Mindanao are collectively called Lumad. There are smaller groups collectively called Mangyan in the central islands as well as even smaller, more scattered groups in the central islands and Luzon.² They generally cannot be differentiated physically from the majority population, except for a few bands of dark-skinned people collectively called Negritos.

The year 2007 commemorated the tenth 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.

In the first half of 2008, indigenous peoples in the Philippines were as they had always been, left on the fringes of society in terms of national prominence, grappling with their interminable problems of marginalization, lack of meaningful representation and development aggression. In the second half of the year, their voices became more

vocal nationally, even though this was mostly from the point of view of the Philippine government.

The Mindanao conflict: indigenous peoples vis-à-vis the Bangsamoro

Just after the midpoint of the year had passed, news came out that the government was ready to sign a Memorandum of Agreement on the Ancestral Domain (MOA-AD) with the Moro Islamic Liberation Front (MILF), which had been waging a war of independence for decades. The MOA was supposed to be a result of years of negotiation between the peace panel composed of representatives of the MILF and the Government of the Republic of the Philippines (GRP). It would have been signed on 5 August 2008 in Kuala Lumpur, Malaysia.³

The MOA gives recognition to specified territories as being part of the homeland of the Bangsamoro, described as “... those who are natives or original inhabitants of Mindanao and its adjacent islands including Palawan and the Sulu archipelago [northwest and southwest of Mindanao Island] at the time of conquest or colonization and their descendants whether mixed or of full native blood. Spouses and their descendants are classified as Bangsamoro.” The Bangsamoro homeland historically consisted of the territory under the control or influence of the Moro Sultanates but the MOA stated that the Bangsamoro ancestral domain would only include the present territory of the Autonomous Region of Muslim Mindanao (ARMM) as its core and additional barangays (smallest administrative unit of the government, which is village level) in Region IX, XII (both in north-central Mindanao) and Palawan. There would be more than 700 barangays outside the ARMM to be restored to the ancestral domain if approved in a plebiscite to be held in the affected barangays within 12 months of signing of the MOA. More towns were to be included, again subject to plebiscite after 25 years.

And this is where the issue of the indigenous peoples came into the limelight as there are several indigenous peoples included in the proposed Bangsamoro homeland, which, according to the MOA is to be called the Bangsamoro Juridical Entity (BJE).⁴ The MOA says that, “The



freedom of choice of the indigenous people shall be respected”, but this is met with suspicion by the indigenous peoples. For one, they look back sadly at the plight of the Teduray who have been included in the ARMM. As one Teduray leader said, “If you want to find out what

will happen to IPs under the BJE, just look at us". The recognition of indigenous peoples' ancestral domain through the issuing of a Certificate of Ancestral Domain Title (CADT) as provided for by the Indigenous Peoples' Rights Act (IPRA) is not happening under the ARMM, and it has been documented that the Teduray are not able to practice their traditional culture under the confines of the Islamic regime.⁵

The other critical aspect is that indigenous peoples are not formally represented on the GRP-MILF peace panel. Why are indigenous peoples' territories being decided upon without consultation with them? There is an indigenous representative on the panel's Technical Working Group but the MILF has not been known to be receptive to indigenous peoples' concerns, which have therefore not been discussed in the peace negotiations. Ironically, the indigenous peoples are told that they need not be included in any peace negotiations because they are not, after all, waging a sustained armed rebellion that would force the government to be in a negotiating position.

Beyond the indigenous peoples' protestations, the MOA-AD caused historical tensions to resurface between the Moro and Christians. Virulent anti-Moro sentiments proliferated in the media, many of them spread by Christian politicians in the areas identified for addition to the BJE. Some sought a Temporary Restraining Order from the Supreme Court to prevent the Philippine government from signing the MOA. But just around the time that the Supreme Court approved the Temporary Restraining Order, the President announced that the government was not going to sign the MOA as a response to the widespread opposition. To top it all, the government decided in early September to dissolve the peace panel.

At the end of August, 230 indigenous representatives affected by the proposed inclusion into the BJE met in Cagayan de Oro City in north-central Mindanao and came up with what is now called the Cagayan de Oro Declaration.⁶ The Declaration put forth important proposals that center around the indigenous peoples' rights to self-determination and cultural integrity, including: (1) That the indigenous peoples in the ARMM and the proposed BJE should not be automatically identified as or lumped together with the Bangsamoro people; (2) That the indigenous peoples in the ARMM and the proposed BJE should be able to freely practice their culture; and (3) That the affected

indigenous peoples should be included in any peace negotiations affecting their territories. These recommendations reflect the indigenous peoples' recommendations based on their main objections to the MOA-AD.

The MOA-AD is in fact an additional affirmation that the Philippine government is capable of recognizing the concept of the ancestral domain. This is not surprising, since the definition used in the MOA was lifted from the Indigenous Peoples' Rights Act (IPRA) enacted 11 years earlier, in 1997. But the indigenous peoples asked why it was so easy for the government to agree to the recognition of a large tract of the Philippine geographical space as the ancestral domain of the Bangsamoro but so difficult for indigenous peoples to have their relatively smaller areas granted a Certificate of Ancestral Domain Title (CADT). The indigenous peoples do recognize the Bangsamoro's right to their homeland but point out that their own rights should be recognized as well.

Philippine laws and the continuing struggle to affirm indigenous lifeways

In October, which is also identified in the Philippines as Indigenous Peoples' Month, a lecture on "The Regulation of Our Identities: Indigenous Peoples and the Enigma of Legal Representation" was presented by Attorney Marvic Leonen.⁷ The title reflects what is happening to indigenous peoples in the Philippines as they struggle in the realm of asserting their rights within a state structure, which means regulated by the Constitution, national laws, department policies, local government ordinances and the like – unevenly applied and many of them conflicting. The space given in this article to the MOA-AD issue is indicative of the amount of attention it received from indigenous peoples and support groups in 2008. It is also reflective of the dilemma of identity regulation by law; in this case Bangsamoro versus being a non-Moro indigenous people residing within the present ARMM and the would-be BJE.

The government seemingly is also in search of how to deal with the indigenous peoples beyond their non-recognition and non-inclusion

in the Moro-Christian conflict. The National Commission on Indigenous Peoples (NCIP), the government body mandated by the IPRA to look after indigenous peoples' concerns from the government's perspective, was originally under the Office of the President. In 2004, it was moved to the Department of Agrarian Reform (DAR), along with the Urban Poor Commission, because the government wanted to rationalize all their land distribution programs. For four years, the NCIP had a frequently uncomfortable relationship with the DAR, which had oversight functions over it, the discomfort arising from vastly differing concepts of what constituted land ownership for the indigenous peoples and non-indigenous peasant farmers. Then, on May 23 2008, through Executive Order (EO) 726, the NCIP was transferred to the Department of the Environment and Natural Resources (DENR), a move eyed with suspicion by those who had experienced or observed the government's, and DENR's, penchant for development projects such as mining and bio-fuel plantations, which are potentially destructive to the environment and culture of indigenous peoples. But before the indigenous peoples and support groups could mount an organized response to this move, the President had issued EO 746 dated August 1 transferring the NCIP to the Office of the President due to recent local and international socio-political developments, which require the attention of the highest level of national government authority. And this was around the time of the start of the MOA-AD. The latest move was supposed to be only for six months, or until January 2009, and there has been no indication as to where the NCIP will be placed after this.

The continuing fight over control of resources in ancestral domains

Tighter Presidential control over territories that contain mineral resources, often found in indigenous peoples' ancestral domains, is being sought. In 2008, for instance, the NCIP issued 35% more Certificates of Precondition for Free and Prior Informed Consent (CP-FPIC)⁸ for development projects (62 in number) than Certificates of Ancestral Domain Title (38).⁹

Previously unresolved disputes over mineral resources still fester, amidst non-stop submissions of mining applications to the Department of Environment and Natural Resources. For example, the Subanen of Siocon Municipality, Zamboanga del Norte Province in north-western Mindanao are still protesting against the exploitation of gold on their land by the Canadian mining company, TVI Pacific. The company allegedly used the FPIC granted by a “fake” tribal leaders’ council to allow the entry of TVI. The innovation in 2008 is that the NCIP office in their region (Region 9) agreed to recognize the *bogolal*, anointed members of the Subanon’s traditional council of leaders, as the legitimate representatives of their tribe.¹⁰ The NCIP Central Office reportedly ordered the validation of the names of indigenous leaders in its master list in August because of the alleged proliferation of fake leaders while genuine leaders and elders are “forsaken” or “cast aside”.

There are successes as well in the northern part of the Philippines in relation to the indigenous peoples’ assertion of control over their resources vis-à-vis mining. One of them is in Itogon Municipality, Benguet Province, where the Australian company Anvil Mining will be suspending, albeit temporarily, all its exploration activities due primarily to the global financial crisis.¹¹

The case of James Balao

Beyond the Mindanao conflict, there are continuing human rights violations against indigenous peoples. One of them was the disappearance on September 17 of James Balao, an indigenous activist of Kankana’ey and Ibaloi descent working for the Cordillera Peoples Alliance (CPA) in the pursuit of indigenous peoples’ land and human rights. He was allegedly taken by unidentified elements of the Armed Forces of the Philippines in collaboration with local Philippine National Police (PNP) units, but this allegation has been denied. By the close of the year 2008 he had not yet surfaced.¹² The search for James Balao is particularly hard because the Armed Forces of the Philippines and the Philippine National Police continue to release statements in an attempt to divert the state’s accountability with regard to James’ disap-

pearance. They have questioned James' identity and have even made his clan and his colleagues in the CPA suspects in the enforced disappearance.

The ongoing assertion of indigenous peoples' rights and identity

Due to the MOA-AD issue, the specter of escalating war in Mindanao loomed large again, and there are fears of a return to the scale of armed conflicts seen some 30 years ago. Toward the end of 2008, there were an increasing number of reports of indigenous persons in evacuation centers needing relief assistance.¹³ Advocacy across sectors for peace in Mindanao has therefore likewise increased. One of them is the "Sowing Peace for Mindanao Peace Caravan, Peace March & Eidl Fitr Interfaith Solidarity Celebration" held on October 2, the day after Eidl Fitr¹⁴ and World Nonviolence Day, which was sponsored by a range of organizations coming from different parts of the ideological and political spectrum.

In late November, a conference entitled "Mindanao-Palawan Indigenous Peoples' Summit for Peace" was held to discuss the situation and options for indigenous peoples' rights on territories claimed by the Moro either as part of the ARMM or of the BJE. Earlier, the President of the Philippines, Gloria Macapagal-Arroyo had requested that the Bishops-Ulama Conference (BUC) be involved in the Mindanao peace process. The BUC was established in 1996 as an interfaith forum composed of Catholic bishops and Muslim ulama (religious leaders) to promote peace and development in Mindanao. It receives funding from the Office of the Presidential Adviser on the Peace Process.¹⁵ The government also called upon the Mindanao Indigenous Peoples Council for Peace and Development (MIPCPD), created in 2003 with assistance from the Armed Forces of the Philippines. Thus both the BUC and the MIPCDP are met with suspicion by some indigenous and support groups due to their close connections with the government, especially the military. But, as a way of forging the broadest possible unity among indigenous peoples, the organizers (BUC, NCIP, NGOs) asked partici-

pants to identify themselves according to their indigenous group rather than organization. □

Notes

- 1 Figure from <http://www.census.gov.ph/> accessed 13 February 2008.
- 2 Data in this section is taken from **Sabino Padilla, Jr. 2000: *Katutubong Mamamayan***. Manila/Copenhagen: International Work Group for Indigenous Affairs (IW-GIA).
- 3 References on this issue include: Orlando B. Quevedo, "What is the MOA-AD in the MILF-GRP peace process?" *MindaNews*, 6 August 2008; Grace Cantal-Albasin and Ma. Cecilia Rodriguez, "Tribes want voice in Mindanao peace talks", *Philippine Daily Inquirer*, 27 August 2008; and International Crisis Group, "The collapse of peace in Mindanao", 23 October 2008, <http://www.crisisgroup.org>.
- 4 It is the non-Muslim native peoples who are generally considered the indigenous peoples of Mindanao. They are commonly called Lumad and assert their separate identity vis-à-vis the Moro.
- 5 These sentiments were expressed during the conference "Forging Partnerships for Peace" on September 25-27 organized by the Assisi Development Foundation and some of its partners, including the author's organization. The conference is featured in "What Lumad women want", an article which appeared in the website of the Office for the Presidential Adviser on the Peace Process (OPAPP) on September 26. The article features an interview with a female Teduray participant. http://opapp.gov.ph/index.php?Itemid=118&id=180&option=com_content&task=view
- 6 "Mindanao-Palawan Consultation-Meeting on the indigenous peoples' ancestral domain and the Bangsamoro Juridical Entity", Manresa Retreat/Conference Center, Carmen, Cagayan de Oro City, 24-27 August 2008.
- 7 As part of the Centennial Lecture Series of the University of the Philippines.
- 8 The NCIP is mandated by law to verify and issue certificates that confirm that the communities have given their free, prior and informed consent to any development or resource extraction project etc. on their land. These certificates are called "Certificates of Precondition".
- 9 The total is 175 CP-FPICs and 96 CADTs ever granted by the NCIP, according to the report of its Executive Director prepared in February 2009. Copy of MSOffice PowerPoint presentation courtesy of the NCIP Central Office.
- 10 See: Press release by Ma. Zherwinah B. Mosqueda, Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth, November 17; and "NCIP orders cleansing of list of tribal leaders in Region 10", *MindaNews*, 21 October 2008. The Subanen had submitted a formal complaint to the United Nations Committee on the Elimination of All Forms of Racial Discrimination in 2007.
- 11 As reported in a press release by the Cordillera Peoples Alliance on November 27.

- 12 An "International solidarity mission to surface James Balao" was held on October 22-24 to pressure the local and national authorities, to no avail. Other references: Cordillera Peoples Alliance web-site; [www.cpaphils.org/campaigns/CPA Update Report_December2208.pdf](http://www.cpaphils.org/campaigns/CPA_Update_Report_December2208.pdf)
- 13 Among them: at least 220 families, most of them Subanen, evacuated their residences in Lintangan, Zamboanga City in September, when residents sighted armed men reported to be MILF and feared a repeat of a 1974 massacre; repeated evacuation of residents in September and October (IPs, Moro and Christians) in Kalamansig Municipality, Sultan Kudarat Province in south central Mindanao involving at least 1,000 children reported by Rhodius Noguera via email on October 3; military operations in Monkayo Municipality, Compostela Valley in south-eastern Mindanao, reported through a statement released to the press by Kerlan Fanagel, Secretary General of the PASAKA (Confederation of Lumad Organizations in Southern Mindanao) on October 24.
- 14 Eidl Fitr is a Muslim holiday that marks the end of Ramadan, the Islamic month of fasting.
- 15 See: Arroyo taps Bishop-Ulama Conference to lead initiative for peace in Mindanao
 MANILA, August 18, 2008, <http://www.cbcnews.com/?q=node/4281>; and "PGMA to address Bishops-Ulama General Assembly in Jolo tomorrow", 19 November 2008, <http://balita.ph/2008/11/19/pgma-to-address-bishops-ulama-general-assembly-in-jolo-tomorrow/>; Mai Guevara, "MIPCDP no show in BJE consultation", Philippine Information Agency press release, 28 August 2008, <http://www.pia.gov.ph/?m=12&sec=reader&rp=1&fi=p080828.htm&no=3&date=>; Brad Miller, "Philippines: Mindanao tribals caught between army, insurgents", Galdu, 1 October 2008, <http://www.galdu.org/web/index.php?odas=2487&giella1=eng.>; "Lumads consulted for peace process", *Sun Star Davao*, 30 November 2008, <http://www.sunstar.com.ph/davao/lumads-consulted-peace-process>.

Ma. Teresa Guia-Padilla is Executive Director of Anthropology Watch, which is a non-governmental organization (NGO) composed of anthropologists and other social scientists who work with and for indigenous peoples in the Philippines. It engages in assistance to land titling, culturally appropriate community development planning, capacity building and advocacy on indigenous peoples' issues.

INDONESIA

Indonesia has a population of around 220 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), uses the term *masyarakat adat* ("traditional peoples") to refer to indigenous peoples. A conservative estimate of the number of indigenous peoples in Indonesia gives 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.

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 of groups identifying themselves as indigenous.

Policy and legal developments

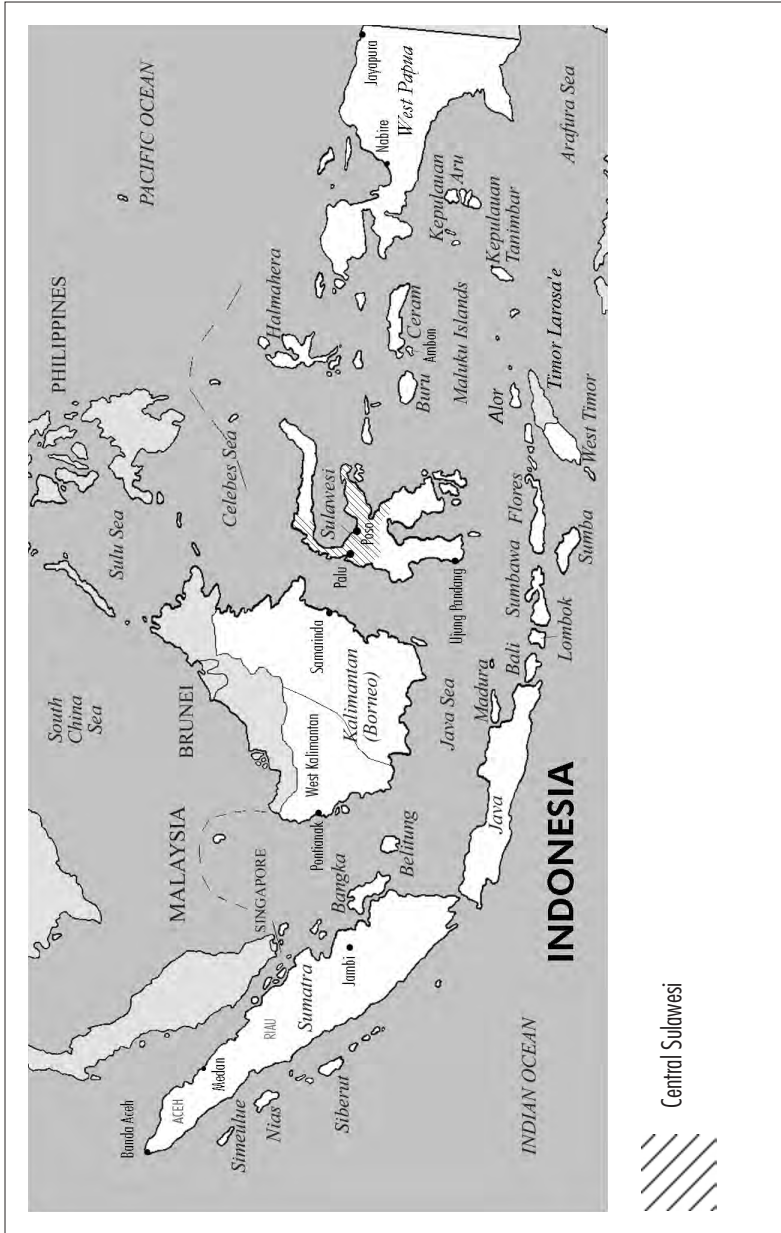
Despite the adoption of the Law on Coastal and Small Islands Management in 2007, which recognizes the right of indigenous and other local communities to manage their resources, (see *The Indigenous*

World 2008) there has been no significant implementation with regard to the recognition of indigenous peoples' rights as acknowledged by the new law. Furthermore, despite its vote in favour of adopting the UN Declaration on the Rights of Indigenous Peoples, the Government of Indonesia has adopted several policies that have met with strong opposition from civil society, including from indigenous peoples.

Government Regulation No 2/2008 was passed regarding types of tariffs and state revenue from activities within forest areas which lie outside the jurisdiction of the Ministry of Forestry. The regulation allows exploitation of forests (including protected forests) for mining activities, solely for the purpose of increasing government income at the expense of the environment and indigenous peoples.

A new Law on Minerals and Coal was adopted in 2008 to replace the old Mining Act of 1967, which had been used to facilitate the incursion of mining companies onto indigenous ancestral lands, causing land conflicts and serious human rights violations. Although the new law does not necessarily promote a contractual concession model as the old Mining Act did, it fails to recognize the land rights of indigenous peoples or environmental concerns. It thus does not provide full protection of affected communities from human rights abuses on the part of mining companies that have been going on for decades. The new law also does not allow for renegotiation of existing mining contracts, thereby promoting the continuation of a cheap-and-quick extraction model, just like the old Mining Act.

In 2007, AMAN and eight other non-governmental organizations requested that the Committee on the Elimination of all forms of Racial Discrimination (CERD) consider the situation of indigenous peoples in Indonesia under its early warning and urgent action procedures.¹ After examining Indonesia's periodic report at its 71st session from 30 July to 17 August 2007, the Committee adopted concluding observations that detail serious deficiencies in Indonesia's observance of its human rights obligations to indigenous peoples and further requested the Government of Indonesia to take action and provide information on the progress of action taken (see also *The Indigenous World 2008*). By the end of 2008, no significant action had been taken by the Indonesian government. On the contrary, the government had drafted a controversial Ministry of Forestry Regulation on Implementation Procedures



for Reducing Emissions from Deforestation and Forest Degradation, which includes regulations to control payments for “reduced emissions from deforestation and forest degradation”. Climate change mitigation through “reduced emissions from deforestation and forest degradation”, or REDD, involves payments being made to national governments for halting or slowing rates of deforestation. Indonesia’s approach to this, as defined in its draft regulation, requires that the state be the sole regulator of forest areas, without recognizing or protecting the rights and forest stewardship role of traditional and indigenous peoples. To access international payments for REDD, the state is establishing regulations that continue to allow it to take over and issue concessions to any forest land as and when it deems necessary. In both word and intent, the draft regulation as it now stands serves to reiterate existing violations of indigenous peoples’ rights found in other national laws.

Racial discrimination: anti-pornography law challenges “United in Diversity”

Bhinneka Tunggal Ika (United in Diversity) is one of the principles on which the Indonesian state is supposed to be founded. It emphasizes that Indonesia consists of diverse cultures. However, this principle was brought into doubt when Parliament adopted the Law on Pornography on 30 October 2008. The Pornography Law met with strong resistance from across Indonesia, including from indigenous groups. Those opposing the law argue that it goes against recognition of and respect for cultural diversity as granted by the Constitution, that it imposes the dominant culture on others, especially targeting women, and further threatens the unity of Indonesian society. For several reasons, it is even considered racist. First, the definition of what constitutes pornography (Article I para 1) includes public displays/performances that may arouse sexual desire and/or stand in contradiction to moral values. The question is whose moral values? Second, the Law forbids actions including nudity or a display that has a nude impression (Article II para 4 sub-para 1h); Third, Article II para 14 allows pornography that “has value” and is for the purpose of art, culture, tradition and

traditional ritual. This implies that the law considers indigenous peoples' cultures and traditions as "pornography", and therefore in itself is a clear expression of discrimination against indigenous peoples.

It is believed that implementation of the law will create an economic downturn in several provinces whose economic development very much depends on tourism. The Governor of Bali, for example, admitted that the province would not be able to implement the Law. On top of that, Article 20 allows members of society to participate actively in preventing the making, distribution and use of pornographic material. This particular article could trigger criminalization and be used by an individual or group to commit unlawful judgment or prosecution of a person or group.

Although the Law proclaims the principles of non-discrimination, respect for diversity and protection of citizens, for indigenous peoples the law is indeed extremely problematic.

The Salena tragedy: stigmatization, discrimination and oppression of indigenous belief systems

The Indonesian government legally recognizes only five religions: Islam, Catholicism, Protestantism, Hinduism and Buddhism. All registered Indonesian citizens – including the indigenous people - must follow one of the five official religions. This means that there is no place at all for the traditional belief systems of indigenous peoples. These are considered primitive religions, and indigenous peoples who maintain their distinct beliefs are often seen as "less civilized", and face discrimination, stigmatization and often harassment from government officials as well as from the official religious authorities.

The killing of Mr. Madi, a member of the Salena indigenous people in Central Sulawesi, is one of many concrete examples of the severe impact of the systematic discrimination and stigmatization of indigenous peoples in Indonesia. Mr. Madi was a traditional healer using ancient knowledge; he was also a master of Silat, a kind of martial art that is practised commonly in Indonesia and has even been recognized as one of the official sports in ASEAN countries for the South-East Asia Games. The Salena were forcibly evicted from their ancestral land in

the 1970s by the government, after their homeland was declared a protected forest.

In early October 2005, there was widespread and distorted media coverage about Madi and his group, calling it a “shadowy sect” and “cult”. The Minister of Religious Affairs, Mr. Maftuh Basyuni, declared *Mahdi* (referring to Madi)’s teachings to be “completely deviant” and promised to bring them back on the right path.² Soon afterwards, a police unit from Palu, the capital of Central Sulawesi was sent to Salena community. Rapid shooting was reported, causing panic and an exodus of the community to the nearby forest, leaving the village empty. This was then looted and burnt down. The police operation killed one person, arrested 11 more for killing three officers but failed to take Madi into custody.

Mr. Madi remained undetected until he was found and shot on 5 April 2008 during an ambush by an elite police anti-terror unit. The operation not only cost Mr. Madi’s life but also that of five villagers, and left many more injured. AMAN and other NGOs strongly condemned the killing. They appealed to the authorities of official religious groups, the mass media and the public to stop spreading biased information about the Salena. They demanded an explanation from the government regarding the use of violence by the police force and protection of freedom of religion. They also pleaded that Indonesia’s National Commission on Human Rights should conduct a comprehensive investigation into the violence.³ With regard to the killing of Mr. Madi, there was hardly any media coverage.

Eco-labelling the Suai Utik customary forest

Amidst global concerns regarding climate change and serious environmental degradation, the indigenous Suai Utik community are showing their resilience to changing climate and environmental degradation. After a long wait and struggle, they have finally received a sustainable forest management certificate from the Indonesia Ecolabelling Institute. Suai Utik belongs to the Iban, one of the many Dayak peoples living on Borneo island. It lies in the administrative area of Kapuas Hulu district of West Kalimantan province, bordering the Sarawak

State of Malaysia to the north. Its inhabitants make a living as farmers from dry-field and wet-rice farming. They maintain traditional rituals connecting people (birth, marriage, death) as well as people and nature. This relationship is vital as it forms the basis of their natural resource management, particularly with regard to forest resources – both timber and non-timber products.

For many years, Suai Utik community has managed to defend its ancestral land and resources from several external pressures, such as licences given by the Indonesian government to timber concessions, industrial plantations and oil palm plantations as well as rampant illegal logging activities in neighbouring areas. In 2004, with the help of NGOs, the community started a forest resource management plan with the idea of combining conservation with small-scale sustainable community logging. In 2006, they applied for a certificate for sustainable forest management from the Indonesia Ecolabelling Institute.

After a long wait and assessment process, they finally received the certificate in May 2008. The certificate was presented directly by the Indonesian Minister of Forestry, Mr. Malam Sambat Kaban, during a special visit by the minister to the community on the International Day of the World's Indigenous Peoples. This historic achievement of the Suai Utik community is the result of a long struggle on the part of the community itself to defend its ancestral land with help from supporting NGOs and indigenous peoples' organizations. Suai Utik's achievement also signifies the recognition of a model of sustainable community-based forest management on the part of both the government and the market. □

Notes

- 1 The request was submitted in relation to Indonesia's plan to expand oil palm plantations over some 850 kilometres along the Indonesia-Malaysia border in Kalimantan as part of the Kalimantan Border Oil Palm Mega-Project. This area is part of the traditionally owned territories of the indigenous peoples of this region. See *Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the United Nations Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures*, 06 July 2007, at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent_action.pdf.

- 2 <http://www.thejakartapost.com/news/2005/10/27/20-arrested-raid-sect.html>
- 3 AMAN's Statement Concerning the Killing of Mr. Madi, Jakarta, 7 April 2008.

Abdon Nababan is the General Secretary of the Aliansi Masyarakat Adat Nusantara (AMAN), the nationwide alliance of indigenous peoples of Indonesia. Rukka Sombolinggi is a Toraja who previously worked with AMAN. She now works as a consultant on indigenous peoples' issues and serves as Member of the Executive Council of Asia Indigenous Peoples Pact (AIPP).

MALAYSIA

In all, the indigenous peoples of Malaysia represent around 12% of the 28.6 million people in Malaysia. The *Orang Asli* are the indigenous peoples of Peninsular Malaysia. They number 149,000, representing a mere 0.5% of the national population. Anthropologists and government officials have traditionally regarded the *Orang Asli* as consisting of three main groups comprising several distinct tribes or sub-groups. The main groups are the Negrito (Semang), the Senoi and the 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 2.3 million people. The 39 different indigenous ethnic groups in Sabah are called natives or *Anak Negeri*, and make up approximately 60% of the 2.4 million population of the state. In Sarawak and Sabah, laws introduced by the British during colonial rule recognizing the customary land rights and customary law of the indigenous peoples are still in place. However, they are not rigorously implemented, and some are even ignored outright by the government, which has tended to give priority to private companies over the rights and interests of the indigenous communities for large-scale resource extraction and mono-crop plantations.

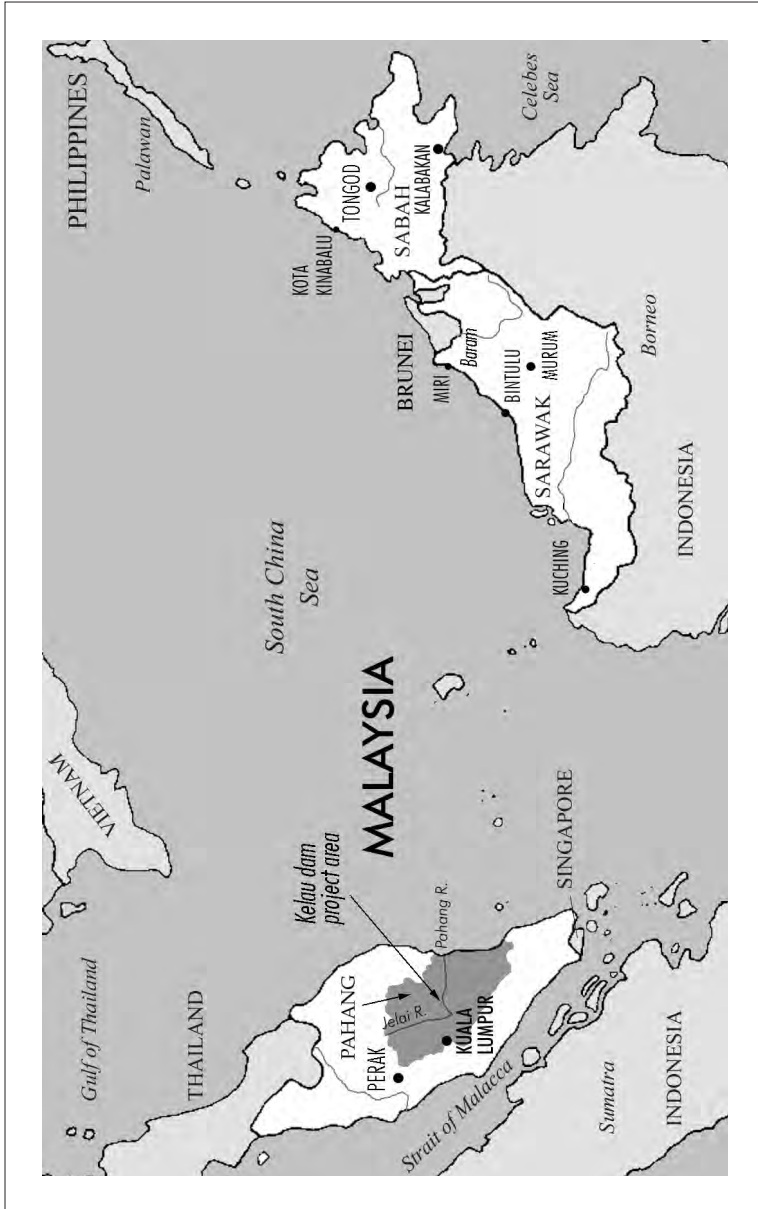
National and international advocacy

The Indigenous Peoples Network of Malaysia (or *Jaringan Orang Asal SeMalaysia*, JOAS) is the umbrella network for 51 organisations throughout Malaysia representing different indigenous peoples

and communities. As the focal point for indigenous rights and advocacy in Malaysia, JOAS provides indigenous communities with representation nationally, regionally and internationally. In 2008, JOAS decided to step up its national and international advocacy efforts using the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as its framework. In August, JOAS initiated studies and several workshops in the country to review laws and policies affecting indigenous peoples using the UNDRIP. These were summarized in two main advocacy documents – a memorandum to the King and a submission to the UN Human Rights Council's Universal Periodic Review¹ in which Malaysia is due for scrutiny in February 2009. In September 2008, representatives from all over Malaysia organized a peaceful march to submit the memorandum to the King but the march was stopped by the authorities without giving any proper reason. Despite this, indigenous peoples managed to gain media and government attention. Focusing on the situation of the Orang Asli, for example, an exchange appeared in the newspapers between the Department of Orang Asli Affairs and members of JOAS highlighting how the Department has perpetuated poverty through bad policy and bad interpretation of customary laws and international rights.

The policy studies initiated by JOAS highlighted several gaps in the laws relating to indigenous peoples with respect to land and natural resources, *adat* (customs/traditions) and customary laws and development policies. The study on *adat* and customary laws showed that the government has increasingly interfered in indigenous peoples' traditional systems, particularly in the selection and appointment of customary leaders. For example, the *Guidelines on the Procedure for the Appointment of Orang Asli Headmen* dictates that the government has the final say in who becomes the community head and has the right to prescribe the procedure for his election. This has resulted not only in division within communities but has also acted as a barrier to indigenous communities' ability to resolve conflicts caused by the imposition of development projects and to strengthen their own indigenous systems and institutions.

One of the key issues highlighted in the submission by JOAS for the Universal Periodic Review and which was included in the summary by the Office of the High Commissioner for Human Rights is



assimilation and right to freedom of religion. The Orang Asal² have their own unique cultures, spiritualities and institutions which they want to continue and pass on to future generations. However, in direct violation of Article 12 of the UNDRIP and Article 11 of the Federal Constitution on the freedom of religion, some Orang Asal face extreme pressure to convert to Islam, the state religion, especially when proselytizing programmes are conducted with state largesse and using public funds and infrastructure. This, coupled with the stated objective of integrating them into the “mainstream society” has overtones of a policy of forced assimilation. Furthermore, some of the Orang Asal who chose to adopt a mainstream religion other than the official state religion have found their religious buildings demolished by local authorities on the weak and untenable argument that these structures were constructed on state land.

The situation of indigenous women

In Sarawak, newspaper reports highlighting the plight of Penan girls reveal how sexual violence is used to break the spirit of the Penans in their struggle to protect their land, livelihood and the dignity of their communities. The reported rape of the young women and girls and the denial of such incidents by the Sarawak government reflects how the state works in collusion with rapists involved in logging to create fear in the community.

Many young indigenous women, especially from Sabah and Sarawak, are also reported to be trafficked for prostitution and as labourers to Singapore, Hong Kong, Japan, Europe and the US. These reports were also denied by the government. Several factors have led to young people, including young women, losing interest in farming and leaving their villages in the hope for getting good jobs in the cities. A coalition of women and indigenous NGOs has asked the government and the police to be transparent and to uphold the law by thoroughly investigating complaints of rape by Penan women. Calls have also been made to ensure that rural women are not trafficked for forced prostitution and labour.³

Land rights and the battle in the courts

The recognition of native title or native customary rights remains the single most pressing issue affecting Orang Asli lives in 2008. In Peninsular Malaysia, the federal government announced its new Orang Asli land policy, which would see each Orang Asli family getting 2.9 hectares of land. This would mean a total of 87,000 hectares being set aside for them. However, this will involve Orang Asli being moved out of (what the state considers) forest reserves, Malay reserve lands, catchment areas and such and resettled in new areas where agricultural development is to be expanded and controlled by a state or private agency. In this deal, the Orang Asli stand to lose about 41,000 hectares of their existing traditional lands that have already been recognized by the government. Furthermore, the new lands would be for a 99-year lease only. Recognising the discontent towards this policy, the new opposition-controlled state government in Perak took its commitment to recognise Orang Asli land rights in the state a step further by establishing the Perak Orang Asli Land Task Force. This body is composed of and led by Orang Asli leaders and representatives themselves and has been entrusted to determine the extent, nature and wishes of each Orang Asli community vis-à-vis their traditional lands with a view to securing permanent title to it. Alas, the opposition-held state government was in power for only 10 months before a constitutional crisis saw its reign threatened and, with it, the promising role Orang Asli themselves were playing in securing their traditional lands.

Orang Asli issues nevertheless continue to be fought in the courts, as the arena of last resort. There are at least six cases filed in Peninsular courts on issues ranging from straightforward Orang Asli land rights, to the right to build religious structures on traditional lands, the right to infrastructure access, and even the right to develop their land of their own accord.

The 13-year-old precedent-setting Sagong Tasi⁴ case is still at the Federal Court appeal stage, the final stage in Malaysia's three-tier court system. In 2005, the Court of Appeal upheld the High Court's landmark ruling in favour of Sagong Tasi and six others from the

Temuan tribe, stating that the government, the Malaysian Highway Authority (MHA) and construction giant United Engineers Malaysia Bhd (UEM) has to compensate them for the loss of their 38-acre customary land confiscated for the construction of the highway linking Kuala Lumpur international airport and the national capital (see *The Indigenous World 2005* and *2006*). Attempts to get the opposition-held Selangor state government, the second defendant in the suit, to withdraw its appeal have thus far not succeeded. As such, they are taking the same position as the federal government: that the Orang Asli do not enjoy native title and common law. Furthermore, the government, citing sections 3 and 6 of the Civil Law Act, is also asserting that if a local, appropriate law is available, there is no need for it to be subjected to the articles of the Federal Constitution or to any international customary law or instrument. Clearly, as such, the Malaysian government rejects the right of indigenous peoples to traditional lands, territories and resources.

In Sarawak, the Bintulu High Court upheld a magistrate's decision to reject a criminal charge against 14 Iban for illegal occupation of "state land". In their defense, the villagers said that their huts were built within Native Customary Rights (NCR) land. Since being freed, the 14 have sued the Sarawak government for malicious prosecution and for damages due to demolition of some of their huts.

In the landmark *Nor anak Nyawai* native land case, in which the Kuching High Court recognized the NCR of an Iban longhouse community in Bintulu over disputed land, the Court of Appeal continued to affirm the High Court's interpretation of NCR land, including the pre-existence of rights under native law and the fact that the Sarawak land code does not abrogate NCR that existed before passing of the legislation. However the court dismissed the indigenous peoples' appeal on the matter of what constitutes evidence to be brought to the court on NCR claims as the judgment threw into doubt the use of oral testimony that could not be corroborated. The former Sarawak State Attorney-General attempted to cloud the status of NCR in the courts by issuing a statement saying that the dismissal of application for leave showed that NCR over land only applies to *temuda* (farmed area) with no rights to forest areas where "natives roamed or foraged for food".

Despite the court victories, land conflicts between indigenous peoples and the government continue to hamper the implementation of

UNDRIP. In 2008, Sarawak Dayak Iban Association estimated that there were 173 cases relating to land issues going through court. Many more communities are in the process of filing their cases. The already slow legal process is not being aided by the state government, a defendant in many of these cases, as it continues to create barriers in the form of appeals, injunctions and eviction notices against the indigenous peoples, who have little resources to continue legal battles.

In the Sabah High Court, the indigenous Dusun representatives from Tongod (see *The Indigenous World 2005, 2006, 2007*) who filed a civil suit against Hup Seng and four other oil palm companies were disappointed when the judicial commissioner decided that it did not have the jurisdiction to determine NCR. According to Justice Yew Jen Kie, the Sabah Land Ordinance 1930 expressly vests the jurisdiction in determining NCR to the director of the Lands and Survey Department (LSD) except on appeal, even though the High Court had made previous decisions on similar cases. The plaintiffs have once again sent an appeal to the LSD director to conduct a public investigation but received no response. The community representatives have filed an appeal.

Mega-projects and violation of FPIC

As a result of the government's non-recognition of native title and its disregard of the obligation to obtain free, prior and informed consent for development projects and other interventions on indigenous peoples' lands, indigenous peoples have also been subjected to forced or involuntary resettlement. One case is the forced resettlement of the Chewong Orang Asli community in the Kelau dam project area in Pahang where they were intentionally misrepresented by agents of the government in order to carry out their forced resettlement. To make matters worse, there was no need to resettle the community concerned as their village was not going to be affected by the project at all.⁵

Despite the ongoing construction of the still controversial 2,400MW Bakun dam in Sarawak (see *The Indigenous World 2008*), many were stunned to discover that there are an additional twelve hydroelectric dams being planned for the state. The hasty announcement came from the state government, after NGOs discovered these plans. One dam in

Murum would submerge several Penan, Kelabit and Kenyah villages and displace at least a thousand people and could affect a UNESCO World Heritage site. The Murum dam is being built by a Chinese company involved in the construction of the Three Gorges dam. These dams are part of a new development plan under the Sarawak Corridor of Renewable Energy (SCORE), for which the state government would receive \$1.5 billion investment and reengineer Sarawak's development. This corridor spans more than 70,000 sq km and includes the Bintulu, Kapit, Sibü and Mukah divisions. All these are in addition to the 2,400MW Bakun dam and will push the total generating capacity in the state to 7,000MW by 2020, an increase of more than 600% on current capacity. While Sarawak's energy output is sufficient for current needs at 933MW, there are plans to develop an aluminium-smelting industry and provide for future energy needs in Malaysia through an as yet unplanned undersea cable. □

Notes

- 1 Submission of the Indigenous Peoples Network of Malaysia (JOAS) on the human rights situation of the *Orang Asal* in Malaysia to the Office of the High Commissioner for Human Rights (OHCHR), September 2008.
- 2 Orang Asal is the Malay term for indigenous peoples in general, while Orang Asli refers only to the indigenous peoples of Peninsular Malaysia.
- 3 **Fernandez, Irene. 2008:** Rural Women – Invisible and Isolated. *Malaysiakini*, 16 Oct 2008. www.rengahc2o.org
- 4 *Sagong Tasi & Ors v Kerajaan Negeri Selangor & Ors*, No. MTI-21-314-1996 (High Court of Malaya, Shah Alam, April 12, 2002).
- 5 **COAC, 2008:** Damned Forest and Damned Lives: The Orang Asli and the Kelau Dam Project. Video documentary. 2008

Jannie Lasimbang is a Kadazan from Sabah, Malaysia, former Secretary General and currently the Coordinator of the Indigenous Knowledge and Biodiversity Programme of the Asia Indigenous Peoples Pact (AIPP). She is one of the founders of PACOS Trust, an indigenous organisation based in Sabah, and she is also a member of the UN Expert Mechanism on the Rights of Indigenous Peoples under the Human Rights Council. The article was written with contributions from Galus Ahtoi (Sabah), Jennifer Rubis (Sarawak) and Colin Nicholas (Peninsular Malaysia).

THAILAND

The indigenous peoples of Thailand mainly live in three geographical regions of the country: indigenous fisher communities (the *chao-lae*) 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-kae*). With the drawing of national boundaries in Southeast Asia during the colonial era and in the wake of decolonization, many peoples living in remote highlands and forests were divided. There is thus not a single indigenous people that resides only in Thailand.

Nine so-called “hill tribes” are officially recognized: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.¹ There is no comprehensive official census data on the population of indigenous peoples. The most often quoted figure is that of the Department of Welfare & Social Development. According to this source, there are 3,429 “hill tribe” villages with a total population of 923,257 people.² Obviously, the indigenous peoples of the south and northeast are not included.

All indigenous peoples of Thailand share similar experiences caused by discriminatory policies. 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. 480,000 indigenous persons in Thailand still lack full citizenship, which restricts their ability to access public services such as basic health care or admission to schools.

The overall political developments

Following the passing of a new constitution by the interim caretaker government, and the elections of 19 August 2007, the successful Peoples Power Party formed the government with Mr. Samak Sundaravej serving as Prime Minister. Since he was seen by many Thai citizens as a proxy of ousted former Prime Minister Thaksin, this resulted in a resurgence of the Popular Alliance for Democracy (PAD) movement. On 26 July 2008, the PAD occupied Government House in Bangkok. Subsequently, Mr. Samak was removed from office by the Constitutional Court on the basis of corruption charges. On 9 September 2008, Mr. Somchai Wongsawat was chosen as Prime Minister to replace Mr. Samak. During this period there was a high level of political conflict that brought the country to the brink of civil war, especially the incident on 7 October 2008. PAD had organised a protest in front of Parliament House. The police responded with tear gas, and the violence resulted in several deaths and hundreds of people injured. This led to the seizure of the Suvarnabhumi International Airport in Bangkok by the PAD. Later, on 2 December 2008, the Constitutional Court dissolved the Peoples Power, Chat Thai and Machimathipatai parties for electoral fraud. The PAD had won, and their movement had led to the Democrat Party forming the next government. Members of Parliament from the three dissolved political parties moved to new political parties already established for this purpose. The Peoples Power Party became the Puea Thai Party, the Chat Thai Party became the Chat Thai Pattana Party, and the Machimathipatai Party became the Dharmathipatai Party.

In the analysis of Thai academics and the Network of Indigenous Peoples in Thailand (NIPT), future events and the probability of renewed violence will depend on three factors:

First, Dr. Thaksin Shinawatra's willingness to give up politics. If he does not, and persists in fighting to the end, Thai politics will continue in turmoil with a high degree of conflict.

Second, the ability to enforce the law, especially concerning *lese majeste*, i.e. the crime of offending the king. *Lese Majeste* is now



being used to politicize some groups. The NIPT fears that other laws, including land laws, could be used in a similar way for political purpose, and against indigenous peoples.

Third, the possibility of negotiations between the current government and Dr. Thaksin Shinawatra. If negotiations are conducted, many people believe that political conflict could cease.

As a result of the many conditions and impacts of the political conflicts over many years, the situation has become polarised, with a divide running through Thai society, sometimes even at family level. And although the indigenous peoples have suffered less violence than those in the lowlands, there remains the possibility that an outbreak and escalation of violence could occur among them at any time.

This continuing political conflict has taught a lesson to both the lowland Thai and indigenous peoples about the effects of failed politics. Thus, civil society has attempted to promote “street politics” – i.e. using peaceful mass protests and demonstrations – as the only way in which marginalized people such as the indigenous are able to raise issues of concern and increase their political and social space in the future.

Laws, policies and programs affecting indigenous peoples

The government, under the Peoples Power Party, enacted several policies that had an impact on indigenous peoples, such as the second and third stages of the War on Drugs which, in the past, had targeted indigenous peoples severely, with a substantial number suffering from threats, extortion, arrests and extrajudicial murder. The Cabinet resolution of 29 April 2008 increased the area of protected forests by 128 million *rai* (21.3 million hectares), with 17.5 million ha to be declared as conservation forests, 2.5 million ha as reserved forests, and 0.6 million ha as mangrove forests. Policies such as this have a severe impact on the possibility of obtaining land title deeds and, therefore, the right to residence and farming in these areas. As a result of the new resolution, large numbers of farmers were arrested for encroachment onto government lands, with local land seized and farmers imprisoned even before court decisions had been forthcoming – something which had not previously occurred. During 2007 there were 6,711 arrests or cases filed for land encroachment and, from January to April 2008, a further 2,625. Most involved indigenous persons.

Government policies, plans and development projects affecting indigenous peoples have, at different times, been closely associated with national security. For example, the previous Master Plan for the Devel-

opment of Communities, Environment and Control of Narcotic Crops in Highland Areas was aimed at resolving problems of national security, destruction of forests and narcotics. Today, the Master Plan has been abolished but government officials continue to view and stigmatize the indigenous peoples as trouble makers, especially the Ministry of Natural Resources and Environment, Ministry of Interior and the National Security Council.

This perceived need to control and suppress indigenous peoples still influences government policies concerning forest management, narcotics, Thai citizenship and the new National Security Act, passed in 2007. This new law has led to an increase in human rights abuses against indigenous and other minority people, mainly carried out by government officials and security forces such as the police, military, forestry and local administration officials. Throughout 2008 this law, claiming to help suppress the drug epidemic, was used to control and suppress indigenous peoples and others in the name of preventing encroachment on forests, cross-border labor migration and the problem of terrorism in the three southern provinces. This law is frequently employed by government officials for these purposes in the border areas of Chiang Mai, Chiang Rai, Mae Hong Son, Tak, Kanchanaburi and Ratburi Provinces, as well as the three southern provinces. These policies have a serious impact on the lifestyles and livelihoods of indigenous peoples.

During the last months of 2008, the situation along the Thai-Burma border of Fang, Chiang Dao and Wiang Haeng districts in Chiang Mai Province became tense as a result of the conflict between the Burmese military and the Wa Daeng ethnic group across the border. Along the western border with Burma, conflicts have already begun between the Buddhist and Christian Karen, ahead of the expected resurgence of fighting in the upcoming dry season of 2009. This will definitely have an impact on the indigenous peoples on the Burmese side of the border, forcing large numbers of them to flee to Thailand, as in previous years. It is feared that this event will be used by the Thai authorities as a rationale for enforcing the National Security Act or other special policies, suppressing and controlling the people living in the areas on the Thai side of the border, most of whom are also indigenous peoples. Expected measures include, for example, a halt in the processing of

applications for citizenship and limitations on the right of stateless persons to travel.

The national policy on Thai citizenship in 2007 appeared to be an improvement, since it provides, for example, for the reinstatement of citizenship to persons who had previously had their Thai citizenship withdrawn. However, the Ministry of the Interior issued a regulation in 2008 permitting the withdrawal of citizenship from persons considered a threat to national security. At the same time, reinstatement turned out to be a long and complicated process which led to many problems, among them a considerable increase in corruption. Stateless children born of parents illegally entering Thailand were denied Thai citizenship and were branded illegal aliens even though they were born in Thailand.

In its analysis of the present situation with respect to state policies, the Secretariat of the Network of Indigenous Peoples in Thailand (NIPT) has concluded that the previous government's policy was not fully implemented due to its limited term in office and its focus on remaining in power during the economic and political crisis, especially the pressure from the opposition. The current, Democrat-led government, formed in December 2008, has no clear and concrete measures for implementing laws and policies protecting human rights, which could lead to their abuse by government officials. Thus, the overall situation of the rights of indigenous peoples may not improve in 2009.

Political movements of indigenous peoples amid political conflicts

Although some indigenous groups joined the "red shirts" (pro-government) or "yellow shirts" (opposition) in the demonstrations of 2008, they did not become tools of either of these political movements. This was because the Network of Indigenous Peoples in Thailand made its position as an unbiased organization clear. Furthermore, it used this opportunity to learn and study these popular political movements and share the insights with indigenous leaders so that they would be able

to keep abreast of events, plan for the future and find a way for indigenous peoples to act in the midst of the political conflict.

The activities conducted by the indigenous peoples' movement in 2008 included: organizing indigenous peoples' festivals (as in 2007), focusing on providing accurate information, identifying indigenous peoples within Thai society, having open discussions with the public, and issuing press releases and recommendations to the government and international organizations. Aside from local political meetings, several broader forums were organized to analyze and assess the political situation, and to educate indigenous workers, leaders and women about people's politics. Indigenous peoples have also joined with other regional (in the north) and national peoples' and non-governmental organizations in organizing forums for exchanges of ideas, criticizing government actions and issuing press releases.

Demands of the indigenous peoples presented to the Thai government

Shortly after the formation of the new government in 2008, indigenous peoples had an opportunity to present their recommendations to the new Prime Minister, Mr. Abhisit Vejjajiva, on 18 December 2008. The government agreed to include these recommendations in their policy formulation, especially the promotion of human rights and the implementation of international UN conventions and agreements, as well as their ideas on local land management, e.g. community land titles. This is an opportunity for indigenous peoples to continue and increase their lobbying for recognition of their rights.

The demands presented to the new government were: first, to affirm the identity of indigenous peoples and include this clearly in the Constitution, which states: "All Thai, regardless of origin, sex, race, or religion, are entitled to protection". The government must plan and enact measures to protect the rights of indigenous peoples in Thailand in accordance with international agreements and UN treaties ratified by the Thai government, including the Convention on the Rights of the Child, the Convention against All Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights, the

International Covenant on Economic, Social and Cultural Rights and the International Covenant on the Elimination of All Forms of Racial Discrimination. At the same time, the government must speed up the study and ratification of ILO Convention 169. For this, the Thai government must abolish all laws and regulations which include direct and indirect discriminatory practices that are not in compliance with these international instruments and therefore present obstacles to the protection of indigenous peoples' rights.

Second, all laws which abuse the rights of indigenous peoples should be rescinded such as, for example, the laws and policies governing protected areas, which encroach on the settlements and lands of indigenous peoples. Boundaries of forests, residential areas and farmland should be newly drawn in a participatory manner, delegating decision-making authority to indigenous peoples and other groups using the land in forested areas.

Third, the government should ensure that stateless indigenous peoples have basic rights equivalent to all Thais, even though they do not yet possess Thai citizenship. These basic rights should be guaranteed by the state since considerable problems will arise when these persons are denied their rights, come under heavy pressure and are often forced to turn to illegal activities such as those related to drugs. □

Notes

- 1 Ten groups are sometimes mentioned, i.e. in some official documents the Pal-aung 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.

Wiwat Tamee is a Lisu from Chiangrai Province. He is currently working as Project Manager for the Highland Peoples' Taskforce (HPT), the secretariat of a network of 12 indigenous and highland peoples in Thailand.

CAMBODIA

There are no recent census data on the population of indigenous peoples in Cambodia. While it has often been cited that they make up around 1% of the total population, it is currently estimated that the indigenous population of Cambodia numbers about 190,000 people, or 1.4 percent of Cambodia's population. They comprise approximately 20 different ethnic groups.

The Cambodian Constitution (1993) guarantees all citizens the same rights, regardless of race, color, language or religious belief. The 2001 Cambodian Land Law provides explicit legal recognition of indigenous communities' collective land rights by the state. The 2002 Forestry Law also makes explicit reference to the rights of indigenous communities to claim areas of forested land for title. The majority of forest land is, however, still under state control and has been classified as "state public land".

Cambodia is signatory to a number of international instruments that protect the rights of indigenous peoples,¹ as well as the Convention on Biological Diversity (1992), which recognizes the role of indigenous peoples in protecting biodiversity. In addition, the Cambodian Government voted in favor of the UN Declaration on the Rights of Indigenous Peoples in the UN General Assembly.

Legislative developments

In 2008, a Sub-Decree on Procedures for the Registration of Indigenous Peoples' Communal Land was drafted. This was to complement the 2001 Land Law, which recognizes the rights of communities to collective titles. The draft sub-decree contained an article that would

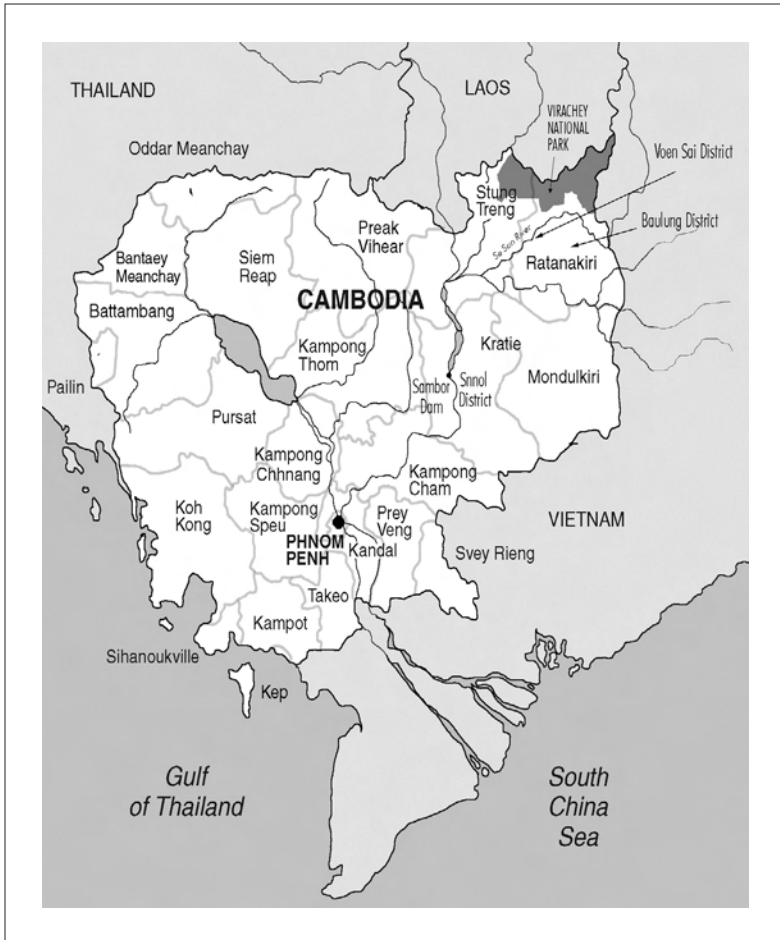
give an individual leaving the community the right to receive private land from the community. It also sought to limit the size of spirit forests and burial grounds that could be included in collective titles. For these and other reasons, community networks, NGOs and donors commented that the draft sub-decree should be revised. These comments were not accepted by the government, which has refused to release a revised version or explain how a final version will be approved. Civil society groups are still requesting an opportunity from the government for further comment.

It is in this environment that there is increasing recognition of the need for protection of indigenous peoples' land *prior* to titling. There are growing concerns that communities will have little land left by the time legal mechanisms for titling are in place; to date, no communities have had their community lands legally registered. Government efforts to register communal lands or offer any form of interim protection continue to focus on only three pilot villages.

Land and resource alienation

Though indigenous communities' lands are protected by the Land Law and their access to forest resources is guaranteed by the Forestry Law, land alienation and reduction of access to resources continues at an accelerating rate for a number of reasons.

Economic land concessions (ELCs) and, increasingly, concessions for mining have been granted on indigenous communities' lands and on areas used by indigenous communities. One ELC with a pending application for a 10,000 ha rubber plantation in Mondulkiri has been reported to be forcing indigenous community members in the neighboring commune to "lease" their land to the company for between US\$25 and US\$250 for up to 99 years. The transactions are arranged by local policemen who informed villagers that if they did not agree to this offer, the company would take the land anyway.² Clearing of indigenous communities' land has happened in many areas, including in Yeak Laom commune, Banlung district, Ta Lav commune, Andoung Meas district (both in Ratanakiri province), and in Snuol District in



Kratie province. In these and other cases, concessions have been issued and operate in violation of Cambodian law.³

An increasing number of concessions have been granted for large-scale mining. In most cases the concessions are not yet operational or are just becoming operational. Most notably, iron ore mines are being developed in Preah Vihear and Stung Treng provinces in areas of Kui communities, and bauxite and other mines are being developed in Bunong areas of Monduliri.⁴ Military involvement is reported at many

of the large mining sites, and is consequently associated with other problems for local communities, such as restriction of access to land used by communities and communication between communities, or intimidation and threats of displacement.

Large-scale iron mining in Preah Vihear and Stung Treng provinces, with major investments from Korean and Chinese companies, is expected to have longer-term effects on the Prey Lang forest and surrounding areas, which support the livelihoods of more than 700,000 people, many of them Kui. These impacts will be compounded by economic development and land concessions, which are encroaching on Kui communities. The international economic crisis during the second half of 2008 has meant that some smaller mining companies have cancelled their operations and others have sold their concessions to larger companies; South Korean investments appear to have been particularly hard hit. However, the impact which these international trends will have on mining operations in indigenous areas is as yet unclear.

Outsiders continue to move into indigenous areas, more and more frequently under the auspices of social land concessions,⁵ in many cases facilitated by newly-constructed roads. There are pressures on indigenous people to sell their land, and land sales continue to increase. This is leading to increased fracturing of communities.

Land grabbing, particularly by powerful people, continues to be an enormous problem and shows no signs of abating. One high profile case, Kong Yu village in Ratanakiri province, involving a family member of the Minister of Economics and Finance and the Secretary of State for Land, continues to be unresolved after more than two years of litigation on behalf of the affected community and advocacy by the community and others. On 28 October 2008 the provincial judge issued an injunction to halt the clearing and respect a previous court agreement, but clearing continued until 4 November amidst administrative delays to implement the injunction.

Threats and intimidation of community leaders and NGOs

Intimidation of both community leaders and NGO staff has become a major concern. Threats and intimidation against indigenous commu-

nity members trying to protect indigenous people's land and natural resources have increased. The examples below are indicative of broader trends that have been documented:

In March 2008, two indigenous community leaders in Kratie province were victims of serious verbal threats and attempted killings after logging equipment was confiscated during forest patrols in communal areas. One of their field houses was also burned down. To this day, local authorities have failed to investigate or arrest the perpetrators.

In February 2008, an indigenous community in Preah Vihear province was intimidated by the provincial court as they attempted to protect their forest from illegal gold mining, which they allege is causing environmental pollution and killing their livestock.

On 5 September 2008, community members in Kratie province staged a protest to halt the clearing of their lands associated with the development of an economic land concession. A week later, four community representatives involved in the protest were summoned to court by the prosecutor after the company filed criminal complaints against the representatives for infringements on private land, destruction of private property and robbery. Community people had surrounded an excavator as part of the protest. An NGO team monitoring the event found that nothing had been destroyed or stolen.

Cases of intimidation against staff of NGOs working with indigenous communities also increased in 2008. An Amnesty International report released in September states that "human rights workers also find themselves at risk for their defense of land and housing rights. Security forces are known to have cut off lawyers' access to the villages of their clients, and in Ratanakiri and Mondulakiri, provincial authorities demanded written applications for permission to pay visits to communities which risk forced eviction, or to monitor peaceful protests".⁶ For example, lawyers working for the Kong Yu case mentioned above remain under criminal investigation and have been warned by the provincial court that they should be careful when speaking to the media because they may face criminal defamation charges.

Hydropower development

The Cambodian Government is increasingly prioritizing construction of hydropower dams for the purpose of selling electricity to neighboring countries, as a means of generating revenue. The proposed dams are primarily located in three areas of Cambodia and the region: along three tributaries of the Mekong in the north-east, along the Mekong River mainstream, and in the south-western mountains of the country. Many of these dams pose a direct threat to the lives of indigenous people, whose livelihoods and cultures are closely connected to the health of the country's rivers.

Members of approximately ten indigenous groups live along the Sesan, Srepok and Sekong rivers in north-eastern Cambodia (Ratanakiri, Stung Treng, and Mondulakiri provinces). Many have already experienced various levels of negative environmental, social, economic and cultural impacts from dams built on these river systems in Vietnam and Lao PDR since as early as 1996. Studies are underway for seven additional dams to be built on these rivers and their tributaries inside Cambodia. One dam of particular concern is the planned 400 MW Lower Sesan 2 hydropower dam to be located in Stung Treng province. It is expected to block fish migrations on both the Sesan and Srepok rivers and will involve the relocation of approximately 5,000 people, many of whom are Khmer-Khek, Bunong, Lun and Lao.

Along the lower Mekong River mainstream, plans have recently been revived to build large-scale dams, which may cause devastating impacts on the river's hydrology and rich fisheries that sustain many of Cambodia's riparian indigenous people living along the Mekong River basin. In May 2008, a project development agreement was signed between the Lao Government and the Malaysian company Mega First Corporation Bhd. to build the 240 MW Don Sahong dam located in Laos near the Lao-Cambodian border. In addition, the Cambodian Government has signed agreements with Chinese and Russian companies to carry out feasibility studies for two dams on the Cambodian Mekong: a 2,600 MW dam at Sambor in Kratie province and a 980MW dam in Stung Treng province.

Agreements were reached with Chinese companies in 2008 to begin construction of four dams in the south-west. Of these dams, the Stung Atay dam and its transmission line in Pursat province is expected to displace around 430 people, who are mainly Khmer Chhoring people. Other dams currently under consideration in the area would pose a threat to the indigenous Khmer Daeum people living in the area. The proposed 260 MW Lower Stung Cheay Areng dam in Pursat province is of particular concern as its reservoir site is home to approximately 1,500 Khmer Daeum people in nine villages.

The indigenous movement

In much of the country, concerns over lack of land security provided the starting point for the indigenous movement, and consultations about the process for registration of indigenous communities' land led to the creation of IRAM (Indigenous Rights Active Members), a nationwide group of indigenous leaders. Since 2004, IRAM has depended heavily on support from other civil society groups but during 2008 they focused on building their own capacity and initiative to organize activities independently. They also strengthened their collaboration with other community networks across Cambodia.

The Cambodian Indigenous Youth Association (CIYA) was set up by indigenous university students in 2006. In 2008, CIYA became formally registered and continued to carry out a variety of activities to support indigenous communities.

The Organization to Promote Kui Culture (OPKC), a Kui organization, received funding from IFAD, ILO and USAID in 2008 for projects involving helping indigenous communities make claims to their land, supporting networking among the Kui and community development. The Highlander's Association in Ratanakiri province has continued working on community organizing and developing approaches to representation.

Indigenous peoples' leaders from provinces in the east of Cambodia helped to organize communities to submit coordinated complaints on economic land concessions, alongside non-indigenous communi-

ties, and there is increasing cooperation with Khmer groups on areas of common interest. □

Notes

- 1 This includes the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- 2 **Diokno, M. 2008:** The Importance of Community: Issues and Perceptions of Land Ownership and Future Options in Five Communes in Mondulkiri Province, Cambodia. NTFP- Exchange Programme and NGO Forum on Cambodia, Phnom Penh, Cambodia, p. 51.
- 3 **NGO Forum 2008:** NGO Position Papers on Cambodia's Development in 2007-08: Monitoring the implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-10. Phnom Penh, Cambodia.
- 4 Ibid.
- 5 Social land concessions are a legal mechanism through which state land can be given to individual families.
- 6 **Amnesty International 2008.** A Risky Business – Defending the Right to Housing, p 13.
<http://www.amnesty.org/en/library/asset/ASA23/014/2008/en/292f2e06-8bd7-11dd-8e5e-43ea85d15a69/asa230142008en.pdf> (last accessed on 10th February 2009).

The article was prepared by a group of people working in consultation with indigenous peoples, who all prefer to remain anonymous. It draws upon documents prepared by the NGO Forum on Cambodia.

VIET NAM

Since 1979, 54 ethnic groups, including the Kinh majority group, have been officially recognised in Viet Nam. However, the country is ethnically much more diverse. 93 different languages have been identified. The Kinh, or Viet majority, inhabits the lowland deltas of the Red River in the north, the Mekong Delta in the south and the coastal land along the Truong Son mountain chain. Ethnic minorities make up about 14% of the total population of 86 million as of 2008. The Hoa (ca. one million) are the various Chinese groups, settled mainly in the large cities, while about one million Khmer, who are culturally linked to Cambodia, live in the Mekong Delta. The other ethnic minority groups live in the mountains and inter-montane valleys of the country. 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 who are referred to as Viet Nam’s indigenous peoples. Some of those living in the Northern Mountains, such as the Thai, Tay, Nung, Hmong or Dao, are fairly large groups, each with between 500,000 and 1.2 million people. But there are many with fewer than 300,000 people, sometimes only a few hundred. Around 650,000 belonging to several ethnic groups live on the plateau of the Central Highlands (Tay Nguyen) in the south. All ethnic minorities have Vietnamese citizenship. In recent decades, the Kinh people have increasingly moved to the highlands and the ethnic minority communities have also left their original lands, resulting in an increasingly mixed population, particularly in the Central Highlands, which have attracted large numbers of migrants. Despite the constant decline in poverty over the past 15 years, by the end of 2006 there were 61 districts in 20 provinces with over 50% of poor households. Most of these districts are in the North-

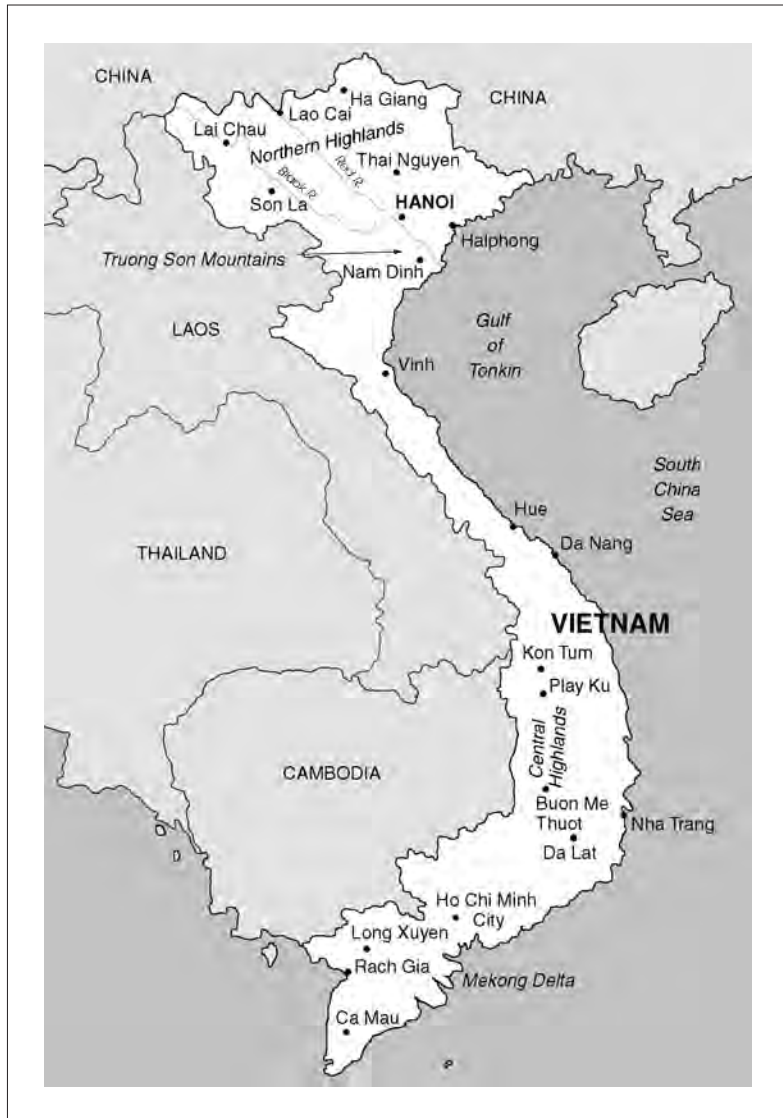
west, Northeast, Central coast and Central highlands where ethnic minorities account for more than eighty percent of the population. The most recent Vietnamese Households Living Standard Survey carried out in 2006 showed that the poverty rate among ethnic minorities was 52.3% as compared to 10.3% among Kinh and Hoa.

International image building

Viet Nam started its 2-year term as a non-permanent member of the UN Security Council on 1 January 2008 and is expected to play an active part in the organization's pacifying role in regional hotspots such as North Korea and Myanmar.

In its national report for the 5th session of the working group on the Universal Periodic Review of the UN Human Rights Council, to be held in May 2009, Viet Nam states that: "Viet Nam has become a multi-ethnic and multi-religious country... and it guarantees the right to development and equal human rights." Viet Nam has also proudly announced that the 12th National Assembly has 87 deputies from ethnic minorities, accounting for 17.65% of members, and that special agencies and organizations are established to ensure the rights of ethnic minorities, such as the State Committee for Ethnic Minorities Affairs (a ministerial-level agency) and the Ethnic Advisory Council.

On September 13, 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples. The government of Viet Nam cast its vote in support of the Declaration. On September 20, 2008, however, an article was published on the Vietnamese official website, the Voice of Vietnam, and on the website of the Communist Review referring to this event. In this article it is argued that "the concept of indigenous peoples" and the "rights of indigenous peoples" have been replaced by the "concept of the rights of citizens" – rights of every Vietnamese regardless of whether they belong to ethnic minorities or the majority. This, the article claims, is "a historical fact that cannot be argued".



In 2008, the United Nations started to implement the “One Plan”, being one of the eight “Delivering as One” pilot countries in the UN

reform. It is a joint action programme between the Government of Viet Nam and 14 of the 16 resident UN organizations in Vietnam. With the aim of increasing the efficiency and effectiveness of the UN's support to Viet Nam, all UN interventions are now included in this programme. The current One Plan will run until the end of 2010. This programme puts a great deal of emphasis on the concept of equitable growth, i.e. on including vulnerable groups such as ethnic minorities in the country's remarkable economic leap forward.

Poverty reduction: old issues, new questions

While Viet Nam impresses the international community with its poverty reduction achievements driven by continuous economic growth, the country continues to struggle with poverty in ethnic minority areas. On 23 March 2008, the social protection department of the Ministry of Labour, War Invalids and Social Affairs (MOLISA) organized a national workshop to search for mechanisms to tackle poverty in the country's 61 poorest districts. The mechanisms identified are reflected in a resolution on "a rapid and sustainable poverty reduction programme for 61 poor districts" which was signed by the Prime Minister on 27 December 2008. The resolution, however, does not offer any great innovations in comparison with the two already existing National Targeted Programmes for poverty reduction.

A lack of government investments cannot be the reason for the slow progress in these areas, given the billions of Viet Nam Dong that have been spent over the last decade. Finding answers and solutions seemed easy for some but difficult for others. "The crux of the matter has been correctly summed up by Ikemoto Yukio in a recent publication:

If a poverty alleviation policy is designed for the majority, it implicitly assumes the environment, society, and culture of the majority. And when the policy is applied to the ethnic minorities, it will bring about conflicts for them. They may be indirectly forced to accept the culture of the majority. (Yukio 2007: 8)

A question of culture and rights

The Vietnamese government claims to have introduced policies to support the preservation and promotion of traditional national culture, in particular the cultures of ethnic minority groups, including the preservation of spoken and written languages. The “unity in diversity” phrase is often quoted to demonstrate how successful this cultural integration has been. Viet Nam is a party to the 2002 UNESCO Universal Declaration on Cultural Diversity. Cultural diversity, as a prerequisite for cultural liberty, means allowing people to lead the life they choose and providing them with the tools and opportunities for doing so. It means, among other things, that people need to be free to speak their mother tongue, and to safeguard their heritage. While Viet Nam’s efforts to safeguard both tangible and intangible cultural heritage need to be acknowledged, promotion of the use of mother tongue is more questionable. Article 5 of the 1992 Constitution stipulates that: “All nationalities have the right to use their mother tongue to preserve their identity and to promote their valuable traditions and cultures”. Earlier, in 1991, Article 4 of the Universal Primary Education (UPE) Law stated that “...ethnic minorities have the right to use their mother tongue together with Vietnamese to implement primary education”. Despite this encouraging legislative work, on a practical level this is often interpreted as the teaching and learning of ethnic minority languages as a subject rather than as a medium of instruction. Vietnamese remains the main medium of instruction at all levels of education, also in predominantly non-Vietnamese areas. Several NGOs and international organizations have been promoting teaching in mother tongue as being essential not only for the safeguarding of languages and indigenous knowledge but also as a means of improving the quality of life for minority groups. Mother tongue education is seen as a key element of quality education and of preventing minority children from dropping out of school or education programmes. The Ministry of Education and Training is, however, not very charmed by this modality and does not allow much more than some small scale pilot programs. The draft decree on “teaching and learning ethnic minority languages”, which was shared with international organizations in November 2008, clearly

states that: "Vietnamese is the official language of instruction in all schools and other educational settings". This message was repeated during the symposium "Language and Quality Education for Ethnic Minority People", which was organized on 3 and 4 December 2008 by the Education Sector Group and the Ministry of Education and Training. The reason for the government's reluctance to provide more autonomy in using languages might lie in a fear of endangering the so highly valued unity of the country.

Climate change and poverty

Natural disasters such as typhoons, storms, floods, droughts, forest fires and salt-water intrusion present recurring risks to Viet Nam. The immediate consequences of global warming are apparent due to changes in rainfall, temperatures and the availability of water.¹ According to the World Bank, Viet Nam is one of the countries most affected by global warming and climate change in Asia.² UNDP's Human Development report 2007 – 2008 states that: "Climate change will strengthen the transmission mechanisms that convert risk into vulnerability, militating against the efforts of the poor to advance human development" (UNDP 2008: 75). During spring 2008, mountainous provinces in the north of Viet Nam suffered a severe cold period which lasted for 38 days and negatively affected ethnic minorities in particular, leaving almost 20,000 cattle and buffaloes dead. For poor ethnic minority households, these were their only assets and means of living (Oxfam 2008). In addition, the northwest and north-east regions of the country experienced heavy, so-called "flash" flooding later in 2008 while a long period of drought occurred in the central highlands and the south. Ethnic minority people, who mainly inhabit these areas, were again seriously hit. The government response was guided by the National Target Program in Responding to Climate Change (NTP RCC), which was launched in December 2007. It has been conceived by the authorities to provide a strong foundation for addressing climate change issues in Viet Nam and is also the official guideline for management and coordination of climate change activities for sustainable development in the future. Unfortunately, the program lacks a long-

term perspective and has not been integrated with poverty reduction policies and sustainable rural development. This integration will be necessary, as the Oxfam report finds that: "It's clear that poor men and women are the ones who suffer the most consequences of climate change situations and also people who are most vulnerable with the future affects of the climate change. ...Support at local level will play key role in helping people to overcome difficulties they will face" (Oxfam 2008:50). □

Notes

- 1 United Nations and the Government of the Socialist Republic of Viet Nam 2007: p. 16
- 2 World Bank 2008: p. 213

Sources and references

- General Statistics Office (GSO) 2007: Result of the survey on household living standards 2006, <http://www.gso.gov.vn>.
- General Statistics Office (GSO) 2009: Poverty and Inequality in Viet Nam 1993-2006.
- Ikemoto, Yukio, 2007:** *Poverty alleviation politics and ethnic minority people in Vietnam*, Institute of Oriental Culture, University of Tokyo.
- Imai, Katsushi and Raghav Gaiha. 2007:** Poverty, inequality and ethnic minorities in Vietnam. Katsushi Imai Raghav Gaiha. Economics School of Social Sciences, the University of Manchester. Manchester, M13 9PL October 2007
- International Non-Governmental Organization (INGO) statement for the Vietnam Consultative group meeting, 4-5 December 2008 (<http://www.ngocentre.org.vn/node/73>)
- Oxfam International 2008:** Viet Nam: climate change, adaptation and poor people, <http://www.oxfam.org.uk/publications>.
- Selter, Elke, Tran Nhat Ly, Le Thi Lien, Hans Lambrecht and Vibeke Jensen 2008:** There is no Shortcut to Development. Safeguarding and Promoting Cultural Diversity and Rights for a Sustainable Future, UNESCO Hanoi office.
- The Communist Review - Vietnamese version of the official website of Vietnam Communist Party http://www.tapchiconsan.org.vn/details.asp?Object=20954872&news_ID=281033639
- The Government of the Socialist Republic of Viet Nam 2008: Resolution On Rapid and Sustainable Poverty Reduction Programme for the 61 Poor Districts.
- The Government of the Socialist Republic of Viet Nam 2009: *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council Resolution 5/1.*

- United Nations and the Government of the Socialist Republic of Viet Nam 2007: *One Plan 2006 -2010.*, <http://www.un.org.vn>.
- United Nations Development Programme (UNDP) 2008: *Human Development Report 2007/2008*, <http://hdr.undp.org/en/reports/global/hdr2007-2008/>.
- US Department of State 2009: *2008 Human Rights Report Vietnam*, <http://www.state.gov>.
- Voice of Vietnam news. <http://vovnews.vn/Home/Boi-canh-lich-su-quyen-cua-nguoi-ban-dia-khong-ton-tai-o-nuoc-CHXHCN-Viet-Nam/20089/12732.vov>
- World Bank 2008: *Global Monitoring Report 2008*, <http://www.worldbank.org>.

Ms Dang Bao Nguyet has worked for several international development projects targeting ethnic minority communities over the past seven years. She currently coordinates the Ethnic Minorities Working Group of the Viet Nam Union of Friendship Organisations-NGO Resource Centre. She is a member of the regional Indigenous Knowledge and Peoples (IKAP) Network. The article reflects her personal opinion and not necessarily that of the Ethnic Minorities Working Group. Nguyet can be contacted at: nguyetbaodang@gmail.com

LAOS

Laos is the most ethnically diverse country in mainland Southeast Asia, with a population of approximately 7 million. The ethnic Lao, comprising around a third of the population, dominate the country economically and culturally. Another third consist of members of other Tai language-speaking groups. The final third have first languages in the Mon-Khmer, Sino-Tibetan and Hmong-Ieu Mien families. These groups are sometimes considered to be the “indigenous peoples” of Laos. Officially, all ethnic groups have equal status and therefore the concept of “indigenous peoples” is not recognized by the Lao government. The Lao government currently recognizes over 100 ethnic sub-groups within 49 ethnic groups. Some researchers have estimated that there are over 200 distinct ethnic groups in the country.

The indigenous peoples of Laos historically resided predominantly in mountainous areas, although many have been resettled to the lowlands in recent decades. They are generally economically worse off than Lao groups, and form a majority in Laos’ 47 poorest districts. They are experiencing various livelihood-related challenges, and their lands and resources are under increasing pressure from government development policies and commercial natural resource exploitation (agro-industry and tree plantations, mining concessions and the development of large hydroelectric dams). There is no specific legislation in Laos with regard to indigenous peoples.

National Assembly Approves List of Ethnic Groups

In 2005 the National Assembly declined to approve the new list of 49 ethnic groups along with a large number of sub-group names pro-

posed by the Lao Front for National Construction (see *Indigenous World 2005* and *2006*). This was after the Central Party Politburo (leadership committee within the Central Lao Revolutionary Party) had approved the list in principle in late 2001 (see *Indigenous World 2001-2002*). The Politburo again reaffirmed the validity of the list in 2005 (see *Indigenous World 2006*).

According to observers, the National Assembly's main objection to the list came from ethnic Brou members from Savannakhet Province, who wanted the Brou included as a separate ethnonym from the Mangkong and Tri ethnic groups, which are included in the list. The Central Lao Front for National Construction returned to Vilaburi District, Savannakhet Province, for a re-study. The people there reaffirmed that they preferred the terms Mangkong and Tri to the designation of Brou, even though most Mon-Khmer language speakers in the province call themselves Brou. On the one hand, it is believed that the main reason why the terms Mangkong and Tri are preferred in Vilaburi is that the two groups want to be categorized differently, even if they often refer to themselves, in their own languages, as Brou. On the other hand, some who outwardly identify as Brou appear to want the Mangkong and Tri to be identified as sub-groups of the Brou in order to increase the political power of those who self-identify as Brou. The provincial government of Savannakhet only recognizes three ethnic groups in the province: the Lowland Lao, the Phou Thai and the Brou, even though the Brou include a wide variety of peoples with different dialects and cultural practices. In any case, in November 2008 the National Assembly adopted the original list of ethnic groups, which does not include the Brou. The controversy appears to remain unsettled, and is likely to re-emerge in the future.

Hydroelectric Dams

In early 2008, foreign investors were still continuing to show considerable interest in developing various large hydroelectric dams in Laos. By the end of the year, however, some investors had withdrawn from projects, including those studying the Nam Ngum 3 dam in Vientiane Province, the Nam Ou dam in Luang Phrabang, and a lignite power



project in Sayabouri.¹ As the global economic crisis expands, other projects may be in jeopardy, although the controversial Nam Theun 2 dam is likely to be completed. In September 2008, *International Rivers*² released a detailed report highlighting various negative impacts associated with large dam projects, including those affecting indigenous peoples, entitled *Power Surge: The Impacts of Rapid Dam Development in Laos*.³ *International Rivers* criticizes the rapid and poor quality of large dam developments in Laos, including the neglect associated with environmental and social impacts, and related compensation for local people. The report includes 11 detailed case studies on dam projects

completed, under construction and planned in various parts of Laos. There is also a useful chapter that lays out some alternatives to large dam development. A large proportion of Lao dams are located in mountainous parts of the country, particularly in areas populated by indigenous peoples, thus threatening them disproportionately as compared to the lowland Lao people. Some of the dams that are considered to be a particular threat to the livelihoods and the natural and cultural heritage of indigenous peoples include Nam Tha 1 (Luang Nam Tha Province), Nam Theun 1 (Bolikhamxay Province) and Nam Theun 2 (Khammouane Province), Xekong 4 and 5 (Xekong Province), Xekaman 1 (Attapeu Province) and Xekaman 3 (Xekong Province), Xekatam (Champasak Province), Xepian-Xenamnoy (Champasak Province) and Xeset 2 (Salavan Province). Many environmental and social problems associated with the Houay Ho (Champasak and Attapeu Provinces), Nam Leuk (Bolikhamxay and Vientiane Provinces), Nam Song (Vientiane Province) and Nam Theun-Hinboun (Khammouane Province) dams also remain unresolved.

Mining

The mining industry in Laos continued to boom in early 2008 (see, also, *Indigenous World 2008*). However, a sharp decline in commodity prices at the end of the year resulted in rapid declines in foreign investor interest in the mining industry. For example, Australia's large multinational corporation, OZ Minerals Limited, which owns the Sepon Mine in Savannakhet Province, the largest mine in the country, announced that it was holding off on plans to spend US\$100 million to expand the mine, citing dramatic declines in copper prices and difficulties in securing loans as the reasons for its change of plans. The mine is located in an area populated by mainly ethnic Brou people. In December 2008, a company spokesman denied that the mine would close down although some workers have lost their jobs and, according to the *Vientiane Times*, "OZ minerals has no policy to compensate local people who have lost their jobs because they were employed on a daily contract basis."⁴ It is unclear how changes at the Sepon Mine are affecting Brou people, either workers or those from communities that

were resettled to make room for the International Finance Corporation (IFC)-supported project.

Economic Land Concessions

There has been a massive expansion of economic land concessions throughout Laos in recent years for industrial tree crops such as rubber, acacia, eucalyptus, teak, *Jatropha*, and agar wood, and for a wide range of agricultural crops including corn, cassava, cotton, coffee, cashew nut and others. In May 2007 Prime Minister Bouasone Bouphavanh announced a moratorium on new concessions⁵ (see, also, *Indigenous World 2008*) although this has had only a limited effect. The granting of concessions continued to increase throughout 2008, even though the Lao government has been increasingly promoting various forms of contract farming whereby the farmers retain at least partial control of the land.⁶ The central government has also been granting new large land concessions, and large numbers of smaller concessions of 100 ha or less have recently been allocated to companies. This is the maximum concession size that provinces can approve following the May 2007 moratorium, thus resulting in large areas of additional new land losses for indigenous peoples and others.

The price of rubber, like many other globally traded commodities, has been in rapid decline recently and yet the expansion of rubber concessions has thus far continued.⁷ The situation may, however, change as the global economic crisis deepens in 2009. Still, on November 27, 2008, it was announced that Sai Gon-Tay Nguyen Investment Joint Stock from Vietnam had received a 30,000 ha concession from the Lao government in Somboun Sub-district, Phou Vong District, Attapeu Province, a heavily forested mountainous area near the Vietnamese border entirely populated by ethnic Brao people. The project will take over the lands and forests in which the Brao people have historically conducted rotational forms of swidden agriculture, and collected non-timber forest products.

Some provincial governments, such as those from Luang Nam Tha and Xekong, have recently instated moratoriums on the expansion of rubber production in their jurisdictions due to concerns regarding pro-

fitability and land availability for more lucrative crops.⁸ In most cases, little is mentioned in the press about the loss of important forest and grazing lands for local people, although Kham-ouane Boupha, the President of the National Land Management Authority, has criticized the destruction of forest lands for economic land concessions.⁹ In Oudomxay, the head of the Provincial Planning and Investment Department was quoted by the *Vientiane Times* as saying, in relation to shortfalls in contract farming rubber plantations, "We've encountered many problems over the years. Some of the land that was approved for plantations was in fact part of a protected forest area or was used by farmers to grow rice and other crops. This happened because we didn't check and survey the land properly."¹⁰

In Bachieng District, Champasak Province, many indigenous communities have already lost most of their agricultural and forest lands to Vietnamese economic rubber concessions, causing severe livelihood problems and a great deal of anxiety amongst affected communities. Expansion of areas under rubber cultivation is still continuing.¹¹ In Paksong District, another district dominated by indigenous peoples, there are so many economic land concessions that some overlap, causing conflicts between the companies involved. As an indicator of the extent of the problems, a group of former revolutionary soldiers (*nak lop kao* in Lao) in the district sent an ominous letter to the government stating that if the land problems plaguing the people were not resolved soon, there could be serious unrest in the district. Although it was not stated directly, the wording left no doubt as to the warning that the indigenous people of the area could rise up in armed rebellion, although the likelihood of this happening on a wide scale seems unlikely in the immediate future.

Lao Hmong Repatriation from Thailand Continues

In 2007 there were approximately 7,000 Lao Hmong living in a camp at Huay Nam Khao in Petchabun Province, Thailand. Although organizations such as Amnesty International and Human Rights Watch criticized an agreement between Thailand and Laos to forcibly repatriate the Hmong to Laos, approximately 2,000 Hmong have been involunta-

rily returned to Laos since November 2006 (see *Indigenous World 2008*). According to the *Vientiane Times*, a publication controlled by the Lao government, nine groups of Hmong have “voluntarily” returned to Laos since repatriation began, with the most recent group of 58 people from 17 families arriving in Laos on December 22, 2008. According to the *Vientiane Times*, the Hmong who left Laos illegally and ended up in Huay Nam Khao had been tricked into believing that they would be able to obtain refugee status in the USA if they went to Thailand. The newspaper also reported that there are still 5,000 people scheduled to be repatriated from Huay Nam Khao, and that there are plans to return them all to Laos by June 2009. The Thai and Lao government consider the Hmong in Thailand to be illegal economic migrants.¹² Those moved are apparently being allowed to return to their villages, or resettle with relatives in Laos. However, those who previously conducted swidden agriculture are being sent to resettlement areas in the lowlands,¹³ including places where agricultural land is scarce, and people are already experiencing various livelihood problems. □

Notes

- 1 **Phonthonesy, E. 2008:** ADB vows to stand beside Laos as crisis grows. *Vientiane Times*, December 25.
- 2 Formerly *International Rivers Network* or IRN.
- 3 **International Rivers 2008:** Power Surge: The Impacts of Rapid Dam Development in Laos. Berkeley, CA, 88 pp.
- 4 **Phonthonesy, E. 2008:** Sepon Mine cuts production costs. *Vientiane Times*, December 23.
- 5 *Vientiane Times* 2007: Govt suspends land concessions. May 9.
- 6 *Vientiane Times* 2008: Luang Phrabang to grow more trees for export. October 17.
- 7 *Vientiane Times* 2008: Vietnamese firm to process Lao rubber for export. November 14; *Asia Pulse* 2008. Dak Lak develops industrial crops in Southern Laos. October 6.
- 8 *Vientiane Times* 2008: No more rubber for Luang Nam Tha. November 11; *Vientiane Times* 2008. Xekong to expand crop varieties. September 2.
- 9 *Khaosan Pathet Lao* 2008: Development projects affect forests. June 6.
- 10 **Syvongxay, K. 2008:** Oudomxay rubber plantations fall short. *Vientiane Times*, November 5.
- 11 **Baird, I.G. 2008** (in Preparation): Land, rubber and people: Rapid agrarian change and responses in southern Laos. *Journal of Lao Studies*.
- 12 *Agence France-Presse (AFP)* 2009: Laos wants Hmong repatriated. January 2.

- 13 **Chandara, P. 2008:** Illegal migrants return home from Thailand. *Vientiane Times*, December 24.

Ian G. Baird, originally from Canada, has a PhD in human geography and has been working on natural resource management and ethnic identity issues in mainland South-east Asia for 21 years. He is Executive Director of the Global Association for People and the Environment, a Canadian NGO active in Laos.

BURMA

Burma is a very ethnically diverse country, with over 100 different ethnic groups. The Burmans make up an estimated 68 per cent of Burma's 50 million people. Other major ethnic groups include the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. The country is divided geographically into seven, mainly Burman-dominated, divisions and seven ethnic states. It is usually the non-Burman ethnic groups that are considered Burma's indigenous peoples. In accordance with more general usage in the country itself, in this article they will be referred to as "ethnic nationalities".

Burma has been ruled by a succession of military regimes dominated by ethnic Burmans since the popularly elected government was toppled in 1962. After decades of armed conflict in ethnic nationality areas, the military regime negotiated a series of ceasefire agreements with various groups in the early and mid 1990s. The military regime has justified its rule, which is 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. While the ceasefires resulted in the establishment of special regions with some degree of administrative autonomy for the ethnic nationalities, the agreements also allowed the military regime to progressively expand its presence and benefit from the unchecked exploitation of natural resources in ethnic areas.

Constitutional Referendum

On 9 February 2008, Burma's military junta, the State Peace and Development Council (SPDC) announced its plan for a referen-

dum to adopt a new constitution, followed by general elections to be held in 2010. Ten days later, the junta announced that a handpicked 54-member constitution drafting committee had completed the writing of the charter. This concluded a process that had lasted more than 15 years and had been characterized by lack of transparency, freedom of opinion and participation by the most representative pro-democracy and ethnic political parties.

Many ethnic political parties, including the United Nationalities Alliance,¹ the Shan Nationalities League for Democracy, the New Mon State Party and the Chin National Front, expressed strong opposition to the junta-drafted constitution and urged voters to reject the charter in the referendum. On 15 February, Burmese opposition groups in exile announced the completion of an alternative draft constitution. Over 90 pro-democracy and ethnic organizations endorsed the text, which outlines a genuine federal system and excludes the right to secession.²

By contrast, the SPDC-drafted constitution does not promote and protect the rights of non-Burman ethnic groups and does not provide for a decentralized political system that grants a degree of autonomy to Burma's ethnic nationalities. The constitution makes provision for the establishment of parliaments and the appointment of chief ministers in every state and division. However, the charter grants very limited legislative and executive powers to local bodies. The central legislative and executive bodies retain exclusive power to make laws and govern on matters affecting ethnic nationalities, such as land administration, the use of natural resources, health, education and justice. In addition, the appointment of the chief ministers of states and divisions by the President of the Union also goes against federal principles.

The SPDC failed to adequately inform citizens about the content of its proposed constitution. Moreover, the junta failed to translate the constitution into any of the ethnic nationalities' languages. The referendum campaign was marred by intimidation, arrests and harassment countrywide. Vote buying was also widely reported, especially in rural areas.

In the lead-up to the referendum, the regime arrested scores of activists across Burma for campaigning against the SPDC's constitution. The crackdown targeted activists in Arakan State in particular, where SPDC authorities arrested about 100 activists in separate incidents for



expressing their opposition to the charter. Despite this, people from ethnic nationalities' regions demonstrated against the SPDC-backed charter. Activists and students played a vital role in the protests, which were mainly conducted through the distribution of leaflets and posters urging citizens to oppose the junta-backed constitution.

The referendum was held on 10 May throughout most of Burma, and on May 24 in the areas that had been worst affected by cyclone Nargis, which wrought havoc to large areas of the south. Despite domestic and international appeals to the regime to postpone the referendum and focus instead on relief operations in areas hit by cyclone Nargis, the junta pushed ahead with the vote. On 26 May, the SPDC announced that 92.4% of voters had approved the constitution, with a turnout of 98.1%.³ Allegations of intimidation, fraud and irregularities were reported across all Burma's states and divisions. The UN Human Rights Council said that the referendum was held in an "atmosphere of intimidation and in disregard for international standards of free and fair elections."⁴

Cyclone Nargis and food shortages

On 2-3 May, cyclone Nargis cut a swath of death and destruction across Burma's Irrawaddy delta and beyond. The cyclone left about 134,000 people dead or missing and another 2.4 million in desperate need of aid. The humanitarian catastrophe unleashed by Nargis also had repercussions in ethnic nationalities' regions that were not directly affected by the disaster. SPDC army troops stationed in border regions that are reliant on rice and other basic food commodities produced in the delta stepped up confiscation and extortion for fear of food shortages.⁵ In addition, SPDC authorities extorted money and confiscated rice, paddy seeds and cattle from farmers, allegedly to help cyclone-affected communities. In many cases the confiscated goods never reached cyclone survivors. In fact, it is not known if any of these goods ever reached the cyclone survivors.

In Arakan State, the SPDC carried out an aggressive campaign of forced procurement of rice. This practice, coupled with restrictions on the delivery of food and a ban on the transport of rice from other areas,

resulted in widespread food shortages. In addition, the SPDC forced farmers to plant unprofitable cash crops such as the physic nut (*Jatropha Curcas L.*, now promoted all over the world for bio-fuel production). In September, the World Food Program said that 44% of households in Northern Arakan State had insufficient food and 27% of children under five were suffering from “moderate to acute” malnutrition.⁶

Famine in Chin State

In Chin State, a plague of rats triggered by the cyclical flowering of bamboo resulted in the destruction of crops. This caused acute food shortages for local communities. An estimated 100,000 people, or 20% of the total Chin population, have been affected by food shortages. Many people have fled across the Indo-Burma border. In July 2008, more than 700 people fled to India’s Mizoram State in search of adequate food supplies.⁷ The SPDC failed to provide any assistance to affected communities and instead confiscated food aid donated by private donors and church groups.

The food crisis in Chin State was exacerbated by the SPDC’s ongoing human rights abuses and repressive economic policies. The use of forced labor, which diverted local farmers’ resources from their own crops, continued to be reported across the state. Arbitrary taxation by the SPDC authorities also continued, including the extortion and confiscation of money, properties and livestock by SPDC army battalions. The regime also ordered farmers to replace staple crops with other cash crops, such as tea and physic nut.

Rohingya flee persecution

The SPDC’s political, economic and social persecution of Rohingya, a Muslim ethnic group of Northern Arakan State, worsened over the past year.⁸ The regime continued to subject them to systematic discrimination and abuses, which have included restrictions of movement, restrictions on marriage, arbitrary taxation, forced labor, confis-

cation and arbitrary arrests. In addition, the SPDC relocated Rohingya villages to make room for “model villages” to house Burmans. The SPDC also stepped up religious persecution against Rohingya. This has included fines and arrests for the renovation of mosques.⁹

Many Rohingya fleeing oppression, discrimination and restrictions in Burma have crossed into Bangladesh in an attempt to reach Thailand and Malaysia in overcrowded boats unfit for purpose. Rohingya boat people also departed – or attempted to depart – from Arakan State. It is estimated that in 2008, over 5,000 Rohingya boarded boats in Bangladesh and Burma heading for Thailand and Malaysia.¹⁰ Many boats never reached their destination, as they sank in the Bay of Bengal and the Andaman Sea. In 2008, over 500 Rohingya boat people died at sea.¹¹

Eastern Burma offensive continues

The SPDC army continued its military offensive against the Karen National Union (KNU) and other ethnic armed opposition groups in Eastern Burma. The offensive has resulted in the displacement of over half a million civilians and the destruction or forced relocation of more than 3,200 villages between 1996 and 2007.

Intensified militarization, coupled with the construction of new roads and military bases on the frontlines, allowed the regime to carry out attacks even during the rainy season, previously a time of let-up in military operations.¹²

Attacks on civilians, extrajudicial killings and forced displacements continued to occur in Eastern Burma.¹³ Over the past year, an estimated 66,000 people have been forced to leave their homes as a result of the SPDC army’s attacks, including 27,000 villagers in four townships in Northern Karen State where the regime’s offensive was mainly concentrated.¹⁴

The SPDC campaign of terror against Karen went beyond Burma’s borders. On 14 February, two unidentified assailants shot and killed the General Secretary of the KNU, Pado Mahn Sha, at his home in Mae Sot, Thailand.¹⁵ The killing was believed to be the work of members of the pro-junta armed group, the Democratic Karen Buddhist Army.¹⁶

Energy projects fuel abuses

The SPDC's energy and infrastructure projects in ethnic nationalities' areas continued to have a negative impact on local communities. Hydropower projects generate electricity that the regime sells to neighboring countries or diverts mainly to Burma's new capital, Naypyidaw. Apart from the military regime, the Chinese and Thai companies that have been contracted for the construction of the dams are the only stakeholders which stand to benefit from these projects.

Of these hydropower projects, the dam on the upper Paunglaung River exemplifies the military regime's policy of unchecked exploitation of Burma's natural resources and oppression of ethnic nationalities. The upper Paunglaung dam is located in the Pyinmana Hills of Southern Shan State, 26 miles East of Naypyidaw. The 99-meter-tall dam is being jointly built by the SPDC's Hydroelectric Power Department under the Ministry of Electric Power and China's Yunnan Machinery Import and Export Corporation. It is expected to be completed by December 2009 in order to generate 140 megawatts of power for the junta's new capital. The dam project involves the flooding of 5,000 acres of fertile farmland and 12 villages with a population of 3,500. The villages are inhabited by Kayan Lahta, the smallest sub-group of the Kayan, belonging to the Karenni ethnic nationality. The regime never consulted the local communities and did not offer any compensation for lost land. Local communities have faced the increased presence of SPDC army troops, which has resulted in forced labor and other abuses. The deployment of SPDC army troops along the Paunglaung River is in contravention of the ceasefire agreement signed by the main Kayan armed opposition group, the Kayan New Land Party (KNLP), and the military regime in 1994. The ceasefire agreement had granted the KNLP control of the area affected by the dam project.¹⁷ □

Notes

- 1 The United Nationalities Alliance comprises eight ethnic-based political parties that ran in the 1990 election and won 10 % of the parliamentary seats.

- 2 *Mizzima News*, 15 February 2008, Burmese opposition groups challenge junta's constitution.
- 3 *Associated Press*, 26 May 2008, Referendum approved in cyclone-hit areas.
- 4 Human Rights Council, 8th session, Situation of human rights in Myanmar, 12 June 2008, UN Doc. A/HRC/8/L.12.
- 5 *Reuters*, 24 May 2008, Cyclone increases army looting on Myanmar borders.
- 6 *Deutsche Presse-Agentur*, 16 September 2008, WFP faces 11.2-million-dollar shortfall in Myanmar.
- 7 Chin Human Rights Organization, July 2008, Critical point: Food scarcity and hunger in Burma's Chin State.
- 8 Human Rights Council, 7th session, Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro Pinheiro, 5 March 2008, UN Doc. A/HRC/7/18.
- 9 *Kaladan News*, 28 February 2008, Twelve sentenced to seven years in jail for renovation of mosque.
- 10 *Arakan Project*, January 2009, Boat people departures chart.
- 11 *Straits Times*, 18 January 2009, Boat people feared dead.
- 12 *Asian Tribune*, 16 January 2008, Ten civilians killed as Burma army increases presence in Karen state.
- 13 Human Rights Council, 7th session, Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro Pinheiro, 5 March 2008, UN Doc. A/HRC/7/18.
- 14 Thai Burma Border Consortium, October 2008, Internal Displacement and International Law in Eastern Burma.
- 15 *Associated Press*, 15 February 2008, Karen rebels vow to continue fighting against Burma junta.
- 16 *Irrawaddy*, 21 February 2008, DKBA members kill Mahn Sha: Karen sources.
- 17 Kayan Women's Union, June 2008, Drowning the Green Ghosts of Kayanland.

Andrea Martini Rossi is a human rights researcher from Italy. He has worked in Europe, Latin America and Asia and is currently a Research Officer at the Bangkok-based ALTSEAN-Burma.



SOUTH ASIA

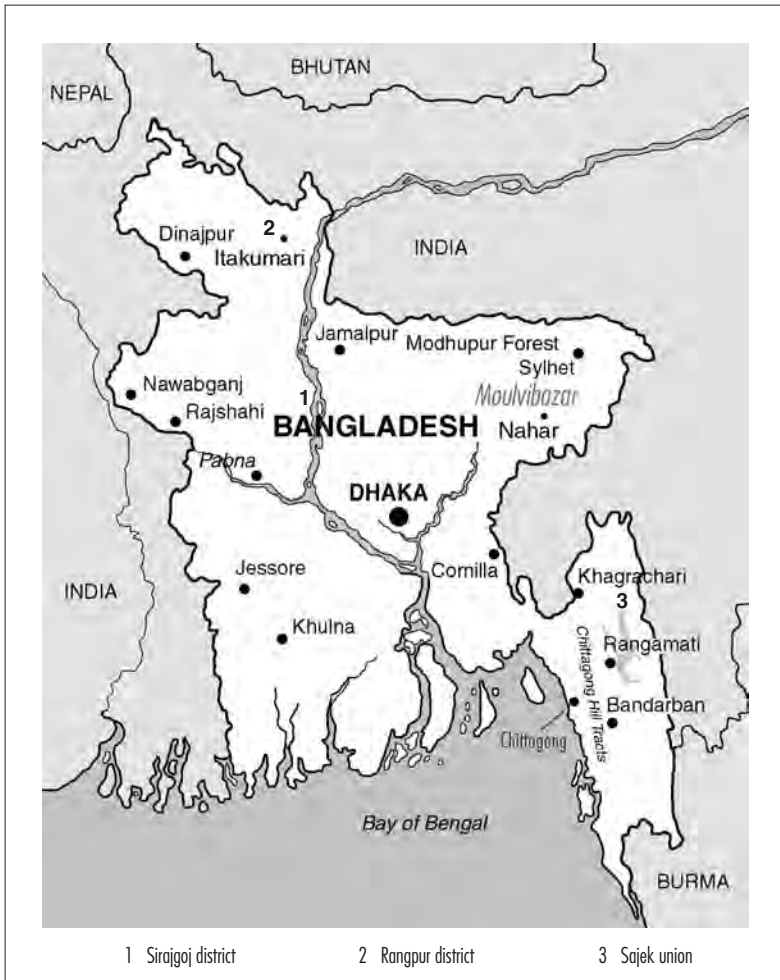
BANGLADESH

The majority of Bangladesh's 143.3 million people are Bengalis, and approximately 2.5 million are indigenous peoples belonging to 45 different ethnic groups. These peoples are concentrated in the north, and in the Chittagong Hill Tracts (CHT) in the south-east of the country. In the CHT, the indigenous peoples are commonly known as *Jummas* for their common practice of swidden cultivation (crop rotation agriculture) locally known as *jum*. There is no constitutional recognition of the indigenous peoples of Bangladesh. They are only referred to as "backward segments of the population".

Indigenous peoples remain among the most persecuted of all minorities, facing discrimination not only on the basis of their religion and ethnicity but also because of their indigenous identity and their socio-economic status. In the CHT, the indigenous peoples took up arms in defence of their rights. In December 1997, the 25-year-long civil war ended with a Peace Accord between the Government of Bangladesh and the Parbattya Chattagram Jana Samhati Samiti (PCJSS, United People's Party), which led the resistance movement. The Accord recognises the Chittagong Hill Tracts as a "tribal inhabited" region, its traditional governance system and the role of its chiefs, and it provides building blocks for indigenous autonomy.

Overall situation under the State of Emergency

The State of Emergency, declared on 11 January 2007, and the rule of the caretaker (interim) government continued throughout most of 2008. Under the State of Emergency, many fundamental rights, including freedom of press, freedom of association and the right to bail, were



suspended and political activity banned. The caretaker government's human rights record continued to be flawed in 2008. A reported 149 people were allegedly extra-judicially killed by law enforcement agencies but the government did not investigate the incidents nor did it circumscribe the powers of these agencies. Arbitrary arrests and detentions took a new turn during the State of Emergency, with thousands

of people arrested in only a short space of time. Between 28 May and 30 June, 50,215 people, many of whom were affiliated to political parties, were arrested by the Joint Forces. Torture, arbitrary arrests on false or at least barely credible charges, summary trials on dubious charges along with repression and harassment of human rights defenders and the media also continued unabated.

2008 also saw a few positive developments, however. In a landmark ruling, the High Court directed the government to set up criminal and civil courts in each of the three districts of the Chittagong Hill Tracts (CHT). The courts were set up in July in order to improve access to justice, and were expected to take up over 3,500 pending cases. In a separate move, restrictions on the use of mobile phones in the CHT were withdrawn in May.

In December 2007, the Council of Advisers approved the ordinance to set up the long-awaited National Human Rights Commission (NHRC), which will give priority to promoting human rights, ensuring that any perpetrators are brought to justice and human rights violations investigated. The NHRC, which began operating in 2008, is composed of three members (one of them an indigenous person) sitting for three-year terms, renewable once. Indigenous peoples of Bangladesh are expecting the NHRC to operate and significantly contribute to the promotion and protection of their rights, as the most vulnerable and marginalized group in the country. It is also expected that the NHRC will work constantly to close the gap between the promise of the Universal Declaration of Human Rights and the government's performance, as well as to put pressure on the government to respect the international human rights laws and instruments to which Bangladesh is a signatory.

Parliamentary elections and the commitments of the new government

On 17 December 2008, the State of Emergency was finally lifted and the first parliamentary elections in seven years were held on 29 December in a peaceful atmosphere and with a large voter turnout. Awami League (Bangladesh People's League), the biggest political party in

Bangladesh, won a landslide victory, claiming nearly 230 of the 300 seats in parliament. In its election manifesto, Awami League, which signed the Chittagong Hill Tracts Peace Accord in 1997, pledged among other things to prevent discriminatory treatment and human rights violations of religious and ethnic minorities and indigenous peoples, to take special measures to secure indigenous peoples' original ownership of land, bodies of water, and their age-old rights to forest areas, and to repeal all laws and other arrangements discriminatory to minorities, indigenous people and ethnic groups. Awami League also pledged to fully implement the Peace Accord, raising hopes that all its provisions will finally be implemented without further delay.

Chittagong Hill Tracts

Registration of indigenous political parties denied

The *Representation of the People Order of 1972* stipulates that any political party willing to participate in an election shall be registered with the Election Commission. In accordance with this provision, Parbattya Chattagram Jana Samhati Samiti (PCJSS), one of the political parties of the Chittagong Hill Tracts' (CHT) indigenous peoples, applied for registration. The Election Commission rejected their application, however, arguing that PCJSS did not fulfil the conditions of this provision. A delegation of PCJSS called on the Election Commission in October and urged it to reconsider PCJSS's application in the light of the distinct socio-political, cultural and historical background of the indigenous peoples in the CHT region. The Election Commission, however, did not take any consideration of these issues. Similarly, another indigenous organization in the CHT, United Peoples Democratic Front (UPDF) was also refused registration.

Nor did the Election Commission provide a separate electoral roll for the CHT, limited to permanent residents of the area. Instead, the electoral roll for the parliamentary elections was prepared on the basis of the inclusion of all inhabitants of the region, both permanent and non-permanent residents, thereby potentially legitimising the claims of Bengali settlers to the same rights as the original inhabitants of the area. This is in clear violation of the CHT Peace Accord.

Land rights in the CHT

Due to large-scale settlement of Bengalis from the plains to the Chittagong Hill Tracts (CHT), the government's resumed control over land and forests and the heavy militarization of the region, the indigenous peoples in the CHT have lost vast tracts of ancestral land. As in previous years, there were many evictions and land expropriations on the part of Bengali settlers in 2008, often backed up by the army and, in one instance, a local NGO. In one report from Khagrachari, it was alleged that some 133 indigenous households were affected when around 400 acres of land, including a school, were occupied by Bengali settlers, reportedly in the presence of the security forces. In another incident, some 100 Kheyang families in Rangamati were displaced and forced to seek alternative livelihoods due to continuing restrictions on *jum* (swidden or shifting) cultivation imposed by the Forest Department. The Land Commission, which should have been formed in accordance with the Chittagong Hill Tracts Peace Accord 1997 to deal with the land disputes in the CHT, remained non-operational in 2008.

Continued militarization and human rights abuses

In clear violation of the CHT Peace Accord, only a few "temporary camps" of the security forces have been withdrawn from the CHT and full control of local civil and police administration still remains to be handed over to the three Hill District Councils. The continued extensive military presence and control, the influx of settlers and the culture of impunity are all reportedly contributing to the ongoing human rights violations.

Human rights defenders active in the CHT, as well as prominent members of political parties such as PCJSS and UPDF, are facing particular difficulties, with several being targeted for arrest and questioning. Arson attacks were also reported in 2008. On 20 April, plains settlers attacked eight indigenous villages in Sajek union, Rangamati district, injuring nine people and burning down 132 houses without the necessary intervention of the authorities and despite the presence of nearby army camps. False charges have been brought against some

community members and the situation in the area continues to be tense.

Reconstitution of the International CHT Commission

In June, the Chittagong Hill Tracts Commission (CHT Commission) was re-established after several years' inactivity. The re-established CHT Commission has 11 members from Bangladesh and abroad. It carried out its first mission to Bangladesh in August with the aim of familiarising itself with the situation in the CHT, holding initial meetings with the parties concerned and seeking their input regarding possible actions to be taken and recommendations to be made by the CHT Commission. The CHT Commission will carry out its second mission in February 2009, on the basis of which a report with observations and recommendations will be prepared.

Plains areas and the northern hills

Conference on the rights of indigenous peoples

In February, the Bangladesh Adivasi Forum, the European Commission and UNDP jointly organised a conference entitled "Towards A Better Understanding of the Rights of Indigenous Peoples". The conference resulted in a number of recommendations, such as the recognition of indigenous peoples' rights and existence in the Constitution, implementation of ILO Convention No. 107, recognition of the collective and individual rights of indigenous peoples, the formation of a national commission for indigenous peoples and ensuring the full and effective participation of indigenous peoples in development works.

Attack on indigenous villages in North Bengal

Several attacks on indigenous villages occurred in 2008. On 15 April, a group of Bengali miscreants attacked the Adivasi families of Non-dokuja village and destroyed their eight houses. The miscreants looted the houses and their properties. The indigenous peoples had been living on the land for 70 years but the Bengali miscreants claimed that

they had ownership documents. The indigenous peoples complained that the miscreants had made fake documents. On 23 April, a group of 30 to 40 Bengali miscreants attacked the Adivasis of Itakumari village in Rangpur district to evict 100 families from their homeland. More than 20 women and children were injured in the attack and six injured people were admitted to hospital. The police came to the village after the attack but no-one was arrested. A case was filed by the indigenous peoples.

In Sirajgonj district, a group of Bengalis attacked the indigenous peoples of Sorabpur village on 15 September. More than 20 Adivasis were injured, including women and children. One woman later died in hospital. The attackers destroyed and looted houses. The Bengalis organised this attack to evict the Adivasis from their land. Indigenous peoples organised a press conference in Dhaka in protest at the attack.

Killing of two Santal farmers in Dinajpur

On 5 June, two Santal farmers were killed by land grabbers and a case has been filed against four Bengalis. The land grabber Bengalis, accused of murder, forcibly occupied 19 acres of land. Indigenous organisations have organised protest rallies to arrest the killers.

Continuing conflicts over forests

In Moulvibazar district, the Khasis communities are still facing an uncertain future. The Forest Department could not implement the Eco-park project on Khasi land in 2001 but the land disputes have still not been solved and, in September, betel leaf gardens of Khasis in Islachera village were destroyed. The police visited the place and a general report was filed at the police station.

In October, the Nahar Tea Garden Authority allegedly marked 4,000 trees from a Khasi village for felling. They had already cut down 700 trees on Khasi land. The Khasis of Nahar village in Moulvibazar have protested against the loggers and a group of human rights activists and environmental organisations have organised protest rallies and human chain activities against the Forest Department. The organisers are demanding a halt to the felling of trees and to the process of leasing out forests and hills, arguing that the Khasis have been protect-

ing the trees and forests for decades and they are the main protectors of biodiversity.

The land problem of 20,000 Garo and Koch people in Modhupur forest remains unresolved and the indigenous communities are still under threat of forcible eviction from the government's Eco-park project (see *The Indigenous World* 2006 and 2007). Many Garos have been facing false cases filed by the Forest Department, leading to endless harassment. In 2008, indigenous peoples also faced harassment from a social forestry project, which is being implemented without proper consultation with local communities.

Regional Consultation on ILO Convention No. 107

Two regional consultations were organised by the Bangladesh Adivasi Forum during 2008, with the support of the ILO's Dhaka Office in order to raise awareness of ILO Convention No. 107 and ILO standards on indigenous and tribal populations among indigenous organisations, government and other stakeholders, to identify needs and gaps in the implementation of Convention No. 107 and to provide recommendations for further activities. The consultations were supported by the ILO Project to Promote ILO Policy on Indigenous and Tribal Peoples and attended by more than 200 delegates. □

Sources

Human Rights in Bangladesh 2008 by Ain o Salish Kendro (ASK): http://www.askbd.org/hr_report2008/16_Indiginious.pdf

Human Rights Report 2008 by Odhikar: http://www.odhikar.org/report/pdf/hr_report_2008.pdf

OMCT Action File: BGD 290808, ESCR. "Arson attack on indigenous Jumma community in Sajek Union, the Chittagong Hill Tracts – Bengali settlers, with military support, torch houses of indigenous community".

Bangladesh Adivasi Forum's magazine *Solidarity* 2008

Indigenous Peoples Development Services 2008. Human Rights Report 2008 (unpublished report)

Prothom Alo, daily newspaper, 22 April 2008

Jai Jai Din, 25 and 26 April, *Prothom Alo* 26 April, *Samakal* 28 April, 2008

Prothom Alo 12 and 17 June 2008

The Daily Star 24 September 2008

Prothom Alo 12 September 2008

Kapaeeng Watch 2008

Binota Moy Dhamai is a Jumma from the Tripura people of the Chittagong Hill Tracts and is an activist in the movement for the rights and recognition of indigenous peoples in Bangladesh. He currently works as programme coordinator for the Asia Indigenous Peoples Pact (AIPP) (bdtripura@gmail.com). **Sanjeeb Drong** is a Garo from northern Bangladesh. He is a columnist and freelance journalist and currently editor of the indigenous magazine *Solidarity*. He has published more than 400 articles and four books on indigenous issues (sdrong@bangla.net).

NEPAL

Nepal is a country of immense cultural diversity. Its total population is 22.7 million, and over one hundred castes/ethnic and religious groups, and ninety-two mother tongues were listed in the 2001 Census. Indigenous nationalities (*Adivasi Janajati*) make up 8.4 million, or 37.19% of the total population. However, indigenous peoples' organizations claim they have been under-represented in the census, and that their actual populations comprise more than 50% of the total population. Fifty-nine indigenous nationalities have been legally recognized under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act 2001. The NFDIN Act defines indigenous nationalities (*Adivasi Janajati*) as communities who perceive themselves to be distinct groups and who have their own mother tongue, traditional culture, written and unwritten history, traditional homeland and geographical areas, plus egalitarian social structures.¹ There are a number of indigenous communities yet to be recognized. Nepali society is highly stratified, with the state-imposed and protected Hindu caste system's upper castes (*Bahun* and *Chhetri*) holding key positions in the state, and indigenous nationalities, Dalits and Tarai caste groups experiencing subjugation, exclusion, discrimination, oppression and exploitation.

Political transformation

The past year has been full of transformatory events for the Nepali state. Political developments, in which the indigenous movement has played a major part, have effectively led the country towards a democratic transition. The country, for example, is moving from autoc-

racy to democracy, from a Hindu kingdom to a secular republic, and from a unitary and centralized structure to a federal design. The concept of "inclusion", promoted by the indigenous movement, served as a key word in the discourse in terms of breaking the existing deep-rooted caste/ethnicity-based structural inequality.

The indigenous peoples' movement has successfully drawn the attention of the state and various other stakeholders over the past few years to equitable resource distribution and protection of indigenous peoples' rights, as enshrined in national and international instruments. The Three-Year Interim Plan 2008-2010 (TYIP) announced by the National Planning Commission, for example, set specific targets and allocated a budget for the development of indigenous peoples. The development regime in general, including the United Nations and donor agencies, has now adopted "social inclusion" as one of its priorities. The development discourse itself has widened to incorporate identity and cultural rights. The Government of Nepal's ratification of ILO Convention 169 on Indigenous and Tribal Peoples in 2007, as well as its support of the UN General Assembly's adoption of the UN Declaration on the Rights of Indigenous Peoples, was applauded by the indigenous peoples and brought great hope for them.

The following key events capture the major political developments, the responses from the state and international development community and the trends within the indigenous movement itself.

- Agreement between the Janajati party's Federal Democratic National Forum (FDNF) and the Government of Nepal for recognition of an ethnically-based federal system in the new Constitution. March 2008
- Constituent Assembly Election, 218 CA members elected from indigenous communities (First Past the Polls Election 82, Proportional Representation system 120 and Nominated 16). April 2008
- Fifth Amendment to the Interim Constitution, declaring Nepal a "republic" by abolishing the monarchy. May 2008
- The International Day of the World's Indigenous People celebrated on 9 August 2008 with a demand for a federal design that



ensures indigenous peoples' autonomy and right to self-determination.

- ILO Convention 169, ratified by the Government of Nepal, came into effect. Prime Minister Puspa Kamal Dahal Prachanda expressed his commitment to implementing ILO Convention 169. National Action Plan for Implementation of ILO 169 under preparation. September 2008
- UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Professor James Anaya, visited Nepal. November - December 2008
- The Nepal Foundation for Indigenous Nationalities (NFDIN) and Ministry of Local Development initiated a process of addressing demands for recognizing separate identity for indigenous groups. December 2008
- The Janajati Empowerment Project (JEP), funded by DFID, successfully concluded the formation of 57 District Coordination Councils and 2000 Village Coordination Councils. December 2008
- Formation of informal indigenous Caucus by 35 CA members for promoting indigenous rights in CA. December 2008

As the above time line shows, there have been some important advances in policy commitments over this period, along with the active mobilization of indigenous organizations around their rights.

Consolidation and expansion of the indigenous movement

Indigenous organizations have increased in both number and quality. The organizational growth, on one hand, shows the increased intensity of the activities being undertaken by these entities while, on the other, has also increased the cleavages and tensions within the movement.

The national representative organization of indigenous peoples' organizations (IPOs) – the Nepal Federation of Indigenous Nationalities (NEFIN) - has expanded its organizational wings on a number of levels. For example, from a point when NEFIN had a limited number of organizational linkages at grassroots level three years ago, it had by the end of 2008 been able to form indigenous Village Coordination Councils within 2000 Village Development Committees (also known as VDCs – the local-level administrative units of the state). This outreach was primarily achieved by forming and activating Indigenous Peoples' District Coordination Councils (IP-DCC). Currently, NEFIN has IP-DCCs in 57 districts, coordinating the activities of different indigenous peoples' organizations (IPOs) and working collectively to influence decision-making at local level with regard to state resource distribution. Similarly, out of 59 indigenous groups enlisted, only 48 had their organization registered in 2005. There are now 54 IPOs formed and affiliated to NEFIN as Federal Council members.²

Besides expanding its own organs at different levels, NEFIN has itself started to expand to include various indigenous civil society groups, such as lawyers' associations, NGOs, students' organizations, youth associations, indigenous environmental groups and journalists' associations, as sister organizations. This coalition has proved helpful in influencing the political parties and relevant authorities, as well as developing a broad-based process of collective action.

Along with the organizational growth of NEFIN, indigenous women have also formed various fronts and are actively engaged in raising issues of indigenous women's rights. The National Indigenous Women

Federation (NIWF) is very active and has a broad-based set-up, with representation in 20 of the country's districts.³ The National Network of Indigenous Women (NNIW) is another high-profile indigenous women's organization, and its current president is also serving as a CA member.⁴ There are a number of other indigenous women's organizations active either within their communities or on specific issues.

Indigenous journalists have played an important role in Nepal's democratic process in recent years. A study of the ethnic media counted around 400 publications, although most are sporadic papers/magazines published by different indigenous groups. Indigenous journalists are organized in the Association of Nepalese Indigenous Nationalities Journalists (ANIJ), which currently has 500 members. The organization has branches in 29 districts producing and disseminating information on indigenous peoples' rights.⁵

There are two indigenous lawyers' associations currently operating. The Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) has taken international human rights instruments, to which Nepal is a party, as key instruments in their advocacy work and in their legal battle to protect the rights of indigenous peoples. Among these international instruments are ILO Convention 169 on Indigenous and Tribal Peoples, the UN Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC). Over the last year, LAHURNIP has focused on reviewing national laws,⁶ including the Interim Constitution, in order to indicate areas in which domestic law runs counter to indigenous peoples' rights and is not in line with international human rights law.

The NGO Federation of Nepalese Indigenous Nationalities (NGO-FONIN), established with 11 NGOs in 2003, was able to bring together 53 affiliated organizations by the end of 2008. It was also able to set up district networks in 17 districts.

As the future federal units are gradually decided by the different political parties, the indigenous groups with small populations have started to spontaneously come together to make sure that their rights are respected. For example, minority indigenous groups such as the Hayu, Thami, Surel, Jirel and Yolmo, which fall within the state/prov-

ince proposed as Tamsaling, have come together to form an alliance to ensure their rights in the future federal Nepal. Similar trends can also be seen in regions such as Limbuwan, Khumbuwan and others so far named by the political parties.

Political parties and indigenous peoples

Over the last half-century, indigenous peoples in Nepal have participated in different political parties, with different experiences. The indigenous leaders are frustrated with the mainstream political parties in terms of their exclusionary cultures, and see a need for their own strong political force. They are not, however, currently in a position to organize such a force. Many therefore believe that they should continue to work through the different political parties.

For the Constitutional Assembly (CA) elections in 2008, indigenous political leaders did not choose to leave their mother parties to form their own political parties. Apart from the small Janajati (indigenous) parties, the majority of indigenous leaders contested the election from within established political parties. Overall, of the 3,946 candidates who stood in the CA elections, approximately 26% were indigenous people from 40 different political parties. Only six of the participating parties were exclusively Janajati parties. Interestingly, none of them won a seat in their constituencies in the first-past-the-post election. The Communist Party of Nepal Maoist (CPN Maoist) had the highest number of indigenous candidates with 72, out of which 51 or 70% of those who stood won the direct election. This number was much higher than within the Nepali Congress or the Communist Party of Nepal United Marxist-Leninist (CPN-UML), in which only 11 and 12 indigenous candidates won the election respectively.

In the CA elections, 218 out of total of 601 members elected were indigenous. This is a very significant change in the political landscape of the country, as the indigenous representation in the CA is now almost proportionate to the indigenous population of 37.2%. In the last elections in 1999, the indigenous groups gained only 24% while Bahun and Chhetris constituted 65% of the members elected. The increased number of indigenous representatives was celebrated, and the post-

election period was marked by satisfaction and hope among indigenous activists. But, as time passes, the indigenous activists are gradually becoming skeptical of their effectiveness and ability to contribute to the Janajati cause within the CA process. This is primarily due to their role within their parties. The majority of the indigenous CA members do not have the necessary educational background and operate at the lower echelons of the party hierarchy; they are therefore able to make little impact on the party's decisions. In addition, the central committee composition of each of the major parties remains as exclusive as usual. For example, a recent report showed that indigenous peoples' representation on the central committee of Nepali Congress and CPN (UML) was as low as 11%. CPN (Maoist) has also not done much in this regard, with 17% of indigenous representatives on its central committee.⁷ Seen in this light, increased indigenous representation in the current CA is merely a quick fix in response to popular pressure and not a systematic attempt at real inclusion, as promised in the Interim Constitution. Radical voices within the indigenous movement argue that the current indigenous CA members do not represent the indigenous peoples as they are accountable to their political parties and respective political ideologies rather than to their own communities. They argue that indigenous peoples should be granted the right to represent themselves "through representatives chosen by themselves in accordance with their own procedures" as enshrined in Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.⁸

As the debate on federal structure deepens, the indigenous peoples are expecting the political parties to remain true to their promises made in the election manifestos, in which each of the parties stated that "history, ethnicity and language and region" would be taken as a basis for designing the federal system. CPN (Maoist) even provided a map of the proposed federal units in its Election Commitment Paper, based on indigenous territories. Contrary to the hopes generated by the electoral promises, there is a growing feeling among Janajati activists that issues of ethnic equality and linguistic rights have gradually been sidelined. Indigenous leaders within the Maoist and other political parties are publicly warning that there may be a rebellion within the parties if issues related to indigenous peoples' rights are ignored in the forthcoming constitution. One manifestation of such growing dis-

content, and also a proactive initiative on the part of indigenous leaders, can be seen in the formation of an informal caucus within the Constituent Assembly.

While all political parties have formed "Janajati fronts/organizations" to deal with indigenous issues, they are not able to effectively channel Janajati voices within their parties. The Janajati wings of the political parties have instead become, as the Janajati activists complain, tools for intervening in Janajati action. Party interventions are generally aimed at co-opting indigenous leaders and generally have a damaging impact on Janajati movements.

The failure of the political parties to address ethnic issues has often resulted in the rise of more radical forms of ethnic organization. A case in point is the activities of the Federal Democratic National Forum (FDNF) – a political party which has two seats in the CA, with affiliated state councils in Limbuwan, Khumbuwan, Tamang-Saling and Tharuhat (indigenous regions of the country). FDNF has organized to encourage the general public to take indigenous issues seriously in the different regions of the country. In the mainstream party fashion of forming para-military youth-wings, FDNF has also formed its own youth groups, called "Limbuwan Volunteers" or "Tharu Volunteers" as wings for possible armed struggle, if needed.

As can be seen, the possibility of violence in Nepali politics cannot be ruled out given that the state and relevant authorities continue to fail to respond to the legitimate demands of ethnic groups in coherent and logical ways. NEFIN, its affiliated indigenous organizations and its district and village chapters are making a conscious effort to remain separate from the groups who propose violence as a way of achieving their goals. This is one of the challenges facing civil organizations such as NEFIN when they wish to peacefully pursue their agenda while also needing to influence and work with political groups such as FDNF, CPN-Maoist and others, which see armed struggle as not only a possible but a necessary means to an end.

Ongoing Tharu and other Janajati identity movements in the Tarai region reflect another kind of challenge to the civil movements of NEFIN and indigenous organisations when dealing with Madhesi political forces. Madhesis are groups of people who live in the southern plains of Nepal known as Tarai, adjoining the Indian border, and who

have been discriminated against by the Hill Brahmin/Chhetri-centric state policies of the past. Madhesi society is characterized by the Hindu caste system, with hierarchical arrangements. Indigenous societies in Nepal Tarai distinguish themselves from Madhesi society by their egalitarian social character with no caste system, as well as their relationship to the land. On the one hand, NEFIN and other indigenous organizations are working with the Madhesis in a coalition to end exclusion and discrimination, and secure a fairer distribution of resources. On the other, they have had to defend themselves from a tendency towards encroachment on the part of the Madhesis. When Madhesi political parties started to take the position of "*ek madhes, ek pradesh*" or "one Madhes, one province", Janajatis considered this an infringement of their rights and opposed it. To them, it was a hegemonic approach adopted by Madhesi political parties mostly dominated by Tarai high-caste elites, aimed at assimilating Tarai indigenous groups within the Madhesi category.

Indigenous engagement in the constitution-drafting process

During his official visit in November - December 2008, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, emphasized the need to develop additional mechanisms within the constitution-making process in order to consult directly with indigenous peoples through their own chosen representatives and in accordance with their own methods of decision-making, as required by the international standards to which Nepal has subscribed.

Through its own method of civil activism, NEFIN is currently preparing collective suggestions for the Constituent Assembly (CA). For this, NEFIN's leadership has called on indigenous intellectuals, lawyers, academics, planners and educators to work in different thematic committees parallel to the sub-committees of the CA. These committees are in the process of developing suggestions on given themes which will then be discussed and adopted by NEFIN's Federal Council. Once the Federal Council has endorsed the proposals, they will be taken up for debate within the respective indigenous organisations at different levels. This process was thought crucial for producing a col-

lective voice as well as educating the indigenous communities at the grassroots on the indigenous position in the CA.

Tentative points for discussion include some interesting alternatives that have not yet been considered in Nepali public discourse. The thematic group on state restructuring, for example, has started by establishing principles for a federal design. The core principles they suggest include a) historical/ancestral land/territories; b) language; and c) indigenous autonomy within the federal autonomy when deciding state boundaries. They propose 13 broader states and then delineate autonomous regions and areas for each of the indigenous groups. For example, in Tamsaling state, Chepang, Thami, Hayu, Surel, Jirel, Sunuwar, Pahari and Yolmo will have their own autonomous regions/areas where they can have their own self-government but also be involved in governing Tamsaling state and the nation of Nepal as a whole. The balance between self-rule and shared rule, which is the principle of federalism, is being discussed. Broadly, a three-tiered state structure is being tentatively proposed whereby the current districts will become redundant. No specific map of the future Nepal has yet been sketched out but they wanted to make sure that all indigenous groups, including those with smaller populations, would have a chance to enjoy the right of self-determination, equal to others, in the upcoming map.

Recognition of indigenous peoples' ownership rights to land and natural resources, and the right to self-determination, continue to remain central to indigenous demands for autonomy. Nevertheless, the definition of self-determination has been refined over time. In the spirit of Article 46 of the UN Declaration on Rights of Indigenous Peoples,⁹ the indigenous movements assert that the principle of self-determination in the Nepali case need not include right to secession.¹⁰ They argue that self-determination is more about internal democracy and, if the state continues to remain exclusionary and continues to violate indigenous rights, then the people will spontaneously rebel to get rid of such a predatory state.

Internal challenges to the indigenous movement

Challenges internal to indigenous movements are no less serious. For example, there is broad discontent among indigenous peoples that the

leadership of NEFIN and other indigenous peoples' organisations has been hijacked or co-opted by the major political parties. Several indigenous leaders have party political affiliations and their loyalty to the indigenous peoples' cause is, therefore, at times questioned.

Political parties' co-opting of indigenous leaders appears to damage the dynamic of the indigenous movement. Firstly, indigenous peoples tend to fragment into different parties and compete as party representatives. Secondly, as the general public becomes frustrated with the indigenous leadership, there is a tendency for organizations and ideas to proliferate with no coherent voice or action. A move in this direction can now be seen and there is a risk that the situation will further deteriorate if no corrective action is taken.

The fragmentation is further increased by the competition for resources. Last year's experience indicates a trend towards increased competition between indigenous peoples' organisations for the resources made available by project funding, with increasing feelings of antagonism between large and small indigenous organizations, and between highly marginalized and less marginalized groups – instead of solidarity. The claim for distinct identity on the part of some of the indigenous groups is also seen as a result of such competition.

This fragmentation is also linked to the issue of how the movement functions in terms of generating its collective voice. In order to synthesize peoples' aspirations into a common political demand, a sound consultative process is needed.

Important achievements in 2008

In 2007, Nepal became the first country in mainland Asia to ratify ILO Convention 169 on Indigenous and Tribal Peoples, the only legally binding international instrument for the protection of indigenous peoples' rights. In 2008, a Task Force chaired by the Secretary of the Ministry of Local Development began drafting a National Action Plan to implement the Convention. Although it has yet to be seen how the Action Plan will be implemented, and how the necessary resources will be generated, the act of ratification itself has given a sense of empowerment to indigenous communities. A promising development in 2008

was that Prime Minister Pushpa Kamal Dahal Prachanda made a public commitment to implementing the convention and to making Nepal an exemplary case for promoting indigenous rights in the Asian region.¹¹

In line with spirit of the Interim Constitution, the National Planning Commission has also taken steps to include the issue of indigenous people's development within its consideration. The Three-Year Interim Plan (2008-2010), for example, set a target to increase the Human Development Index (HDI) by 10% for indigenous peoples, for which around 15 billion Rupees (USD 188 million) was allocated.

The indigenous movement in Nepal has, over the past few years, established itself as a critical force that has taken an active part in the ongoing democratization and peace process. With an agenda promoting social inclusion, secularism, linguistic rights, equality and the rule of law, the indigenous movement played a significant role in the process leading up to the Constituent Assembly (CA) elections in April 2008. The election of 218 members from indigenous communities was a significant achievement. The country is currently in the process of crafting a new Constitution. As this process takes its course, the indigenous movement is continuing to fight for the space in which to contribute to the new statute as well as draw attention to the inadequacies of policy measures undertaken and the weak implementation of promises made by the state of Nepal with regard to their inclusion. □

Notes

- 1 The Foundation for Development of Indigenous Nationalities (*Adivasi Janajati Uthhan Rastriya Pratistan*) is a focal governmental organization under the Ministry of Local Development with a mandate to make suggestions to the government for the improvement of the situation of the indigenous peoples of Nepal. The NFDIN mainly works in the areas of preserving cultures, languages, belief systems and history. It also provides scholarships for education and works for the economic development of indigenous peoples.
- 2 NEFIN: <http://www.nefin.org.np>.
- 3 NIWF-affiliated organizations include: 1) Nepal Magar Women's Association, 2) Sunuwar Women's Association, 3) Nepal Kirant (Rai) Women's Association, 4) Nepal Tamang Women's Association, 5) Thakali Women's Association, 6) Kumal Women Society Reform Committee, 7) Dolpo Women's Association, 8) Danuwar Women's Community Reform Union, 9) Nepal Sherpa Women's Fed-

- eration, 10) Nepal Pahari Women's Development Federation, 11) Meche Women Upliftment Federation, 12) Rajbanshi Women's Society, 13) Kirat Yaakthung Chumlung, 14) Nepal Majhi Mahila Utthaan Sangh, 15) Nepal Bhasa Misha Khala, 16) Nepal Tamu Mahila Sangh, 17) Tharu Mahila Jaagaran Kendra, 18) Lhomi Mahila Kalyan Manch and 19) Walung Mahila Sangh. <http://www.nniw.org.np/>
- 4 Personal communication with Krishna Kumari Waiba, General Secretary of NNIW. See also <<http://www.nniw.org.np>>
 - 5 Gurung, C.B. (2007). An assessment and analysis of ethnic media in Nepal. Kathmandu.
 - 6 Limbu, S. (2005). Comparative study of prevailing national laws concerning Indigenous Nationalities in Nepal and ILO Convention No. 169 on Indigenous and Tribal Peoples. In ILO Convention No. 169 and Peace Building in Nepal, S. Webster and O. Gurung, eds. ILO/NEFIN: Kathmandu.
 - 7 Bhurtel, B.P. (2008). *Rājnitik Dalharumā Samābesikaranko Abasthā*, (Status of inclusion in Political Parties). In *Samābeshikaran: Rājnitik Dal, Rājya ra Mediā*. [Inclusion: Political parties, State and Media]. A. Ajit ed. Martin Chautari: Kathmandu.
 - 8 Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples states: "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."
 - 9 Article 46 of UNDRIP states "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."
 - 10 Bhattachan, K. (2008). *Sanghiyeta, Atma nirnayako Adhikar ra Adivasi Janajatiya Swayetta* [Federalism, right to self-determination and indigenous peoples' autonomy]. NFDIN: Kathmandu.
 - 11 See Prime Minister's speech of 13 September 2008. Adivasi Janajati Bulletin. Issue 8, December 2008. NFDIN: Kathmandu.

Mukta S. Tamang is a lecturer at the Department of Sociology/Anthropology, Tribhuvan University, Kathmandu. He holds a PhD in anthropology from Cornell University. He has conducted research principally on indigenous peoples' movements, history and participatory social development in Nepal.

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. Indigenous peoples continue to face civil and political rights violations, land alienation, displacement and false prosecution for accessing minor forest produce. As India's booming economy requires more resources, indigenous peoples' land and resources have been grabbed, resulting in a strong sense of alienation among the indigenous peoples and further exacerbating conflicts. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. India has a long history of indigenous peoples' movements aimed at asserting their rights.



Legal rights and policy developments

On 1 January 2008, the government of India notified the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.¹ Hence, the Scheduled Tribes and Other Tradi-

tional Forest Dwellers (Recognition of Forest Rights) Act of 2006, notified on 31 December 2007, came into force giving tribals and “other traditional forest dwellers” rights over land and forest produce.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Bill, 2008 was listed for introduction during the monsoon session of Parliament (17 July – 23 December 2008) but was finally withdrawn.² The Ministry of Social Justice and Empowerment has reportedly proposed amendments to Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 to give “absolute jurisdiction” to Special Courts constituted to try the cases under this Act.³

By the end of 2008, the government of India had failed to release the final National Tribal Policy, drafted by the Ministry of Tribal Affairs in June 2006 to address various issues concerning the tribals and the indigenous peoples. The draft National Tribal Policy has been under consideration by a Group of Ministers.⁴

Indigenous peoples engulfed by armed conflicts

In 2008, 21 out of total of 28 Indian states were afflicted by internal armed conflicts. Except in the states of Jammu and Kashmir, in all others (7 North Eastern states and the 13 states afflicted with Naxalite or Maoist conflicts) indigenous peoples are disproportionately affected by human rights violations both by the security forces and the armed opposition groups.

Even tribal rights’ activists have faced repression from the state. Between 2 July and 11 July 2008, three activists of the Keonjhar Integrated Rural Development and Training Institute (KIRDTI) were arrested in Orissa charged with having alleged links with the Maoists. They have been charged under several sections of the Indian Penal Code (IPC) and Sections 25 and 27 of the Indian Arms Act. On 11 July 2008, four other activists of KIRDTI had to flee Keonjhar district to escape arrest by the police for alleged links with the Maoists. KIRDTI is a voluntary organization working for the tribals’ land rights, ecological protection from mining and illegal felling of trees in Harichandanpur and Banspal

Block of Keonjhar district in Orissa. The activists of KIRDTI have been targeted by the police for defending human rights.⁵

Human rights violations against indigenous peoples

According to the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,532 cases of crimes committed against tribals were reported in the country during 2007 as compared to 5,791 cases in 2006, showing a decline of 4.5%. But the NCRB figures do not reflect the actual intensity of violence. The majority of the atrocities are not reported and, when they are brought to the police authorities, they sometimes refused to register the cases, and the conviction rate remained as low as 27% during 2007.⁶

Human rights violation by the security forces

The security forces were responsible for gross violations of the rights of indigenous peoples during the year. Following the failed attempt on the life of West Bengal Chief Minister Buddhadeb Bhattacharjee by suspected Maoists on 2 November 2008, the police swooped down upon the tribal villagers in Lalgarh in West Midnapur district to conduct a search operation but ended up harassing the innocent tribal villagers, including women and children. The police arrested several innocent tribals, including school-children, as "Maoists".⁷ In protest, the tribals felled hundreds of trees to block the roads and virtually declared the area a "Republic". On 7 December 2008, the tribals suspended their protests⁸ after Chief Minister Buddhadeb Bhattacharjee tendered an apology in the State Assembly, withdrew some police camps from Lalgarh,⁹ removed the inspector-in-charge of Lalgarh police station and dropped charges against eight arrested tribal villagers, including three schoolboys.

Several innocent indigenous villagers were shot dead or seriously wounded during anti-insurgency operations, as on 7 January 2008 by the Tripura State Rifles (TSR) in Kunjaban of West Tripura district in Tripura state,¹⁰ or on the night of 22 November during an anti-Maoist operation near Kutuniganda village in Gajapati district of Orissa.¹¹

Human rights violations by the *Salwa Judum* militia in Chhattisgarh

On 31 March 2008, while hearing two petitions to disband the civilian militia *Salwa Judum*, the Supreme Court of India noted that it was illegal to “give arms to somebody and allow him to kill” and that this could make the state an “abettor of the offence under Section 302 of the Indian Penal Code.”¹² On 15 April 2008, the Supreme Court asked the National Human Rights Commission (NHRC) to investigate allegations of human rights abuses by the *Salwa Judum* forces and the Maoists. The tribals had to face violent retribution at the hands of *Salwa Judum* for making depositions before the visiting NHRC investigation team.

On 26 June 2008, an independent fact-finding team of non-governmental organizations from Madhya Pradesh, including Narmada Bachao Andolan, Bhopal Gas Peedit Mahila Udyog Sangathan and Madhya Pradesh Mahila Manch, visited Nendra village in Konta block in Dantewada district and found that 11 houses belonging to the *Adi-wasis* (tribals) of this village had been completely burnt down by the *Salwa Judum* members in reprisal for depositions made by the villagers before the NHRC investigation team on 10 June 2008. The independent fact-finding team also learnt that between 2005 and 2008, 16 men and women and at least nine children of Nendra village were killed by members of the *Salwa Judum* and the security personnel. At least four women had been raped. Over 150 houses have been burnt down by *Salwa Judum* members.¹³

Violation of humanitarian law by the armed opposition groups

The armed opposition groups continued to be involved in gross violations of human rights, including killings, abductions and torture during 2008. The Naxalites or Maoists were the worst violators of the rights of the indigenous peoples. They continued to kill innocent tribals on the charge of being “police informers” or members of the anti-Maoist civilian militia such as *Salwa Judum* and for not obeying their diktats. On the night of 17 January 2008, Maoists killed 35-year-old tribal, Samireddy Ganesh of Bhiram village in Visakhapatnam district

of Andhra Pradesh¹⁴ and, on 11 December, the Maoists shot dead a tribal leader, Sudhir Mandi at Jordanga village in West Midnapore district of West Bengal, for leading an anti-Maoist protest in Belpahari.¹⁵

From 13-22 March 2008, alleged cadres of the National Liberation Front of Tripura (NLFT) raided Karnamuni and Tetia villages in Dhalai district of Tripura several times and tortured the tribal villagers for not voting for an NLFT-backed candidate in the Legislative Assembly elections held on 7 February 2008. At least 67 tribal families were forced to flee their homes.¹⁶

Violence against indigenous women and children

Indigenous women and children are highly vulnerable to violence, including killing, rape and torture from non-tribals, security forces and members of the armed opposition groups in armed conflict situations. The National Crime Records Bureau recorded a total of 627 cases of rape of tribal women in 2007, as compared to 699 cases in 2006. Out of these 627 rape cases, 45.9% were reported from Madhya Pradesh.¹⁷

Tribal women were targeted both by the armed opposition groups and the security forces. On the night of 3 February 2008, a 38-year-old tribal woman identified as K. Sharada was tortured to death by the Maoists at Muthapur village in Govindraopet mandal of Warangal district of Andhra Pradesh on the charge of being a "police informer".¹⁸

On the night of 22 May 2008, the personnel of the 188th Central Reserve Police Force (CRPF) allegedly opened fire, killing a child named Raju (2) and a woman identified as Rambai (25) at a relief camp at Cherpal village in Bijapur district in Chhattisgarh. Another six-year-old boy and a woman were critically injured in the shooting.¹⁹

In June 2008, police detained three Special Police Officers (SPOs) for allegedly abducting and raping three tribal women near Kirandul in the Naxalite-controlled Dantewada district of Chhattisgarh.²⁰ On 10 July 2008, police arrested two young tribals - Vetti Pojja (14) and Madkam Bima (16) of Nendra village in Dantewada district of Chhattisgarh - as they were returning from the weekly market. The police first shot at Vetti Pojja and then arrested him. Both Vetti Pojja and Madkam Bima

were sent to Dantewada jail charged with “attacking the police with bows and arrows”.²¹

Alienation of the tribals' 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.

Yet the rate of alienation of tribal land in India is alarming. The 2007-2008 Annual Report of the Ministry of Rural Development stated that a total of 506,307 cases of tribal land alienation, involving 902,417 acres (or 365,351 hectares), had been registered in 12 states of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tripura.²² This clearly shows that the laws relating to protection of tribal land have failed. And the high rate of tribal land alienation suggests the presence of an unholy nexus between the non-tribal land grabbers and government officials at various level of administration.

In addition, the government has also forcibly displaced tribals from government land without providing them with any alternative land to settle on and survive. On 26 February 2008, the police launched a massive eviction drive in Malancha Niwas and its adjacent areas in Agartala in Tripura and expelled over 450 “landless” tribal families from “government land”. At least 25 tribals, including women, were injured in the police action.²³

According to the 2007-2008 Annual Report of the Ministry of Rural Development, Government of India, out of total 430,450 cases of tribal land alienation (involving 851,372 acres) ruled on by the Court, a total of 198,674 cases (involving 410,587 acres of land) were rejected i.e. a decision taken against the tribal petitioners. Only 225,343 cases (involving 500,376 acres) were decided in favour of tribals, out of which only in 203,064 cases was the land (involving 418,128 acres) restored to tribals. A total of 55,702 cases involving 128,360 acres of land are pending at the Court.²⁴

The conditions of indigenous internally displaced people

Development-induced displacement

The tribals have been up in arms against various so-called development projects such as dams, steel plants, mining etc. across India. In a report presented to the Lok Sabha (Lower House of Parliament) on 23 October 2008, the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes stated,

*The Committee pointed out that notwithstanding Act and regulations to control alienation of tribal land, tribal people are being alienated from their land in the name of development and due to insufficient amount given to them for their land, they migrate to other places in search of livelihood.*²⁵

Neither the Ministry of Tribal Affairs nor the National Commission for Scheduled Tribes has undertaken any study with regard to displacement and rehabilitation of tribals in the country.

On 8 August 2008, the Supreme Court allowed South Korean steel giant POSCO to use 2,900 acres of forests in Orissa's Jagatsinghpur district to build a steel plant, and Sterlite India Limited, a subsidiary of Britain's Vedanta Resources plc, to mine bauxite in Niyamgiri hills in Kalahandi district of Orissa. The Nyamgiri hills are considered sacred by the indigenous Dongria Kondh.²⁶ The Supreme Court's order has undermined the tribal protests and encouraged further forcible acquisition of tribal lands, leading to their displacement without proper rehabilitation, destruction of their culture and posing threats to their survival in the name of development. Under the aegis of *POSCO Pratirodh Sangram Samiti* (Committee for the Resistance Against POSCO), the tribals have been resisting the proposed steel plant, which is expected to displace about 4,000 tribal families.²⁷ The state government has allegedly backed the pro-POSCO activists to counter the movement by *POSCO Pratirodh Sangram Samiti*. On 20 June 2008, an anti-POSCO tribal activist identified as Dula Mandal (35) died in an attack by pro-POSCO villagers near Gobindpur.²⁸

On 29 June 2008, the National Human Rights Commission (NHRC) sent an investigation team to probe allegations that the Orissa government had forcibly evicted over 10,000 villagers from their homes in Bhadrak district to make way for a massive flood-control project, the Salandi-Nalia river Sanskar project. According to the complaint filed by Advocate Radha Kanta Tripathy, the state government of Orissa did not serve any land acquisition notice nor did it take any steps to rehabilitate the displaced villagers. The villagers had been forcibly evicted from their agricultural lands.²⁹ According to the affected villagers, thugs had been hired by contractors to attack people who protested against the “illegal” acquisition of land.³⁰

The government of Arunachal Pradesh has reportedly signed 42 Memoranda of Association with various power supply developers over the past three years to execute hydro power projects of 23, 591 MW in the state.³¹ Some of these projects have met with protests from the local indigenous peoples as they would lead to mass displacement and cause environmental hazards. For example, the local indigenous peoples demanded scrapping of the 1,000-MW Siyom hydel project at Reying under the Payum circle of West Siang district on the grounds that it would have adverse impacts on the livelihood of the indigenous Bori peoples.³²

Conflict-induced displacement

In 2008, the tribals of Chhattisgarh continued to flee from their villages due to the Naxalite conflict. Media reports estimated that nearly 120,000 Gutti Koya tribals of Bastar and Bijapur districts of Chhattisgarh had fled to Andhra Pradesh’s border district of Khammam during January-June 2008 to escape violence by the Maoists and the *Salwa Judum* activists.³³ The displaced persons have been viewed with suspicion by the administration and denied basic amenities including food, water, shelter, medical services, sanitation and livelihood opportunities. Maoists also created problems for the evacuees living in the relief camps by blocking supplies of humanitarian aid.³⁴

From 17-19 December 2007, the National Commission for Protection of Child Rights (NCPCR) sent a fact-finding team to Dantewada district in Chhattisgarh and Khammam district in Andhra Pradesh to

study the conditions of the displaced tribal children. In its report, the NCPCR states, "The harmful effects of internal displacement and conflict are particularly acute for children. Forced to live in relief camps, the children are bereft of education, lack access to health and nutrition and miss out on their childhood."³⁵

In August 2008, communal clashes broke out between the Bodos, Assam's largest tribal group, and non-tribal Muslims. The riots began on 14 August 2008 following the killing of a Bodo tribal youth by supporters of a *bandh* (strike) called by the Muslim Students Association, Assam in Udalguri district. The clashes soon spread to Darrang and Sonitpur districts, claiming 17 lives and resulting in the displacement of 14,279 persons who had been sheltering in nine relief camps. Again, from 3-7 October 2008, Bodos bitterly fought with Muslims in Udalguri and Darrang districts. By the time paramilitary troops sent by the central government had quelled the violence, 55 persons had died, 2,505 houses had been either completely burnt down or partially destroyed and over 200,000 people had fled their homes out of fear. There were casualties on both sides.³⁶ The actual cause of the conflict was believed to be resentment among the Bodo tribals regarding encroachment onto their lands by the Muslims, many of whom are believed to be illegal immigrants from Bangladesh.

Following a complaint filed by the Asian Indigenous and Tribal Peoples Network (AITPN) against the failure to include 7,204 internally displaced Bru children in Tripura on the food relief cards, on 8-9 September 2008 the National Commission for Protection of Child Rights (NCPCR) visited the relief camps in Tripura that had been housing the Bru indigenous IDPs since they fled Mizoram state following ethnic conflict in 1997. The members of the NCPCR:

*were appalled by the sub human conditions under which the families had to survive.... There was none or little, if any, registration of births and deaths, marginal immunisation, no health facilities or primary health centres, no functional schools, no safe drinking water, poor sanitation and inadequate rations.*³⁷

At least 30 Bru children died in the relief camps through malnutrition and disease in August 2008 alone.

Repression under forest laws

As stated above, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 came into force on 1 January 2008. In August 2008, the Ministry of Tribal Affairs stated that more than 800,000 claims from different states had been received requesting allocations of land to tribals under the Forest Rights Act.³⁸

Yet the Forest Rights Act 2006 saw little implementation during 2008. The tribals continued to be arrested for accessing minor forest produce, evicted from their lands, their huts gutted and people even killed by the forest officials. On 8 February 2008, forest guards shot dead a 16-year-old tribal boy, Shyamal Rabha, at the Buxa Tiger Reserve in Jalpaiguri district of West Bengal. The forest officials accused him of being a "timber smuggler" but the locals and family members said he and three others had gone to the forest to collect firewood for domestic use.³⁹ Again, on 13 February 2008, two tribals were killed when police fired on tribals protesting at the forcible evictions in Antarsumba village in Vijaynagar taluka of Sabarkantha district in north Gujarat.⁴⁰

Hundreds of tribals were forcibly evicted from "forest land" by the forest officials in violation of the Forest Rights Act 2006. On 19 March 2008, Andhra Pradesh's Minister for Forest and Environment, S. Vijayarama Raju, announced in the State Assembly that the state government had decided to evict tribals from all the 32 existing habitations in the Rajiv Gandhi Tiger Reserve, which lies between Nagarjunasagar and Srisaïlam, to save the dwindling tiger population. He stated that the displaced tribals would be allotted houses and provided with compensation.⁴¹ Similarly, in early November 2008, Tripura Wildlife Advisory Board approved the setting up of a wildlife reserve at Kalajhari-Laxmipur-Dhalagari in Dhalai district in Tripura. Thereafter, more than 400 indigenous families residing inside the earmarked wildlife reserve were served eviction notices by the local administration. One estimate indicated that around 50,000 indigenous peoples would be affected by this proposed Wildlife Reserve project.⁴²

Forest officials often burn houses and destroy standing crops in order to force indigenous peoples off their land. In January 2008, at least 125 houses were burnt by forest officials in Peepal Khotha and Juni-

wadi villages in Burhanpur district of Madhya Pradesh. The forest officials had allegedly hired over 100 labourers to attack these villages.⁴³ On 2 July 2008, forest officials and police personnel burnt down 125 huts and forcibly evicted over 400 Pardhi tribals from forest land near Wadoda village under Jalgaon Jamod taluka in Buldhana district of Maharashtra.⁴⁴ On 14 October 2008, forest guards allegedly completely destroyed the standing crops of 16 tribal families in Dabhas village under Ahwa sub-division in Dang district of Gujarat. The forest guards also allegedly destroyed the standing crops of seven tribal villagers at Bhapkal village and set fire to the hut belonging to one Mangalbhai Amirbhai at Mokhamal village in Dang district.⁴⁵ On 4 December 2008, forest officials allegedly set 17 tribal huts at Bir Birsa Munda Colony near Malbazar in Jalpaiguri district of West Bengal ablaze simply for not showing land documents to the forest officials.⁴⁶

Affirmative actions

The Constitution of India provides an array of affirmative action programmes for the Scheduled Tribes (tribals) and the Scheduled Castes (dalits), including reservation in the Parliament, education, employment etc. These affirmative action programmes have been instrumental in bridging the social, political and economic disparities between the tribals and the general population. The affirmative action programmes have, however, failed to achieve their desired results in India through lack of proper implementation.

Non-implementation of reservation in employment

On 23 December 2008, the central government tabled the Scheduled Castes and Scheduled Tribes (Reservation in Posts and Services) Bill 2008 in the Rajya Sabha (Upper House of Parliament).⁴⁷ The Bill seeks to end de-reservation of posts meant for Scheduled Castes (SCs) and Scheduled Tribes (STs) in central government jobs and stipulates penal action against offices which did not implement the reservation policy.⁴⁸

The government failed to ensure 7.5% and 15% reservations of government jobs for the Scheduled Tribes and the Scheduled Castes re-

spectively. This is evident from the findings of the Parliamentary Committee on Welfare of Scheduled Castes and Scheduled Tribes.⁴⁹ In Assam alone, there was around a 29,000 backlog of vacancies for Scheduled Castes and Scheduled Tribes in various government departments as of 23 September 2008, according to the All Assam Tribal Unemployed Association.⁵⁰

Non-utilization and misuse of tribal funds

In a report tabled in the Lok Sabha on 21 April 2008, the Standing Committee on Social Justice and Empowerment recommended that, "The funds should be allocated in proportion to the population of the Scheduled Tribes to the total population in the country. As such, at least 8.5 per cent of the Budget of the entire country should be provided for the development of tribals."⁵¹

Various state governments do not fully utilize, and some even misuse, the funds allocated to them for tribal development. A report by the Comptroller and Auditor General of India, tabled in the Jharkhand State Assembly in March 2008, found that the Jharkhand government used only 855.5 million out of 1.83 billion Rupees it had received from central government during 2003-2007 under the Integrated Tribal Development Project. The unused funds were kept in banks and the interest earned was used to repair official buildings.⁵²

The Standing Committee on Social Justice and Empowerment found that funds could not be released for the development of tribals due to inaction on the part of state governments. During 2007-08, the Ministry of Tribal Affairs had to withhold grants under Special Central Assistance to the Tribal Sub Plan to the states of Assam, Bihar, Chhattisgarh, Jharkhand, Jammu & Kashmir, Madhya Pradesh, Tamil Nadu, Tripura, Uttar Pradesh and Uttarakhand due to their inability to furnish Utilization Certificates and unspent balances.

There is also little awareness of the various affirmative action programmes benefiting tribals. The Standing Committee on Social Justice and Empowerment noted that "sufficient steps have not been taken by the Ministry (of Tribal Affairs) to generate awareness among tribal people about the various schemes being implemented for their upliftment."⁵³

Denial of voting rights to Chakmas and Hajongs

In February 2008, the High Power Committee on Chakmas and Hajongs headed by the Speaker of the Arunachal Pradesh Legislative Assembly, **Setong Sena**, submitted its report to the government of Arunachal Pradesh. The report has, however not been made public so far.

In the absence of a permanent political settlement of the Chakma and Hajong imbroglio, the members of the Chakma and Hajong community continue to be deprived of their rights, including the right to vote (see *The Indigenous World 2008*). There are around 15,000 eligible Chakma and Hajong voters who continue to be denied registration on the electoral rolls.

During 2005-2008, the Election Commission of India held four summary revisions and one Intensive Revision of electoral rolls in Arunachal Pradesh but, for the Chakmas and Hajongs, there has been practically no revision of electoral rolls over these past four years. There is no change in the situation because the state government continues to violate the guidelines/directions of the Election Commission. Rather than increasing, the number of Chakma and Hajong voters has consistently decreased over the last 5 years. □

Notes

- 1 Forest Act comes into force, green activists cry foul, *The Hindustan Times*, 2 January 2008
- 2 PRS Legislative Research, December 23, 2008 available at http://www.prsindia.org/docs/latest/1230042471_Plan_vs_Performance__Monsoon_2008.pdf
- 3 Centre considering changes in SC/ST Act, *The Shillong Times*, 1 September 2008
- 4 Govt refers draft national tribal policy to GoM, *Times of India*, 17 March 2008 (online) available at <http://timesofindia.indiatimes.com/articleshow/2875144.cms>
- 5 India: Human rights defenders in fear of arrest over false allegations of Maoist involvement, Frontline, 14 August 2008, available at <http://www.frontlinedefenders.org/node/1542>
- 6 "Crime In India-2007", 2007 Annual Report of the National Crime Records Bureau, Government of India, National Crime Records Bureau, Chapter 7: Crime against persons belonging to SCs / STs, available at <http://ncrb.nic.in/cii2007/cii-2007/CHAP7.pdf>
- 7 Agitation by Lalgath tribals continues, *The Hindu*, 17 November 2008

- 8 Tribals suspend agitation, want apology. Officials deny talks on SP's 'sorry', *The Telegraph*, 8 December 2008
- 9 Police camps withdrawn from Lalgargh, *The Statesman*, 2 December 2008
- 10 Jawans kill tribal youth in Tripura, *The Telegraph*, 8 January 2008
- 11 Tribal shot dead in encounter; tension in Orissa, *The Deccan Herald*, 24 November 2008
- 12 Hearing plea against Salwa Judum, SC says State cannot arm civilians to kill, *The Indian Express*, 1 April 2008
- 13 "Tribal houses in Village Nendra in District Dantewada of Chattisgarh burnt down by Salwa Judum in reprisal for depositions by adivasis before NHRC" available at http://www.cgnet.in/FT/FT/FT/humanshield/CPJcnendrapressnote/document_view
- 14 35-yr-old tribal killed by Maoists, *The Deccan Chronicle*, 19 January 2008
- 15 "Maoist revenge" kills rally leader, *The Telegraph*, 12 December 2008
- 16 Tripura tribal families tortured by militants, *The Assam Tribune*, 23 March 2008
- 17 "Crime In India-2007", 2007 Annual Report of the National Crime Records Bureau, Government of India, Chapter 7: Crime against persons belonging to SCs/STs, available at <http://ncrb.nic.in/cii2007/cii-2007/CHAP7.pdf>
- 18 Naxalites beat tribal woman to death, *The Hindu*, 5 February 2008
- 19 CRPF jawans attack tribal camp, 2 dead, *The Telegraph*, 24 May 2008
- 20 Tribal women accuse SPOs of rape, *The Indian Express*, 17 June 2008
- 21 Available at <http://groups.yahoo.com/group/chhattisgarh-net/message/9525>
- 22 2007-2008 Annual Report, Ministry of Rural Development, Government of India, available at http://rural.nic.in/annualrep0708/annualreport0708_eng.pdf
- 23 450 tribal families evicted from govt land in Tripura, *The Assam Tribune*, 27 February 2008
- 24 2007-2008 Annual Report, Ministry of Rural Development, Government of India, available at http://rural.nic.in/annualrep0708/annualreport0708_eng.pdf
- 25 Committee on the Welfare of Scheduled Castes and Scheduled Tribes (2008-2009) (14th Lok Sabha) Thirty-Third Report of Ministry of Tribal Affairs entitled "National Commission for the Scheduled Tribes – Its mandate and achievements – A review of its organisation and working" presented to Lok Sabha on 23.10.2008 and Laid in Rajya Sabha on 23.10.2008
- 26 SC lifts industry hurdles - boost to steel plant & bauxite mine stalled over land, *The Telegraph*, 9 August 2008
- 27 "Atrocities at Singur, India: A matter of rights of the dispossessed", *ACHR Review* No. 144/06, Asian Centre for Human Rights, New Delhi
- 28 Anti-Posco activist dies in attack, *The Hindu*, 22 June 2008
- 29 Panel probe on flood eviction, *The Telegraph*, Kolkata, June 30, 2008
- 30 Villagers stage demonstration, *The Hindu*, Mar 14, 2008
- 31 Arunachal inks MoAs for 42 projects in three years, *The Sentinel*, 8 January 2008
- 32 Hydrel power project hits hurdle - Group of 24 warns of environmental disaster and displacement, *The Telegraph*, 24 November 2008
- 33 Chhattisgarh tribals sneak into AP, *Daily News and Analysis (DNA)*, 20 June 2008, available at <http://www.dnaindia.com/report.asp?newsid=1172353> Also see

- “Red army, govt sandwich tribals”, *The Telegraph*, Kolkata, 20 June 2008 available at http://www.telegraphindia.com/1080620/jsp/nation/story_9435075.jsp
- 34 Maoists cut off supply line to Dantewada relief camp, *The Pioneer*, 11 January 2008
- 35 National Commission for Protection of Child Rights, Newsletter “*infocus*”, October 2008 issue, available at http://www.aitpn.org/IDPs/Infocus_Oct_2008_-1.pdf
- 36 “Communal inferno” by Sushanta Talukdar, *Frontline*, Volume 25 - Issue 22: Oct. 25-Nov. 07, 2008
- 37 National Commission for Protection of Child Rights, Newsletter “*infocus*”, October 2008 issue, available at http://www.aitpn.org/IDPs/Infocus_Oct_2008_-1.pdf
- 38 Tribals file 8 lakh cases for land allocation, *The Tribune*, 10 August 2008
- 39 Forest guard shoots youth, *The Statesman*, 9 February 2008
- 40 Two tribals killed in firing, *The Hindu*, 14 February 2008
- 41 Eviction of tribals to save tigers, *The Hindu*, 20 March 2008
- 42 Discontent brewing at Gandacherra, Amarpur Wildlife Reserve, *The Tripura Times*, 24 November 2008
- 43 125 houses set ablaze after Forest Act notified, *The Asian Age*, 21 January 2008
- 44 400 tribals removed from forest land, 125 huts razed, *The Hitavadaonline*, 3 July 2008
- 45 Forest officials accused of harassment by Dangs tribals, *The Indian Express*, 8 November 2008
- 46 Tribals seek action on hut arson, *The Telegraph*, 9 December 2008
- 47 “Bill to give Statutory backing to SC/ST Reservation in Posts introduced in parliament.” Press Release by Ministry of Personnel, Public Grievances & Pensions dated 23 December 2008 available at <http://pib.nic.in/release/release.asp?relid=46097>
- 48 No de-reservation of Centre SC/ST posts, *The Times of India*, 8 October 2008
- 49 Committee on the Welfare of Scheduled Castes and Scheduled Tribes, “Situation arising out of employment secured on the basis of false caste certificates”, report presented to Lok Sabha on 19.3.2008
- 50 Tribal body demands filling of vacant posts, *The Sentinel*, 24 September 2008
- 51 Thirty-Fourth Report of Standing Committee on Social Justice and Empowerment (2007-2008) – “Demands for Grants (2008-2009) of the Ministry Of Tribal Affairs” submitted to the Fourteenth Lok Sabha on 21.04.2008
- 52 Tribal welfare exposed - CAG targets fraud NGOs, detects funds misuse, *The Telegraph*, 29 March 2008
- 53 Thirty-Fourth Report of Standing Committee on Social Justice and Empowerment (2007-2008) op. cit.

Paritosh Chakma is Programmes Coordinator at the Asia Indigenous and Tribal Peoples Network (AITPN) based in Delhi, India.

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 and north-west Burma. The Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. In the absence of democratic mechanisms and platforms to address their demands, Nagas residing in the federal units of north-east India (Assam, Arunachal Pradesh, Nagaland and Manipur) and Burma (Kachin state and Sagaing division) forged a pan-Naga homeland, Nagalim, transcending modern state boundaries in order to assert 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.

The Indo-Naga peace talks

The Indo-Naga ceasefire and peace talks have been ongoing for 11 years now but after 68 rounds of talks it still has not gone beyond the same old press communiqués and threats on the part of the National Socialist Council of Nagalim, Isak-Muivah faction (NSCN-IM), that the ceasefire may break down any time. The talks have not been



able to set any direction that gives the peoples of India and Nagalim something to aim for.

The last round of talks was held on 7 December 2008 in the Dutch capital, Amsterdam. The NSCN-IM reiterated that they had submitted a comprehensive proposal as the basis for a settlement long ago, and that the Indian government had yet to reciprocate. But, as expected, nothing substantive was reported following the talks. The government of India seems to be willfully retaining the status quo of the impasse. It appears that the NSCN-IM too is unable to deal with the situation.

The delaying tactics of the Indian government and the neo-liberal project with its promises of better life and employment are being used in combination to weaken the resistance movement. To a degree, this appears to have worked well. On top of this, internal differences

among the Nagas are generating frictions and outward conflicts, further weakening them.

There is very little interest shown by mainstream Indian intellectuals and the media, and the Indo-Naga conflict remains but a footnote in Indian politics. The media has continued to portray the Nagas as a violent people opposing the state. Yet, when it comes to promoting tourism, setting up extractive industries and attracting investment, the same people are portrayed as hospitable, innocent, honest and inhabiting a beautiful environment. The shift in the image becomes convenient when the region is to be promoted as a corridor linking India's economy with that of South-east Asian countries. This is a part of "Vision 2020", the "Indian Dream".

The situation on the ground

The situation on the ground is turning sour and 2008 witnessed the worst factional fighting, with scores of killings, kidnappings between different Naga groups, robberies etc. In a letter to the editor of the Nagaland-based newspaper, *Morung Express*, Dr. K. Hoshi listed 16 incidences of such kinds in the month of April 2008 in Nagaland State alone.

The situation worsened in November 2007 with the formation of a so-called "Unification Group" led by Azheto Chopy, the then Home Minister (Kilo-Kilonser) of the National Socialist Council of Nagaland, Isaac-Muivah group (NSCN-IM)'s Government of the People's Republic of Nagaland. The NSCN-IM blamed the intelligence network of the Indian government for engineering the dubious rhetoric of "unification" of the Naga people used by this group. The Naga people too were in general doubtful about the rather vague and naïve rhetoric of their call for "unification". Eventually, towards the end of 2008, the Unification Group merged with the rival Kaplang faction of NSCN (NSCN-K).

Nonetheless, the year's end saw some positive developments, with more proactive engagement in the talks by the political parties of Nagaland state. The local newspaper, *Nagaland Page*, reported on an 11-member delegation of the Nagaland state Congress Party that head-

ed to New Delhi on 11 December 2008 to call upon party leader Sonia Gandhi and the central government to expedite the talks. The United Democratic Socialist Party also appealed to the Naga People's Front-led Democratic Alliance of Nagaland to take forward the resolution adopted in the Nagaland Legislative Assembly that the State of Nagaland should be transferred back to the Ministry of External Affairs (instead of the Home Ministry), a status enjoyed prior to 1972, until an honourable political solution is attained.¹

Call for unity and reconciliation

In the midst of conflict spreading like poison through the body of Naga society, the call for unity and reconciliation among the people is being voiced from different corners. The government of India is called on to demonstrate sincerity and commitment through action. It also clearly points out that reconciliation is not an option for any section or party or armed groups. It is becoming stronger and too important to be ignored by any section of society. The effort to bring all the factions together and embrace the common aspiration and hope is led by the Forum for Naga Reconciliation (FNR). The Forum has a broad base, consisting of the traditional tribal apex bodies, civil society organizations and prominent individuals representing different Naga areas. This gives the Forum the right leverage to begin with. Four Peace Summits have been held so far under the FNR, in which they have managed to bring together the different political factions for discussions. They are also undertaking various consultations and activities at different levels within Naga society, drawing attention and support from diverse quarters.

Apart from peace summits and many other activities, they have organized two reconciliation soccer matches between the armed groups and civil society organizations to strengthen their commitment to peace and unity. The FNR has also told critics that this may not prevent violence but it is a means towards strengthening the reconciliation process.

The process led by the FNR is timely as it has come at a time when the call for unity, peace and reconciliation is at the heart of most Nagas.

The only question is whether it will be able to continue to provide the leadership and set a new direction after all the years of bitterness, mistrust and hard politics.

Development: a new device of oppression

While the negotiation tactics of the Indian government are clearly being used to weaken the struggle of the people, development is the currency to buy them off once their resistance begins to wane. This strategy also fits well with the neo-liberal economic agenda of India. Hence, there is nothing to lose but everything to gain.

The Indian state is making way for corporate governance in place of democratic governance, for corporate competitive logic to dominate every aspect of the individual and public space. The Indian state has come to serve market forces instead of its people. In this context, the Indian state is increasingly taking over community-owned land and resources through legal actions or by brute force. The state has assumed the role of containing, repressing or quelling people's resistance on behalf of corporate interests.

Now the Indian state has its eye on the resource-rich land of the North-east region of India, which is one of the last bastions of communal property regimes. The Indian government has already been in negotiations with the governments of Burma, Thailand, Malaysia and China, as well as the US and European countries on economic cooperation and investment. However, any economic analyst will have doubts since the region has a difficult terrain, poor infrastructure and is conflict-ridden, making it utterly unviable for economic development.

In North-east India, extractive industries are most promising and the Naga areas are particularly apt. However, to get access to its resources, the Indian government will first have to be able to bring down resistance to a degree where they are able to control and take over the communally-owned land.

What can thus be observed is that, on the one hand, sham negotiations are being conducted with the NSCN-IM while, on the other, deals for mining, extraction of crude oil and gas, mega-dams for power generation, bio-fuel plantations or the setting up of pharmaceutical com-

panies are being agreed in Naga areas. And, for the latter to succeed, changes in land and forest laws in order to take over communally-owned land are a priority.

Mega-dams have been vehemently opposed by the people. Of this, the protest against Mapithel Multi-purpose Dam and Tipaimukh Multi-purpose Dam in Manipur state are the most prominent. These protests have resulted in further militarisation of these areas. On 3 November 2008, when around 500 women had insisted on submitting a memorandum with regard to the Mapithel Multi-purpose Dam, the security forces resorted to violence. Forty-five women were seriously injured, including Ms Lungmila, a 50-year-old Naga mother of nine, who was left in a coma with part of her skull and brain surgically removed. □

Note

- 1 *Morung Express*, 22 December 2008

Gam A. Shimray is a member of the Naga Peoples' Movement for Human Rights and at present works as Assistant to the Secretary General for the Asia Indigenous Peoples Pact (AIPP).



THE PALESTINIAN BEDOUIN IN ISRAEL

The Naqab Bedouin number approximately 200,000 and make up 2.2% of Israel's total population. Half of the Bedouin have been displaced from their land and live in government-planned towns, while the other half still live in traditional villages which are not recognized by the state. They are an overwhelmingly young community, with over 65% under the age of 20.

The Naqab Bedouin are among the indigenous Palestinian Arabs who remained in Israel after 1948 and are today a minority group of Israeli citizens. Traditionally, they were organized into semi-nomadic tribes which derived their livelihood from livestock and seasonal agriculture.

Due to the processes of modernization, Bedouin life throughout the Middle East has undergone many changes. No Bedouin community, however, has been so dramatically affected as the Palestinian Bedouin in Israel, who have also been directly and indirectly impacted by the Israeli-Palestinian conflict.

One of the main obstacles to the establishment of a Jewish state in Palestine was the fact that the overwhelming majority of the population was Palestinian Arab. However, during the course and aftermath of the establishment of Israel, the land was emptied of over 700,000 Palestinians, including about two-thirds of the Bedouin population, who fled or were expelled to the neighboring Arab countries/territories. Those who remained in Israel were never recognized by the authorities as Palestinians, even though all of them, including the Bedouin, had relatives in the Palestinian diaspora.

Instead of receiving recognition as a national minority, they were divided into several smaller "minorities" based on religion and/or lifestyle. The authorities designated the Bedouin as a separate group,



and worked to institutionalize this segmentation through administrative structures and conditions, such as allowing the Bedouin to volunteer for military service, and denying this option to other parts of the Palestinian minority. The issue of whether the Bedouin are Palestinians is debated or even denied on many levels of Israeli Jewish discourse (popular, governmental, academic).

The “Judaization” of the land in Palestine has its roots in pre-1948 Zionist settlement methods, which attempted to create contiguous chains of segregated Jewish localities, particularly in areas with a Palestinian majority, such as Galilee and the Naqab. Jewish settlement in these regions continues to be a highly valued Zionist achievement.

Since the establishment of the state, a number of mechanisms have been used to accomplish this objective. A military administration was established to govern the Palestinian minority in Israel until 1966. It was empowered to regulate their place of residence and all movement, which it utilized to prevent many from returning to, or cultivating, their lands. Of the 19 Naqab Bedouin tribes, 12 were displaced from their lands, and the whole population was confined to a specially-designated Restricted Area in the north-eastern Naqab, which represented only 10% of the territory they controlled before 1948. During this time, a law was enacted that allowed for the confiscation of land in the absence of its owners. The majority of Bedouin, whose absence was being imposed and enforced by the military administration, thus lost their lands.

The Israeli government enacted a series of laws that facilitated the confiscation of land from the Palestinian minority in Israel, most of which was classified as state land and co-administered by quasi-governmental, private organizations such as the Jewish Agency. As a result, the Palestinian Arab citizens of Israel are currently prevented from purchasing, using or leasing land in 80% of the country. The land loss has been most severe among the Bedouin, who the Israeli authorities portray as aimless wanderers, with no attachment to or ownership of the land, despite the semi-nomadic lifestyle of most that was based on permanent home bases and seasonal migration. Prior to 1948, most Bedouin land was held according to traditional land-ownership systems, clearly demarcated and accompanied by contracts, either oral or documentary, signed with neighboring tribes and communities. As of 2008, the Israeli authorities and courts have refused to recognize the traditional ownership systems, so the state has claimed virtually all of their land. The Bedouin are unwilling to relinquish their land rights and have continued to live on their lands and to practise their traditional livelihood to a limited extent, even though their formal legal status is that of "illegal squatters", "trespassers/invaders of state land".¹

Forced Urbanization

Another mechanism used by the government to consolidate its control over the land and displace the Bedouin presence was an urbanization

program initiated in the 1960s. This involved resettling the Bedouin population in urban-style towns on $\frac{1}{4}$ -acre (or smaller) plots, making them completely dependent upon integration into the wider Israeli economy for their livelihoods. The government has claimed that their purpose was to provide the Bedouin with modern services (e.g. running water, electricity, telephones, local schools and health clinics, etc.). As of 2008, these towns ranged in size from 7,000 to 43,300 inhabitants. While the towns provide the most basic services, they lack internal and external public transportation networks, active industrial and commercial centers, operational sewage systems, libraries, sports and cultural centers and, in most cases, even banks or other basic urban amenities, all of which are found in neighboring Jewish towns of comparable size. The systematic underdevelopment of the government-planned Bedouin towns is evident from the official government document ranking local authorities in Israel according to a socio-economic index. This places most of the Bedouin towns at the bottom of the list.² They have the highest unemployment and school dropout rates, and the lowest educational levels, in the country. Their integration into Israeli society is marginal, and approximately 65% - 75% of the Bedouin population lives below the poverty line.

Unrecognized Villages

Due to the socio-cultural inappropriateness of the urbanized settlement plan, and the complete economic dependency it has created among the towns' inhabitants, resettlement in the towns has been resisted by those Bedouin who are in a position to do so.

Over four decades after commencement of the urban resettlement program, only half of the Bedouin thus live in the government-planned towns. The remainder live in unrecognized villages that are denied services such as paved roads, public transportation, electricity, running water, garbage disposal, telephone service, community health facilities, etc. All forms of housing (except for tents) are considered illegal, and are subject to heavy fines and demolition proceedings. The implementation of these measures is carried out by a paramilitary unit known as the Green Patrol,³ whose actions include exercising tight

control over herd sizes and grazing areas, confiscating flocks found in violation of the restrictions and destroying Bedouin dwellings (including mosques), crops and trees. Over the past two years (2007-2008), government demolition activities have escalated and, in a new development, entire villages have been destroyed. For example, on 25 June 2007, all dwellings in the village of Um Al-Hiron were demolished, leaving 150 people without homes. In addition, all of their possessions were confiscated, including medicines, children's books and school materials, and food. The village of Twail Abu Jarwal, which had around 100 residents, was demolished for the first time in 2006. The residents responded by rebuilding their homes and government forces have since destroyed their village at least a further 15 times over the 2007-2008 period.⁴

The unrecognized villages are denied their own representative authorities and have no official local councils. The majority of residents of the unrecognized villages live in areas devoid of any municipal authority. Even those who do live in an area under a municipal authority, such as those villages within the jurisdiction of Jewish regional councils, do not receive services from these bodies or vote in their elections.

In light of the Bedouin's ongoing resistance to the urbanization program, the government approved a five-year plan in 2003 to bring "final closure" to the land conflict with the Bedouin in the Naqab by establishing a number of new Bedouin towns. The plan, which was developed without the participation of the Bedouin, includes establishing a new police unit and special forces to implement government policies toward the villagers living on their lands and to carry out demolition orders.

As a result of the continued community resistance, another government committee was formed in early 2008, headed by an Israeli High Court judge, Eliezer Goldberg, to study the issues and propose solutions to resolve the land and other conflicts. The Goldberg Committee⁵ recently submitted its recommendations to the government. They represent a continuation of the long-standing government policy of refusing to recognize Bedouin land rights. This is also evidenced by the fact the demolitions of Bedouin homes/mosques/businesses, etc. have continued and even intensified throughout this period. As such, the Goldberg recommendations have been rejected by the Bedouin community.

Conclusion

Indigenous people share a history of targeted exclusion from the decision-making processes of dominant society that directly affect them, including their displacement and relocation and development initiatives.

A review of Israeli policy toward the Palestinian Bedouin of the Naqab reveals that little has changed since the pre-state Zionist goals of Judaizing / de-Palestinizing the land were first established. The Bedouin in Israel suffer from this internal Israeli-Palestinian conflict and, as members of the Palestinian minority, continue to be viewed as a demographic and security threat to the Jewish state, and denied full and equal citizenship rights.

What has indeed changed over the past 60-odd years is the resistance of the indigenous Palestinian Arab minority in Israel. Over the past ten years, Palestinian human, civil and legal rights organizations have developed throughout the country to document the needs and develop channels for resistance using the legal and civil mechanisms of Israeli society. These have had some measure of success. The Naqab Palestinian Bedouin, who have shown the tenacity typical of the Palestinian people to withstand efforts to remove them from their land, even in the face of great adversity, have also begun to organize their resistance to displacement by developing their own (albeit unrecognized by the government) regional councils.

The government's response to this resistance up to and throughout 2008 has been to intensify the use of coercive measures in order to achieve its goals. The very existence of the Palestinian Arab people has been an anathema to the Zionist movement since its inception, and will remain so until the Palestinian people cease to exist, or submit to a diminished, highly-controlled existence that somehow ceases to violate Zionist sensibilities. Since neither of these scenarios seems likely, there will be an ongoing and increasingly conflict-ridden deadlock between the Israeli government and the Naqab's Palestinian Bedouin for as long as it is unable to relinquish the Zionist dream of Judaizing and de-Palestinizing the land.

Furthermore, the experience of indigenous people worldwide holds an important lesson for the Palestinian Bedouin case in the Naqab. Successive plans and policies, ranging from extermination to separation to assimilation, have treated indigenous people as a “problem” to be solved according to settler society interests. Virtually all of these plans have resulted in failure, at extremely high social cost to indigenous societies, as well as high moral and social cost to mainstream societies. These failed policies have, in many cases, eventually led to violent confrontation, as well as to growing demands from indigenous communities for self-determination, and incrementally expanding recognition on the part of mainstream societies that indigenous “problems” cannot be solved unless indigenous people play a major and meaningful role in developing the solutions. □

Notes

- 1 **Abu-Saad, I. 2008:** Spatial Transformation and Indigenous Resistance: The Urbanization of the Palestinian Bedouin in Southern Israel, *American Behavioral Scientists*, 51, 1713-1754.
- 2 CBS (2006) http://www.cbs.gov.il/publications/local_authorities2003/local_authorities_e.htm
- 3 The Green Patrol was established by the Israeli government in 1976 as a body to preserve nature, and to oversee and protect state lands from “squatters”.
- 4 <http://www.rcuv.net/en/roll.asp?id=15>
- 5 <http://www.moch.gov.il/NR/rdonlyres/770ABFE7-868D-4385-BE9A-96CE4323DD72/5052/DochVaadaShofetGoldbergHebrew3.pdf>

Recommended Reading

- Falah, Ghazi, 1989:** Israeli state Policy toward Bedouin sedentarization in the Negev. *Journal of Palestine Studies* 18 (2): 71-91.
- Maddrell, Penny, 1990:** *The Beduin of the Negev*. London: Minority Rights Group Report No. 81.
- Shamir, R., 1996:** Suspended in space: Bedouin under the law of Israel. *Law & Society Review* 3, 231-57.

Ismael Abu-Saad is a Professor in the Education Department, Ben-Gurion University of the Negev.



NORTH AND WEST AFRICA

MOROCCO

The Amazigh (Berber) peoples are considered to be 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. Amazigh associations strongly challenge this result and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population of Morocco may well number around twenty million, with around thirty million throughout the whole of North Africa and the Sahel.

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. Recent years have seen positive changes, with the establishment of the Royal Institute of Amazigh Culture, recognition of the Amazigh alphabet and introduction of mother-tongue education in the Amazigh language in state schools. However, as documented in this article, the situation again seems to be deteriorating. The Amazigh people have founded a movement called the "Amazigh Cultural Movement" to advocate for their rights. There are now more than 500 Amazigh associations established throughout the whole of Morocco. It is a civil society movement based on universal values of human rights

General government policy towards the Amazigh

The Amazigh identity among the Moroccan population is still not recognised in the Constitution, which states that Morocco is an Arab country. The fact that Arabic is the official language and that the Amazigh language has no constitutional recognition means that government departments (education, information, justice, administration)



and their staff are legally able to prevent the Amazigh from using their own language, on the pretext that it is not official.

The inauguration of a new government (end of 2007) headed by the Istiqlal party, a Salafist party hostile to Amazigh rights, forced the Amazigh Cultural Movement to remind this government soon after it came to power that the Moroccan State's commitments to promoting Amazigh rights had to be applied and respected.

And yet these calls have resulted in no improvement in their rights. Observers and human rights associations, along with the Amazigh organisations, described 2008 as a year of deteriorating human rights, both in general and for the Amazigh in particular. The annual reports

of the Amazigh organisations show that the State's commitment to improve Amazigh rights is not a priority for this government.

Civil and political rights of the Amazigh

Following the ban on the Amazigh Democratic Party (*Parti Démocratique Amazigh* - PDA) at the end of 2007, on the pretext that it was ethnically-based, something that was denied both by the party leaders and by the lawyers' petitions during the court case, the Amazigh no longer have the right to organise politically or freely or to form their own political parties. And yet a number of other political parties have an ethnic pan-Arab ideology, proving that the Amazigh are targeted by a policy that the Amazigh Cultural Movement considers discriminatory.

The new government has pushed forward with the ideological process of Arabisation on various levels. The mass media systematically popularise this policy, sidelining all aspects of Amazigh identity in public life. We are witnessing a return to the mass use of Arabic, to the detriment of the Amazigh language. It was in this context that the prime minister's party presented a law known as "The law on Arabisation of the administration and public life" to the Chamber of Counsellors (Morocco's Upper House) at its 2008 spring session. With this, according to Amazigh activists, the governing party was directly targeting the Amazigh identity. A petition was launched against this bill of law. This petition was launched by the Amazigh Cultural Movement of southern Morocco, supported by democrats from the region, and it stated that:

The content of this bill of law undermines the linguistic plurality of our country and is intended to deny the Amazigh language, which enjoys no legal or constitutional protection.¹

Other associations of the Amazigh diaspora supported this initiative, sending a letter to the Moroccan parliament on 22 October 2008 demanding that the bill be immediately withdrawn as its aim was to impose Arabic in all areas of civic life and to establish fines for anyone using a language other than Arabic. Several hundred thousand people signed the petition resulting, finally, in the bill being halted.²

In addition, Amazigh associations have long been subjected to harassment on the part of the authorities. In Agadir, the "Akal" association has never received any acknowledgement from the authorities, despite submitting its registration papers seven years ago. In Rabat, the provincial authorities have refused to issue an acknowledgement of renewal to the Amazigh Citizenship Network (*Réseau Amazigh pour la Citoyenneté*), although the paperwork was submitted on 4 August 2008.³ Amazigh activists are also stopped and questioned every so often.

According to a press release issued by the Amazigh World Congress, a number of student activists from the Amazigh Movement were tried before the Criminal Division of the Meknes Court of Appeal, which "finally passed verdict on 16 October 2008 with regard to the 10 Amazigh defendants held in Meknes prison since 22 May 2007. The sentences are extremely harsh for two young inmates, Mustapha Ous-saya and Hamid Ouadouch, both sentenced to 12 years in prison."⁴ The Amazigh organisations denounced this verdict, describing it as politically motivated and unjust, and they are demanding the defendants' acquittal and release.

The ban on Amazigh first names and changes to place names

Proof of the decline in Amazigh rights under the new Moroccan administration can be seen in the Interior Minister's failure to respect Morocco's commitments to the UN Human Rights Council. When the Human Rights Council discussed the report presented by Morocco on the progress of human rights in Morocco – for which the Amazigh International Congress presented a shadow report – the Government of Morocco affirmed that the Amazigh surname problem had been resolved. Despite this commitment, the Amazigh still suffer the impact of a ban on the use of Amazigh first names when registering their children.

One example is that of a little girl whose parents chose the name Illy (my daughter) and which was arbitrarily banned by the registry officials. The parents, who live in Larache (near Tangiers), were forced to go to court. The judge of the Larache District Court, however, also

refused to allow the little girl to be called Illy. President of the Bar, Abderrahim Jamaï, known for his human rights activism, described the ruling as “unjust” and “an attack on human rights and on respect for the plural identity of Morocco, which has Amazigh roots.”

Farid El Mouchni and his wife, Moroccan nationals living in Spain, discovered in March 2008 that they could not register their daughter’s name, Chaden, because the Moroccan Embassy in Madrid had a list of those first names that were not acceptable. The Ministry of the Interior still holds this infamous list of banned names, which includes Bahac, Damya, Diyia, Mayssa, Guraya, Yuba, Ijja, Aderfy, Amzin, Idir, Massinissa, Tihia, Tinass, Taynust, Sifaw, Massin, Ayour and others, and whenever Amazigh names are put forward for Amazigh children, instead of registering them as the children’s first names, they are added to the list of banned names. If this continues, the list will simply increase ad infinitum.⁵

The ban not only affects first names but also place names. Many Amazigh place names have been changed into Arabic names, such as Imi Ougadir, which is now Foum Lhsen in the southern Tata region of Morocco, and the Illalen tribe who are now the Hilala, to give but two examples.

Amazigh language teaching in crisis

In 2003, Morocco decided to begin teaching the Amazigh language, apparently in response to demands from the Amazigh Cultural Movement. Efforts have been made to introduce it but there is clearly still strong resistance to the initiative. A number of schools remain cold and indifferent to this project. There is no consolidated system within the Ministry of Education for monitoring the introduction of this language. Everything depends on the conviction and will of the teachers and the directors of the regional academies for education and training. The Royal Institute for Amazigh Culture (*Institut Royale de la Culture Amazigh*), a body established by King Mohamed VI, has on several occasions highlighted major operational difficulties in the teaching of Tamazight, citing the Ministry of Education as responsible for this. A report from the Higher Education Council (*Conseil Supérieur de*

l'Enseignement - CSE) published this year made no reference to Amazigh language teaching at all. It was only after the alternative report of the Confederation of Amazigh Associations of South Morocco (*Confédération des Associations Amazighes du sud marocain*) pointed out this problem that the Council amended its report, adding a note on Tamazight teaching.⁶ The Amazigh Cultural Movement continually criticises the lack of reference to Amazigh culture in school books.

2008 was also a year in which great propaganda efforts were made to instil in the people a belief that Morocco's history began only 12 centuries ago, coinciding with the arrival of the Arabs in Morocco (the Idrisid dynasty of the 9th century). The "12 centuries of the history of Fez" association received huge State funding, with the mass media and schools ready to facilitate and contribute to propaganda that "falsifies the history of Morocco and the Amazigh", according to Amazigh activists. Several demonstrations have been organised against this activity by Amazigh activists, the last of which was held in Marrakech on Saturday 20 December 2008.

Information

The enthusiasm that was aroused following the creation of the Royal Institute for Amazigh Culture (IRCAM) has since been stifled by the marginalisation of anything Amazigh and the contempt demonstrated by the Government. The creation of an Amazigh channel has not yet seen the light of day and the Amazigh receive only 2% of broadcasting time.

For a Morocco of human rights

The Amazigh Cultural Movement in Morocco is still a peaceful movement, demanding its rights by legitimate means. Despite this, however, the Moroccan government has remained reticent towards the Movement, refusing to consider it as a trusted partner or to engage in a direct and responsible dialogue that would enable it to suggest appropriate solutions to the problems of Amazigh identity.

2008 was judged a repressive year by Amazigh activists. This could be seen in the slow pace of the court case against the Amazigh defendants in Meknes, the ban on Amazigh first names (despite Morocco's commitment to the UN Human Rights Council) and the Ministry of Education's neglect with regard to Amazigh language teaching, which could have represented an historic action to normalise Amazigh rights. In addition, there is the Ministry of Information's handling of the Amazigh television channel project. The Amazigh are talking of a lack of political will to resolve the situation of Amazigh rights.

And yet despite the discontent and pessimism of the year, the Amazigh Cultural Movement remains alive and vigilant and open to initiatives that could see Amazigh demands satisfied, so that we can build a new Morocco that is reflective of its plurality. □

Notes

- 1 See www.amazighworld.org
- 2 The bill of law was put forward by the Istiqlal party so that it could be discussed with the other parties last October before being adopted in parliament. The intervention of the Amazigh Cultural Movement with regard to the deputies and other parties has contributed to getting the project withdrawn.
- 3 Press release from the Amazigh Citizenship Network, see <http://www.forumalternatives.org/rac/auteur14.html>
- 4 Press release from the Amazigh World Congress, see www.congres.mondial.amazigh.org
- 5 Report from the Aljazeera channel on the banning of Amazigh first names in Morocco <http://www.bladi.net/forum/149130-reportage-aljazeera-linterdiction-prenoms-amazigh-maroc/>
- 6 The report can be found at www.tamuntnifuss.org

Dr. Mohamed Handaine is the President of the Confederation of Amazigh Associations of Southern Morocco (Tamunt n Iffus), Agadir Morocco. He is a historian, writer and board member of the Coordination Autochtone Franco-phone (CAF). He is also a founder member of the Amazigh World Congress and has published a number of works on Amazigh history and culture.

ALGERIA

According to unofficial figures, the indigenous Tamazight-speaking population of Algeria today represents between 20-30% of the country's total population of 32.9 million (2006 census), spread over a total area of 2,381,741 km². The Amazigh people live in four large linguistic areas, each with its own regional dialect. They are: Kabylia in the north, covering almost 20,000 km² (around 5 million inhabitants in 6 *wilayas* or provinces); Aurès in the east covering a total area of more than 11,000 km² (almost 2 million inhabitants in 5 *wilayas*); M'zab in the south (100,000 inhabitants in an area of 300 km²) and the Tuareg territory in the far south with an area of more than 1 million km² (more than 500,000 inhabitants in 4 departments).

There are also further pockets of Amazigh people in the west and in the Sahara, although these account for no more than a few tens of thousands of individuals. It is, moreover, important to note that some people living in Arabic-speaking regions are also historically and culturally Amazigh but have been Arabised over the years, undergoing a process of gradual acculturation since the arrival of Islam 1,400 years ago.

The indigenous peoples have no outwardly distinguishing features to differentiate them from other inhabitants. The difference lies purely in terms of their language, customs and habits. Despite constitutional recognition of the Amazigh language as a "national language", the Amazigh identity in Algeria remains marginalised by the state institutions. Official Algeria "prestigiously" declares itself an Arab country, and evokes its Amazigh identity only occasionally in official rhetoric, primarily at the time of elections.

The right to study one's mother tongue, the right to culture, etc. are nevertheless enshrined in the International Covenant on Economic, Social and Cultural Rights, a text that Algeria has ratified, along with the Association Agreement signed with the European Union and many other international texts ratified by Algeria. The most recent such text was the UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly, including Algeria, in September 2007.

Denial of identity and linguistic rights

After many years of denial and exclusion of the Amazigh identity, the indigenous Amazigh language obtained the constitutional status of national language following an amendment adopted by the National Assembly on 8 April 2002.

This partial recognition of Tamazight should have been followed up with legal and institutional instruments to promote and develop its practical implementation. However, the Amazigh language has still not received any funding from the state for its promotion or development. This is in contrast to the position of Arabic, also an official language, and one that does receive state support.

Teaching of the Amazigh language: a question of political will

Although there is an original script, Tifinagh, which derives from the ancient Lybic, almost all indigenous Amazigh-language speakers and writers, particularly in the Kabylia Region, use the Latin script (international phonetic alphabet) due to historical and scientific considerations and, above all, out of a concern for remaining open to the outside world. Teaching of the Amazigh language has been conducted in Latin script since it was first introduced into the Republic's schools. Moreover, the HCA (which is the state institution responsible for promoting and developing the Amazigh language), took an official decision in



favour of Latin script following national and international conferences and seminars led by eminent linguists and socio-linguists. However the Algerian authorities are now challenging the use of the Latin script for the transcription of Tamazight, attempting to replace it with Arabic script on the basis that Latin script is a vehicle for Franco-colonial aspirations.

The field of Tamazight linguistics in Algeria is being squeezed into a corner, giving way to a fierce Arabisation, particularly in the towns. It is in the rural and mountainous areas that Tamazight survives, protected from outside intrusion. The honour for this goes first and foremost to Amazigh women, who are the guardians of the ancestral language and culture.

Cultural production in the indigenous language

In audiovisual terms, the programmes broadcast on state-run television, the only channel existing in Algeria, are primarily in Arabic. However, some slots are broadcast in the Amazigh language, including a news bulletin and a few rare cultural broadcasts. The government refuses to open up the audiovisual sector to private investors, who are waiting for a green light from the government to be able to set up private channels. The planned establishment of an Amazigh language channel is being delayed.

As for radio, there are three government-run stations, one of which broadcasts in Tamazight (in its different dialects), along with other state-run local stations that broadcast programmes in both Tamazight and Arabic. Here too, there are unfortunately still no private radio networks, the existing stations being state-controlled.

A national Amazigh film festival has been running since March 2006 with funding from the Ministry of Culture. The 8th festival was successfully held in January 2008 in Sétif, a town to the east of Algiers.

Marginalisation

In some regions, indigenous people are still prohibited from giving their children Amazigh names. The names of former Amazigh kings and princes are not recognised by the authorities as they do not appear on the official list drawn up by the state and many people are unable to register their children's births, including in certain areas of Kabylia.

It is the same for road signs and other commercial and administrative signs in the Amazigh language. Although tolerated in Kabylia, this is not the case in other Amazigh-speaking regions.

During the different local, parliamentary and presidential elections, the central authorities keep a tight grip on the administration, attempting to commit electoral fraud at every ballot, doing all they can to restrict the parties with a strong Amazigh base (the RCD/Union for Cul-

ture and Democracy and the FFS/Socialist Forces Front) and prevent them from having a voice outside their regional strongholds.

However, Amazigh individuals can be found within many of the country's different political parties and state institutions and even in the higher echelons of power. For example, in 2008, the Algerian prime minister was Amazigh as were many other male and female ministers. The two main parties with a strong Amazigh base (the RCD and the FFS) are in the opposition; they currently run most of the councils in Kabylia plus some in Arabic-speaking regions.

In March 2008, in Berriane (Ghardaia), an Amazigh commune 500 kms to the south of Algiers in which the RCD is in the majority, clashes broke out between two different ethnic communities (Amazigh and Arab) within sight of and with the apathy and complicity of the local authorities. These two communities, both Muslim but belonging to different sects (Ibadite and Malekite) lived peacefully side-by-side for centuries but are now in constant conflict. The central authorities want to make the Amazigh inhabitants pay for their support of the RCD. Moreover, following these events, the Mayor of Berriane, an RCD member, was illegally removed from office by the Prefect and replaced with a mayor from the ruling party.

In terms of public meetings, a meeting of the World Amazigh Congress, an international NGO working for Amazigh rights, planned for 30 and 31 October 2008 at Tizi Ouzou (Kabylia), was prevented from being held by the Algerian authorities. A delegation of Moroccan Amazigh who had been invited to this meeting were intercepted and held by police for 24 hours at Algiers international airport before being returned home.

As in the rest of the country, unemployment is rampant in the Amazigh-speaking regions. Suicides recorded in some areas over the last few years are worrying. There are no reliable statistics that can give precise figures on suicide rates in Amazigh-speaking regions compared to other regions of the country. However, in 2008, according to a report from the Civil Protection Department, Tizi Ouzou alone recorded 53 suicides. This puts the two main departments of Kabylia at the top of the country's regions in terms of suicides.

The situation of Amazigh women differs little from that of women in Algeria in general. The weight of tradition and of the family code,

which draws full inspiration from Islamic (Sharia) law, places women in a subordinate position. Male domination in Algeria can be seen in all walks of life. By way of example, there are many public and shopping areas that are inaccessible to women, such as weekly markets, cafés and other establishments. Women are not actually banned from these places by law but there are social constraints and there is sometimes even self-exclusion, given the weight of custom and tradition and the former Amazigh customary code. For example, nowadays, in Kabylia, where villages are organised and meet democratically to discuss their daily problems, women – whether housewives or employed outside the home - do not have the right to attend such village assemblies.

There has, however, been a women's movement in existence since the early 1990s. This has been gaining ground in recent years, particularly in the towns, where women now participate in civil society, unions and political life. Indigenous Amazigh women hold senior posts in the administration and within elected assemblies (local councils, parliament, senate). This is far from on an equal footing, though, given the dominance and presence of men in all areas. □

Mohamed Si Belkacem is a chemical engineer by training. After studying at Tizi-Ouzou University and working as a laboratory engineer within the Tizi-Ouzou Department for the Environment, he turned to journalism in 2000. He was a founder member of the bimonthly journal Racines, where he held the post of Editorial Director. He has also worked as a freelance journalist, having articles published in a number of daily newspapers. Since 2008, he is President of the Iles Umazigh cultural association (an indigenous Amazigh organisation). From 1999 to 2005 he was Vice-president of the Amazigh World Congress (CMA). From 2006 to 2008 he was Vice-president of the Coordination Autochtone Francophone (CAF). He is the author of a work entitled «Chroniques de la Kabylie martyrisée» published in 2004 by l'Harmattan, Paris. Alongside his work as a freelance journalist and editor, he is currently working in a private land planning and environmental research department.

NIGER

Niger's indigenous populations are the Peul, Tuareg and Toubou. These peoples are all nomadic transhumant pastoralists. Niger's population is estimated at 13,800,000. The indigenous population can be broken down approximately as follows¹:

- 8.5% of the population are Peul, i.e. 1,173,000 individuals. They are mostly cattle and sheep herders but some of them have converted to agriculture because they lost their livestock during the droughts. They live in all regions of the country.
- 8.3% of the population are Tuareg, i.e. 1,145,400 individuals. They are camel and goat herders. They live in the north (Agadez and Tahoua) and west (Tillabery) of Niger.
- 1.5% of the population are Toubou, i.e. 207,000 individuals. They are camel herders. They live in the east (Zinder and Diffa) of the country and along the border with Libya (Bilma).

The Peul can be further sub-divided into a number of groups, namely the Tolèbé, Gorgabé, Djelgobé and Bororo.

Pastoralism remains the only sector not governed by any legislation. Although a draft Pastoral Code has existed for the past 10 years, a number of ministers, MPs and others close to the government have continued to exert pressure in order to prevent its progress.

2008 was marked by:

- A rebellion that resulted in even more atrocities than in 2007;
- The discovery of uranium deposits at Imouraren, near Agadez in northern Niger and oil in the Agadem block in the eastern Differ region bordering Chad;
- More meetings amongst pastoralists.

The rebellion

A rebellion has been raging in the north of Niger, a region rich in uranium, since the start of 2007. The rebellion was instigated by the Nigerien Movement for Justice (*Mouvement des Nigériens pour la Justice - MNJ*), a Tuareg movement demanding greater resource sharing and more economic development within their communities. Attacks have taken place against the government and foreign investors, and these have resulted in an immediate response from the Nigerien government.

Throughout 2008 the rebellion was characterised by more frequent attacks on the civilian population. Niger's government is refusing any kind of negotiations or mediation, and has opted for a military solution. This has seriously affected the civilian population. It is not always easy to distinguish between rebels, accomplices and civilians, and acts of violence have been committed against groups described as rebels by the army but civilians by the MNJ. Moreover, China is supplying military equipment to the Nigerien army, including planes, and this is leading to a rise in the number of civilian casualties.

There is very limited knowledge of the situation in northern Niger at either national or international level. The government has decreed a state of emergency in the area with civil society organisations and journalists being prevented from visiting, and the state of emergency has been extended on a number of occasions, with serious consequences. The area has been deprived of all essential supplies and the population has been plunged into a state of near destitution.

Although this situation relates primarily to the north of the country, the west has also been attacked, affecting other pastoral communities such as the Peul and Toubou. For example, the MNJ's attack on Banibangou, 250 kms north of Niamey, was intended to demonstrate the movement's capacity to strike in all regions of the country. Indigenous Peul and Toubou communities also feel they are suffering from the same marginalisation as the Tuareg, leading some of them to support the MNJ, given that the pastoral region in which they live has received no investment or development projects.

The MNJ split in 2008, giving rise to the Front of Forces for Recovery (*Front des Forces pour le Redressement*), led by Rhissa Boula, a symbolic



leader of the 1990s rebellion. He created his own movement after previous leaders refused to have him heading the MNJ. The FFR is fundamentally no different from the MNJ in terms of its ideas and demands.

The situation of indigenous women in Niger

The situation of indigenous women is very difficult. In fact, this sector of the population is doubly affected, suffering discrimination both as women and as indigenous people. Women are generally less likely to go to school than men in Niger, and to this must be added the already low levels of school attendance among nomadic populations. This means that indigenous women live in a state of extreme vulnerability.

The right to land and the Pastoral Code

The Pastoral Code, now in its seventh version, has been under discussion for the past 10 years and has still not been adopted. The code has been blocked by the government because it would give rights to indigenous peoples, in particular, the right to land.

In fact, according to the report of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights following its visit to Niger in February 2006, the Peul "have no right to land".² The absence of a legal right to land has many consequences. For example, Peul encampments of several years' standing have been moved on without notice and attacked with impunity, the victims being first and foremost women and children.

Impunity from the law

Impunity occurs in a number of ways when violations are committed against indigenous communities in Niger. Since November 2008, the Zarma populations of Ouallam have taken to attacking the Peul quite openly in front of the administrative authorities. They have even driven out the head of the administrative office and the head of the health centre simply because they are Peul. No legal action was taken in this regard.

The killings organised by sedentary populations continue to wreak havoc. In 2008, eight Peul people were killed in the villages of Mangaizé, Tongotongo and Tingara and, in the village of Sinagodar, two people were killed.

Private companies involved in mining operations

AREVA, a French nuclear energy multinational, has been prospecting a uranium mine at Imouraren to the north of Agadez. This mine will be the largest uranium mine in Africa and the second largest in the world. And yet this whole process is taking place without any involvement

on the part of the neighbouring Tuareg populations. What's more, no compensation has been anticipated for local communities, nor has it even been discussed, and this also forms one of the MNJ's demands. The MNJ has been asking, without success, for a dialogue with AREVA to find solutions to or compensation for the environmental degradation.

The consequences of mineral exploitation are two-fold. Firstly, environmental degradation is exacerbated and, secondly, the local population are forced to suffer the harmful effects of radiation.

The same goes for the oil exploitation being conducted by the Chinese at Agadem in the Diffa region, a primarily Toubou area. From the moment of first exploration right up to the laying of the first foundations for the refinery, the indigenous populations had no involvement. It goes without saying that no compensation has been anticipated.

Pastoralist meeting

A number of pastoralist meetings took place in 2008 in order to seek a response to the different problems faced by these communities. Such meetings are held throughout the country, sometimes to discuss how to guarantee corridors for the passage of livestock and sometimes to resolve problems of access to water.

In 2008, one of these meetings focused on the fact that the Peul do not have the right to pitch and hold a market. In fact, the prefect of Magaria, 1,000 kms east of Niamey, sent the security and defence forces to support the local sedentary farmers who were taking down sheds set up by the Peul. In the meantime, the pastoral area³ is in the process of being sold to ministers, MPs and those close to the government in Niamey for ranches. □

Notes

- 1 *Institut National de Statistique du Niger* (Niger National Institute of Statistics).
- 2 Report of the African Commission's Working Group on Indigenous Populations/Communities – Mission to the Republic of Niger, February 2006, paragraph 93, p.49.

- 3 The area is defined by Law 61-05 of 26 May 1961. It stretches from the north of Fillingué to Diffa and is occupied principally by Peul, Tuareg and Toubou pastoralist populations. According to this law, it is forbidden to undertake agricultural activities in this area.

Mr Harouna Abarchi is the coordinator of the organisation Association pour la Redynamisation de l'Élevage au Niger (Association for the Revival of Pastoralism in Niger - AREN), Niamey, Niger.

BURKINA FASO

Burkina Faso has a population of 14,017,262 (4th General Census of Population and Housing, December 2006) comprising some sixty different ethnic groups. Those peoples considered to be indigenous include the Peul and the Tuareg. They can be found throughout the whole country; however, they are particularly concentrated in the northern regions of Séno, Soum, Ya-gha and Oudalan. The Peul and the Tuareg most often live in areas which are geographically isolated, dry and economically marginalized and they are often the victims of human rights abuses.

Peul pastoralists are gradually becoming completely sedentarised in some parts of Burkina Faso. And yet there are 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. Many of them still reject any activity not related to extensive livestock rearing; they are also not particularly interested in sending their children to school or in participating in local and national elections.

To enable, amongst other things, the sedentarisation of nomads in regions where they form true ethnic islands, pastoral areas have been demarcated by the State.

The existence of indigenous peoples is not recognized by the Constitution of Burkina Faso. The Constitution guarantees education and health for all; however, due to lack of resources and proper infrastructure, the nomadic populations can in practice only enjoy these rights to a very limited extent.

Burkina Faso's ethnic victims in 2008

Every year, Peul people are killed in Burkina Faso simply because of their ethnic belonging. The methods are always the same. Following a dispute between a pastoralist and a farmer, the gears of genocide are set in motion. Small groups begin to form. They attack Peul hamlets, burning their houses and organising a hunt. Any Peul that is caught is killed because, in this manhunt, it is not the age, sex or occupation of the victim that matters, it is simply the fact that they are Peul. It makes no difference whether they are from the area or just passing through, whether they are a pastoralist or a civil servant; their ethnic belonging condemns them to death.

In 2008, the Peul hunts, which are becoming an ever more frequent occurrence in Burkina Faso, ended in the deaths of 11 children and adults aged between 7 and 70 (4 women and 7 men) who were in no way connected with the incident that had apparently caused the hunt in the first place.

In fact, the Peul hunts and massacres of 2008, which took place from 24 May to 14 June 2008 in Poni Province were unleashed by the death of a man from the Lobi ethnic group, who was killed by another man from the Silmimossi ethnic group.

When the Lobi man's murderer was identified, his Peul employer took him to the local police station. Yet this did not prevent the incredibly barbarous murders of Peul men and women whose only link to the crime was the fact that the murderer was employed by a Peul to look after his livestock, a Peul who, moreover, took him to the police once he found out what had happened.

Hence Tall Ramatou, a 52-year-old woman who sought refuge in a hut after fleeing with her two seven-year-old grandchildren, and Dicko Fatoumata, a 16-year-old girl, were savagely beaten to death. Diallo Douadji, 40 years of age, was apparently stripped naked before being cut into pieces and buried in a termite mound. Barry Issa was riding his motorcycle when he was stopped, simply for being a Peul, and brutally murdered like the others.



The specific nature of the 2008 ethnic manhunt in Burkina Faso

The 2008 ethnic hunts were characterized by the fact that:

- The organisers of the hunt did not enjoy the support of all members of their ethnic group. For example, many ethnic Lobi leaders risked their lives to prevent the deaths of Peul;
- Burkina Faso's political parties, along with virtually all civil society organisations, chose to bury their heads in the sand, failing to denounce the massacres and letting them pass in silence;
- The central government proved weak and hesitant to act, perhaps due to fear of alarming the electorate. This was interpreted by the perpetrators as a blank cheque to do as they pleased. Moreover, reconciliation meetings organised by the state authorities served as a forum for some to preach hatred and xenophobia. Those who organised the Peul massacre were thus presented as defending the interests of their ethnic group in the

face of threats from “outsiders”, while those who opposed the massacres were dubbed traitors.

The numerous manhunts organised against the Peul minority always end in immense atrocities. Individuals are often humiliated before being killed, and their remains defiled. Whereas in previous years bodies had often been left to decay, exposed to the elements, the families unable to recover them in good time, 2008 was different in that the clothes were often removed from the corpse before it was cut into pieces and the flesh buried in a termite mound. On some occasions, the body was dragged through the mud. What’s more, the slaughter took on a significant temporal and spatial dimension. In fact, the killings took place over several days and over an area of several dozen square kilometres, demonstrating that it was quite clearly an attempt at ethnic cleansing within at least one particular geo-ethnic space.

The contribution of civil society organisations in terms of promoting the rights of vulnerable ethnic minorities

By vulnerable ethnic minorities in Burkina Faso, we mean any human group likely to suffer massacres at any given moment simply due to their ethnic belonging. To date, this has affected members of the Peul group, living in areas where they are in a minority.

In 2008, to our knowledge, two civil society organisations were given the task of investigating the Peul massacres. They were the Association for the Protection of the Rights and Promotion of Cultural Diversities of Minority Groups (*Association défense des droits et diversités culturelles des personnes appartenant à des minorités* - ADCPM) and Tabital Pulaaku.

ADCPM helped to produce an account of the Peul hunt organised in 2007 in Zoundwéogo Province in southern Burkina Faso. This report, which was completed at the start of 2008, focused on 65 people and helped to identify those who took part in the hunt, assessed the losses incurred and handed over all the information to a lawyer. As for Tabital Pulaaku, in December 2008 it organised a meeting on “Pastoralism and Security Issues in Burkina Faso: assessment and prospects”. This meeting took partial stock of the conflicts between farmers and

pastoralists. In addition, a *Study into the conflict between farmers and pastoralists in Manga-Est, Gogo Department* was conducted (ECOWAS, *Conflict Prevention and Management Mechanism, Observation and Monitoring Zone II*, May 2008). In actual fact, the issue documented was a Peul hunt organised by groups of farmers and pastoralists belonging to different ethnic groups and not a conflict between farmers and pastoralists.

Critical analysis

Although the right to life is recognised in Burkina Faso, the repeated ethnic massacres of Peul have thus far not been denounced, to our knowledge, by any of the political parties or the most established civil society organisations in Burkina Faso. As for the State, it still refuses to recognise that these are massacres of an ethnic nature, endeavouring to stifle this sad reality with the euphemism of “farmer/pastoralist conflicts”, as if Peul who have taken up farming are spared during the massacres, or other ethnic group members who are pastoralists are murdered. We believe that such issues are taboo in Burkina Faso, as are those relating to xenophobia.

The one constant throughout all of the Peul massacres is the fact that, up until now, they have occurred in areas where the Peul form ethnic islands, highly vulnerable minorities. The other feature is that they have never been undertaken by one particular ethnic group against the Peul. It is rather the work of particular organized people or groups whose real interest is the assets and resources of the Peul. In a country where almost half the population is rotting in extreme poverty¹ and where “*morality is in decline*”², the temptation to attack a highly fragile target that own a few dozen cattle is one to which some individuals easily succumb, particularly when they think they are above the law. □

Notes

- 1 More than 46% of the population live below the poverty line on less than US\$1a day.

- 2 “Morality seems to be in decline given what we have seen recently. Love is ever more free and easy among young people. Nowadays, people kill for money. They steal, they kill for money. Morality is in decline...” Colonel Antoine Sanou (cf. Sidwaya Thursday 25 October 2007.
http://www.lefaso.net/spip.php?page=impression&id_article=24150)

Issa Diallo is senior research fellow at the National Center for Scientific and Technological Research in Ouagadougou (Centre national de la recherche scientifique et technologique). He is also president of the Association for the Protection of the Rights and the Promotion of Cultural Diversities of Minority Groups (Association de défense des droits et diversités culturelles des personnes appartenant à des minorités - ADCPM), officially recognized by the Government of Burkina Faso since 2005. ADCPM's objective is to promote human and cultural rights, especially for people from minority groups. He is also the author of newspaper articles on the ethnic conflict involving the killing of Peul people in Burkina Faso.

MALI

The people in Mali who identify as indigenous include the Tuareg and the Peul. The Tuareg are a Berber people living in the central Sahara, spread across Mali, Niger, Burkina Faso, Algeria and Libya. Mali's total population numbers 13,716,829 inhabitants in an area covering 1,241,021 km². The Tuareg and the Moors represent approximately 10% of the population. They live in the North, in the regions of Timbuktu, Gao and Kidal, which together cover 2/3 of the country's land mass. They speak the Tamasheq language.

Traditionally, they are nomadic pastoralists, rearing camels and small ruminants. They occasionally engage in trade, bartering game and camel meat, along with rock salt, in return for dates, fabrics, tea, sugar and foodstuffs. They can be distinguished from other Saharan peoples by their way of life and their culture, in which camels play an important role.

The Constitution of Mali recognises cultural diversity and the National Pact recognises the specific nature of the Tuareg regions. In addition, legislation on decentralisation gives local councillors powers whilst failing, however, to transfer the resources necessary for their exercise.

The Peul can be found in all eight regions of Mali, with the exception of Kidal, but are heavily concentrated in Mopti, the 5th region.

Two events occurred last year that were of importance to Mali in general and to the Tuareg in particular: the hike in global prices and developments in the Tuareg rebellion.

The high cost of living

The situation worsened in 2008 with increases in the international prices of gas and oil in particular, affecting the whole of the West Africa region, including Mali,¹ and even leading to riots² in some neighbouring countries such as Senegal and Côte d'Ivoire. Famine was avoided in Mali due to a number of – somewhat criticised – government decisions such as the distribution of food reserves,³ the rice initiative,⁴ price setting for some basic products and the exemptions granted to some importers.⁵

The situation in Kidal – capital of the 8th region, situated in the north-east and the scene of clashes between the army and Tuareg rebels – remained fragile, however. In fact, even though the Kidal Tuareg avoided famine, they still had enormous difficulties to face. The price of basic commodities soared: a quintal of rice rose from 30,000 CFA (46 Euros) to 50,000 (76 Euros); a 5-litre can of oil from 3,000 CFA (4.57 Euros) to 7,000 (17.77 Euros); a kilogramme of semolina smuggled in from Algeria from 250 CFA (0.38 Euros) to 450 (0.69 Euros) and a kilo of sugar from 400 (0.69 Euros) to 500 CFA (0.86 Euros). Prices rose in Kidal without people experiencing an equivalent increase in their incomes. It was not only foodstuffs that were affected but medicines too. Available solely in Kidal town, they could be found only at exorbitant prices: a 24-pack of paracetamol cost 500 CFA (0.76 Euros) and a course of antibiotics 1,200 CFA (1.83 Euros).

None of the measures implemented by the government reached the rural areas in which most Tuareg live: no cereal distributions, no medicines, no nurses (far less any doctors). This year, it was nature that made up for the State's failings. The rainy season came in abundance, helping to re-establish pastureland for the nomads' animals and provide them with milk.⁶

Beginning in 2006 and continuing into 2008, some people gradually began to leave Kidal town for the desert, leading to an even greater deterioration in the purchasing power of town-based Tuareg populations, with families being deprived of the salaries these people had previously contributed. In addition, the uncertainty, the lack of security and the numerous army checkpoints established around the town



have dealt a hard blow to those smuggling in food from Algeria, the main source of Kidal's supplies, thus discouraging traders. Drugs trafficking, with its easy profits, has become ever more attractive to young people, and they are abandoning the traditional informal sector in basic essential goods.

The Ibrahim Ag Bahanga Rebellion

This rebellion is actually an extension of that of 2006 (see *The Indigenous World 2007*). It is being led by a splinter group of the 23 May

Alliance for Change.⁷ It is calling for the peace accords signed in 2006 between the Tuareg and the Malian government to be implemented. Its main demands are: a reduction in the number of army units deployed in the Tin-Zawatan area on the border with Algeria, the arrest and prosecution of the perpetrators of the double assassination of a Tuareg officer and an imam near a military post in Kidal, the formation of special security units run by and formed largely of Tuareg and, finally, that a development process that takes account of the specific needs of the Kidal region (such as its primarily nomadic way of life) should be implemented.

Over the past year, there have been a number of noteworthy events within this rebellion such as, for example, the attack on a military convoy on 20 March when several prisoners were taken. Such attacks were commonplace throughout the year, the bloodiest being at Abeibara on 20 May, when some 20 soldiers were killed and 60 more taken prisoner by the rebels.

The rebellion is no longer limited to the Kidal region and has now stretched to the south of Mali as well. Attacks thus took place on 6 May at Diabaly, in Ségou region, and on 20 December at Nampala, less than 250 kms from the capital, Bamako, and more than 1,650 kms from the rebel stronghold of Tin-zawatan. With these attacks, the rebels have aimed to demonstrate their ability to expand their operations into the south of the country. All these attacks resulted in the rebels taking more than 100 prisoners.

A difficult process of negotiation was commenced. First of all there were the local initiatives, which managed to achieve the release,⁸ in dribs and drabs, of some of the prisoners, followed by efforts on the part of Algeria and Libya as mediators. Rivalry between these two countries has not facilitated the process, however, and problems have emerged both on the Malian government's side and that of the rebels. Algeria even suspended its involvement in the process from 9 April to 19 May.

The rebels themselves split into two groups: those of the 23 May Democratic Alliance for Change (ADC), whose spokesperson is MP Ahmada Ag Bibi, allied to Algeria, and the Tuareg Alliance of North Mali for Change (ATNMC) led by Ibrahim ag Bahanga, calling for Libya to act as mediator. At odds with the Malian authorities since 13

March 2007, the ATNMC is a splinter group of the ADC, which it accuses of weakness in monitoring the implementation of the Algiers peace accords. It is calling for greater speed and application in applying these agreements on the part of the Malian authorities, emphasising the urgent need to withdraw Malian military reinforcements from the towns of Kidal and Tin-zawatan.⁹

The rebellion has had serious consequences for the local people and some have had to flee as refugees to Algeria and Burkina Faso.

Since the murder, on 10 April 2007, of the Tuareg commander Barka and his companion, Mohamed ag Mossa, near a military post on the outskirts of Kidal, the ADC faction that was in Kidal for the peace process has returned to the desert. They suspect the authorities of carrying out these murders and are calling for an urgent investigation. An obsessive fear has taken hold of the people, and Tuareg dignitaries have even had to make statements in support of the government in order to protect themselves.¹⁰ The Tuareg are divided; there are those in Kidal, labelled troublemakers, and those from the regions of Gao and Timbuktu who are presented as 'good' Tuareg by the authorities.

The situation is now most worrying. In fact, the authorities seem to be favouring strong-arm tactics. Hence the 300 members of the ADC who returned to Kidal to commence mediation and reinstate the peace process, with Algeria's support, were rejected by the region's military commander, himself a Tuareg and former rebel from Gao region. All this in the presence of the Minister for Regional Government and Local Authorities¹¹ and the Algerian ambassador, who had been sent to mediate.

The State has been arming the Moors and the Imrads,¹² a Tuareg tribe, and has entrusted their command to Colonel Ould Meidou, a former rebel from the Islamic Front for the Liberation of Azwad (FIAA),¹³ which was integrated into the Malian Army in the 1990s in order to quell the Tuareg rebellion. This runs the risk of sparking a civil war, first between the Tuareg themselves and later between the Moors and the Tuareg. This ethnicisation of the conflict reflects the failure of Algerian mediation, which has been favoured by the government.

Even if the Moorish and Tuareg militia armed by the government are victorious, the problem will not be solved because, basking in this victory, they would perhaps demand autonomy for their two regions:

Gao and Timbuktu. The Malian government would be unable to satisfy this demand and so other problems would ensue. If these militia should fail, the Kidal rebels will have shown that the government has no desire to resolve the problem through dialogue, thus tarnishing its reputation with the international community and causing the rebels to demand the autonomy they had renounced under pressure from Algeria. And if there is no decisive outcome, the area will be consumed by war and anarchy.

It goes without saying that the only satisfactory resolution to this conflict lies in a resumption of dialogue and mediation. The use of force never results in any long-term solution. □

Notes

- 1 Mali is a net importer of gas and oil.
- 2 Philippe Bernard and the Agence française de presse (AFP): Demonstrations against “the cost of living” cause disturbances in Senegal and Côte d’Ivoire. *Le Monde*, 2 April 2008.
- 3 A reserve of 35,000 tons of cereals was distributed to people by the government, according to the WFP Director in Bamako, quoted in the Malian national daily *L’essor*, 24 October 2008.
- 4 See Ibrahima Labass Keita from the Malian newspaper *Le Scorpion*: Is the rice initiative the solution to Mali’s food crisis? in the bimonthly *Défis du Sud*, December 2008, at: <http://fr.search.yahoo.com/search?p=1%27op%C3%A9ration+riz%2Bscorpion&fr=yfp-t-501&ei=UTF-8&rd=r1>
- 5 Ousman Berthé: Cost of living: what’s left after the exemptions? *Nouvel Horizon*, 09 July 08.
- 6 According to the WFP Director in Bamako.
- 7 This was the Tuareg movement that rebelled against the Malian government in 2006 and which then signed the Algiers peace accords with this latter.
- 8 Only three government officials now remain in rebel hands.
- 9 See the interview given by its spokesperson Hama ag Sidahmed to the Algerian independent daily *Al Watan*, 23 March 2008, at: <http://www.elwatan.com/>
- 10 *Le Pouce*, 25 March 2008 and *l’Indépendant*, 31 December 2008 at: http://www.malijet.com/a_la_une_du_mali/les_notables_touaregs_et_arabes_apres.html
- 11 In charge of the case, he was co-signatory to the Algiers peace accords with the rebels.
- 12 The Imrads, a Tuareg tribe, were the vassals of the Ouilliminden and the Ifoghas until French colonisation. In 1994, they led the largest Tuareg rebel movement: the Revolutionary Army for the Freedom of Azawad. In 1994, they were in conflict with the Iforas, who now form the largest contingent of the current rebellion. Their base in Tigharghar was destroyed in 1994 by the Popular Movement

for Azawad (MPA) - formed of a majority of Ifoghas -, supported at the time by the Malian government.

- 13 One of four rebel movements that signed the national pact putting an end to the Tuareg rebellion of the 1990s. It was Zahabi oul Sidi Mohamed, its spokesperson, who signed the pact on behalf of the rebellion at that time.

Khattali Mohamed ag Mahamed Ahmed is the secretary general of the organization L'association Synergie. He is a member of the African Commission's Working Group on Indigenous Populations/Communities.



THE HORN OF AFRICA &
EAST AFRICA

ETHIOPIA

Pastoralism in Ethiopia constitutes a unique and important way of life for close to 10 million people of the country's total estimated population of 76 million. Pastoralists live in around seven of the country's nine regions, inhabiting almost the entire lowlands, which constitute around 61% of its landmass. Pastoralists own 40% of the livestock population in the country. Pastoralists live a fragile existence mainly characterized by unpredictable and unstable climatic conditions. They are affected by recurring droughts, persistent food insecurity, conflict, flood, inadequate services and infrastructure and they are among the poorest of the poor in terms of disposable incomes, access to social services and general welfare. Access to health care and primary and secondary education is very low compared with other areas (mid and highlands) of the country.

The pastoral population is heterogeneous in its ethnic composition and social structure, having some larger ethnic groups such as the Somalis and Oromos with well over four million pastoral people each, while the Afars account for 1.5 million. The rest are Omotic pastoral groups such as the Hamar, Dassenech, Nygagaton and Erbore, and the Nuer and other groups in the western lowlands.

Key pastoral events

Jointly with the Ministry of Federal Affairs (MoFA) and the Pastoralist Affairs Standing Committee (PASC) of the House of Peoples' Representatives, Pastoralist Forum Ethiopia (PFE) organized the 10th Ethiopian Pastoralist Day (EPD) celebrations, held on 26 January 2008 in the *Geda* Assembly Hall in Adama, Oromia Region.¹



The key message of the day was “More Commitment for Good Governance and Sustainable Pastoral Development in the New Ethiopian Millennium”. The message was conveyed to policy makers and the public through various tools. The day was celebrated magnificently in the Afar, Somali, Southern Nations, Nationalities and Peoples (SNNP), Oromia and Gambella national regional states. The decentralized method of celebration raised the plight of the pastoralists at regional level and proved of great value in addressing issues of pastoralist poverty nationally. H.E Prime Minister Meles Zenawi officiated at the opening ceremony, accompanied by members of his cabinet. In his opening speech, the Prime Minister declared that the resilience of Ethiopia in the new millennium would not be possible without the participation of the pastoralists. An elder pastoralist from Oromia region made blessings and forwarded a key message of the day, emphasizing that the pastoral actors (government, NGOs, donors, media etc) should renew their commitment to working with pastoralists in the new mil-

lennium. Pastoralists and partners held panel discussions on key issues and passed a thirteen-point resolution. Pastoralists, decision-makers and other stakeholders came together, discussed and debated on key pastoral issues, and the cumulated advocacy result has put pressure on the decision-makers and the public to recognize pastoralism as a viable livelihood system and way of life.

In January 2008, the Kereyu pastoralists around Metahara town in Oromia regional state demanded Birr 25 million (approx. US\$ 2.5 million) in compensation from the Metahara Sugar factory. The money was promised by Emperor Haile Selassie 40 years ago when the factory was established on the pastoralists' grazing land. The Kereyu pastoralists say that their health and well-being have been negatively affected by the loss of land and the pollution from the plant. Moreover, the Awash National Park has also had negative consequences for them, depriving them of grazing land and causing land degradation.

Socio-economic development

Ethiopia's economy entered 2008 with serious macro-economic imbalances, aggravated by the effects of high international petroleum and fertilizer prices and lower rainfall, which reduced cereal production and contributed to higher domestic food prices. Despite substantial increases in export earnings, external reserves fell to an historic low level and inflation accelerated, to peak at 64% in July 2008. This began to threaten the sustainability of poverty reduction and the continuation of five years of economic growth, which had averaged 11% annually and had delivered impressive progress in human and social indicators.²

Lower levels of rainfall in early 2008 put about 6.5 million people at risk of food shortage, mainly in the pastoralist areas of the country. This, together with over 7 million food-insecure people, led to around 13 million people becoming dependent on emergency food aid and/or benefits from the Productive National Safety Net.³

In August 2008, the Prime Minister pointed out in an interview with the Financial Times that pastoralist areas had not benefited from agricultural development activities in Ethiopia because most of the agricultural development efforts were directed at settled farming.⁴

Marketing of pastoralist products

In the 2007/08 financial year, seven different pastoral unions were established to address the problem of marketing information systems. Around 600,000 livestock and 200,000 skins and hides were supplied to the central market through these unions in 2008. Marketing infrastructure across the region is generally either very poor or non-existent. This makes it difficult for pastoralists to reach the competitive markets in the major cities and towns of the region, and creates an opportunity for middlemen to exploit them by buying livestock and livestock products cheaply from them only to sell them at higher prices in the major markets.

External Assistance Flows

External assistance flows have increased rapidly since 2005/6. According to International Monetary Fund data, grant transfers rose from US\$ 866 million in 2005/6 to over US\$ 1.3 billion in 2007/8. A further significant increase is expected for 2008/9. The external assistance flows have also increased in pastoral areas. For instance, the World Bank approved US\$ 80 million as a grant/credit to the Government of Ethiopia in support of the second phase of the Pastoral Community Development Project. With the share of fund from the International Fund for Agricultural Development (IFAD) and the Government of Ethiopia, the PCDP total budget reaches US\$ 133.3 million. This project is to be implemented in pastoral communities in 57 *woredas* (administrative structure equivalent to district) in the Afar, Somali, Southern Nations, Nationalities and Peoples (SNNPs) and Oromia regions. About 600,000 rural households or approximately 45% of pastoral households and *woredas* in Ethiopia will benefit from the project.

Poverty reduction

While good progress has been recorded in improving maternal health, immunization coverage, and in the fight against malaria, great chal-

lenges remain in terms of reducing the maternal mortality rate and increasing the availability of doctors and nurses. Additional financing holds the key, both from Ethiopia's own resources and from donors.

The reduction in non-monetary poverty over the last few years has been made possible by the joint efforts of the government, civil society organisations (CSOs) and official donors. Under the auspices of PAS-DEP (Plan for Accelerated and Sustained Development to End Poverty), multiple development projects and programs were launched in 2005 to build capacity in education, health, sanitation and water supply. Examples include the Protection of Basic Services Program (BS), the Productive National Safety Net (PNSP), the Health Sector Development Program (HSDP), the Education Sector Development Program (ESDP), the University Capacity Building Program and the multi-donor supported EUR 300 million General Education Quality Improvement Program, which was launched at the end of 2008.

An action-oriented study undertaken in 2007 by PFE on the Ethiopian PRSP (Poverty Reduction Strategy Paper) in relation to the Afar pastoral group was aimed at assessing PRSP initiatives in the Afar region in order to provide practical recommendations that could serve as inputs to constructively influence the PRSP process in Ethiopia's pastoral communities. The study findings indicated that the PRSP initiatives in the Afar were a relevant approach to reducing poverty and empowering pastoral communities. Nonetheless, the study found that participation was not inclusive and that the role of the people and CSOs in terms of implementing, monitoring and evaluating the PRSP was inadequate. The study concluded that the effectiveness of PRSP initiatives in the Afar region had been below expectations in terms of achieving the MDGs.

In October 2008, PFE organized action research training of trainers for partner NGOs / CSOs. The training focused on how to link research to local projects in order to monitor and evaluate progress against the specific objectives of Poverty Reduction Programs. In addition, three community workshops were organized in December 2008 for communities drawn from Somali, Afar, and Oromo (Kereyu) pastoralist groups on rights-based approaches, advocacy and monitoring tools. These workshops were aimed at enabling members of the target communities to identify specific development issues / targets for their

communities (e.g. education, health, infrastructure changes etc.) and enabling the target communities to monitor PRSP budgets and expenditure and to work with governments to improve service delivery that could lead to positive change.

In addition, PFE strives for gender equality in pastoralist areas by producing a generic Gender Guideline for promoting Gender Mainstreaming within pastoral organizations and programs. The Guideline is under implementation.

Power and infrastructure

Ethiopia still has one of the lowest densities of roads and other infrastructures in sub-Saharan Africa, and poor connections with its neighboring countries. This prevents the proper functioning of markets, especially in pastoral areas, and constitutes an impediment to regional integration.

In 2008, the Government of Ethiopia began to plan new railway corridors and more than 300 kms of main and support road construction was undertaken in the Afar and Somali regions in this financial year. The government is, among other things, planning to build the Togowachelle–Kalabydh road connection in the eastern part of Ethiopia, in the Somali region, which will facilitate transport to the port of Berbara in Somalia and which could improve the pastoralists' links to export markets.

The role of energy development in overall economic growth and social development is crucial. There is a strong positive correlation between power and economic development, which can be expressed in terms of the number of towns and villages with access to electricity. Total electricity coverage in the country had increased from 17% in 2005/06 to 22% by the end of 2007. In this regard, pastoral regions are among the least well-equipped in terms of access to these facilities.

In 2007/08, 15 towns and villages in the Afar region and 16 towns and villages in the Somali region were connected to electricity. A large number of pastoral areas have electricity in SNNPR and Oromia.

Environment and climate change

Deforestation and soil erosion remain the most critical environmental issues and need to be better addressed in relation to soil and water conservation, forestry and other public works projects. The government has begun mixing gasoline with bio-ethanol, produced locally from sugar cane molasses. New investment in the bio-fuel sector may have decreased in 2008, as worrying trends emerged from established bio-fuel projects. Drought in 2008 impacted negatively on the development of several bio-fuel plantations, particularly castor oil. At the same time, plantations established in the southern and eastern part of the pastoral areas created problems in food insecure areas as the expansion of the land used for bio-fuel production resulted in competition for critical dry season grazing areas. The unregulated use of pesticides by the private horticulture and agriculture sector is still a major and unaddressed public health issue in pastoral areas.

Ethiopia has finalized its National Adaption Program of Action (NAPA) on climate change and this document has been accepted and ratified by the UNFCCC (United Nations Framework Convention on Climate Change). The government is preparing climate change adaptation programs, and 11 projects are in the pipeline.

PFE has undertaken a study into documenting the pastoralists' innovations for climate change adaptation and how the potential of community knowledge and practices in alleviating poverty and ensuring sustainable natural resources can be unlocked.

Health

During 2008, over 24,000 trained health extension workers were deployed and almost 20.5 million impregnated nets were procured and distributed to help fight malaria.

In the Afar region, 144 health posts, 41 health centers and 378 health extension workers have been trained, which it is believed will improve health coverage to 50% of all people in the Afar region. Children's vac-

ination coverage has reached 62% in the Afar region compared with 20% five years ago.

In the Somali region, 450 health post and 42 health centers are under construction and 1,123 health extension workers have received training. Children's vaccination has improved from 5.3% to 31%.⁵

Education

Adult education boarding schools received 5,500 students from Afar and Somali regions in 2008. Some students have gone on to higher education. In Oromia, pastoral areas' capacity building training was given to 193,402 pastoralists in the areas of income generation.

The Yabelo Technical and Vocational College based in Boran zone in Aroma region is currently training 182 students. The college offers training in the fields of animal health, animal sciences, rangeland management and natural resource management.

In the SNNPR, alternative schools⁶ were established and permanent schools were strengthened. The number of hostels for students also increased from 6 to 8 in this financial year. □

Notes

- 1 Performance report on Pastoral Areas presented on the 10th Ethiopian Pastoralist Day. Ministry of Federal Affairs. Jan. 2007, Addis Ababa
- 2 Joint Annual Report on the Implementation of the ACP-EU Conventions and other Co-operation Activities. Annual Report 2008.
- 3 The Productive Safety Nets Programme (PSNP) is one of the Government of Ethiopia's (GoE) reform programmes for reducing poverty and hunger in Ethiopia. It is an innovative attempt to move away from responding to chronic hunger through emergency appeals towards a more predictable response.
- 4 *Financial Times* East African correspondent, August 2008.
- 5 *Addis zemen* newsletter June 2008
- 6 Alternative Basic Education as an alternative to formal primary school. The government has adopted alternative basic education as a strategy to increase enrollment and ensure greater equity for "disadvantaged children including girls, children with special needs, and children from pastoralist and isolated rural areas" (Ministry of Education, 2005).

References

- Joint Annual Report on the Implementation of the ACP-EU Conventions and other Co-operation Activities Annual Report 2008.
- Building on Progress: A Plan for Accelerated and Sustained Development to End Poverty (PASDEP). Annual Progress Report 2006/07 Ministry of Finance and Economic Development (MoFED) December 2008.
- Addis zemen*, 12 March 2008, 23 April 2008, 27 June 2008, 9 June 2008, 06 July 2008, 9 Feb 2009.
- PFE annual report 2007/08.
- Ethiopian news agency: <http://www.ena.gov.et/>

Tezera Getahun Tiruneh is the Executive Director of the Pastoralist Forum Ethiopia (PFE), a local umbrella NGO with 36 members, working on pastoral advocacy, networking, coordination and capacity building. Since his graduation in 1998 from Alemaya University of Agriculture (now Haramaya University) with a MSc. in Agriculture and Animal Production, he has been engaged in various areas of development and advocacy work in different NGOs and government institutions. His areas of competency include advocacy and lobbying for the rights of marginalized social groups, project team building and management, and design and management of integrated rural/pastoral development. Dr. Daniel Temesgen Gelan is the Policy Research Officer of the Pastoralist Forum Ethiopia. He has PhD specializing in Entrepreneurship Development in Agriculture. He has been working as assistant professor at Hawassa University (Ethiopia), and engaged in research and extension in government and NGOs.

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 is approximately 30,000. Pastoralists mostly occupy the arid and semi-arid lands in northern Kenya and towards the border of Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yaaku, Waata and Elmolo 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 and low political representation. Their situation seems to get worse each year, with increasing competition for resources in their areas. There is no specific legislation governing indigenous peoples in Kenya. However, the indigenous peoples' planning framework, designed and implemented in 2006 by the Office of the President, in collaboration with the World Bank, provides a basis for free, prior and informed consultation and, with this, sustainable development could be achieved among indigenous peoples.

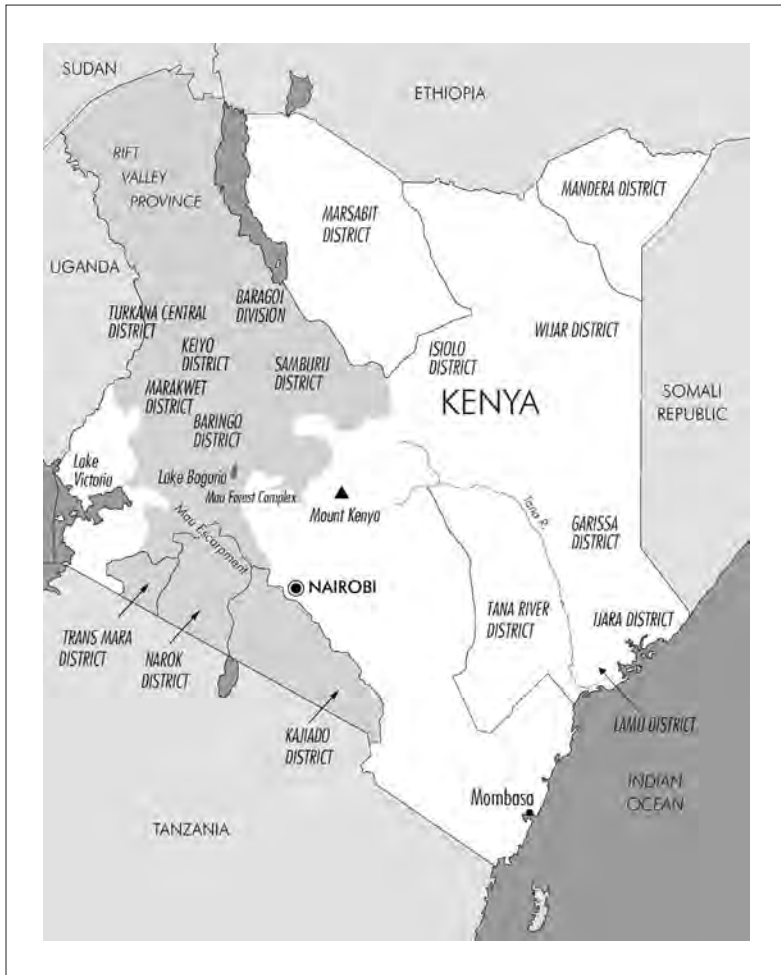
December 2007 elections and their aftermath

Following the hotly-contested elections of 2007, 2008 proved to be a bad year for Kenya. By the time the elections were held, most indigenous communities had made a stand and decided to support the opposition, citing the failure of the incumbent government to deliver on its promises of 2002 (following previous elections) when it assumed office. Topping the list of such promises was the delivery of a new

constitution which promised devolution and decentralization, two items that indigenous peoples believe will assure them rights to resources and some degree of self-governance. After the elections, questions began to arise as to the authenticity of the presidential election results, as the Electoral Commission of Kenya (ECK) had failed to ensure accountability and transparency in the final tallying process. In the end, Kenyans did not know who had won the elections, and the ECK chairman is on record as stating that he, too, did not know. The country was plunged into chaos and many people lost their lives, others were displaced from their homes and property worth millions was destroyed.²

Kenya is now in the process of implementing the recommendations of several commissions that were set up following negotiations between rival political parties and Kofi Annan (the former UN Secretary-General and chief mediator) to address issues relating to the post-election violence. These commissions include the Independent Review Commission on the General Elections held in Kenya, chaired by Judge Johan Kriegler,³ and the Commission of Inquiry into Post Election Violence, chaired by Phillip Waki.⁴ These commissions are mandated to propose reforms of the Electoral Commission of Kenya along with appropriate executive, legislative and political measures to facilitate the reconstitution of an electoral management body and the creation of a special tribunal to prosecute crimes committed during the violence.

As the violence progressed, issues of historical injustices relating to land came up, with certain indigenous communities claiming ancestry to land and fighting those who were "illegally" residing on their lands and territories. To compound the already bad situation, adverse weather conditions led to a weakening of livestock, requiring them to be moved to places far away, including over the border into northern Tanzania, in search of pasture. The food situation became so severe towards the end of the year that, by mid-January 2009, the President had declared a national disaster and appealed for 37 billion Kenya Shillings in food relief from the international community.



Reaction to the rising cost of living

In the midst of the post-election crisis came the problem of soaring food prices, as well as the rising costs of electricity and water attributed to the global crisis (rising cost of oil).⁵ This mostly affected the lower classes, including the indigenous peoples. However, when oil prices fell yet the cost of living remained high, a national debate was

generated with politicians, members of parliament, civil society leaders and citizens, calling for government to intervene and scrap taxes on essential food and commodities, including electricity.⁶ Finally the government met with stakeholders in the food industry and struck a deal to reduce prices. Crucially, the government cut out the middlemen accused of inflating prices and recommended that the National Cereals and Produce Board buy direct from the farmers to sell to the government.

Constitutional Review Process

On Christmas Eve 2008, the President signed the Constitution of Kenya (Review) Bill 2008 into law, which should pave the way to jumpstarting the constitutional process once again. Constitutional weaknesses have failed to address problems such as corruption, nepotism, poverty, ethnic discrimination and hatred, along with employment opportunities.⁷

The Kenya Communications (Amendment) Bill 2008

The President also signed into law the Kenya Communications (Amendment) Bill 2008, thereby dealing the biggest blow ever to the media. This Bill gives government the power to control media content as well as to raid media offices and confiscate equipment if they are perceived to be broadcasting content that threatens national security. The Arid Lands Institute, on behalf of the Working Group of the African Commission on Human and Peoples' Rights, with funding from IWGIA/DANIDA, has organized media workshops by which some Kenyan journalists have been trained to cover indigenous peoples' human rights issues. The Bill is likely to intimidate journalists from covering such issues since the government is likely to perceive them as sensitive to national security.

The signing of the Bill was against the advice of media stakeholders, the Prime Minister, Vice-President and top Cabinet ministers, all of whom expressed fears that the law was oppressive.⁸ As a result, the President directed that further consultations be undertaken between

the media stakeholders, the Minister of Information and the Attorney-General. Since then, several memoranda have been presented to the Attorney-General by the media and civil society. Following these memoranda, the Attorney-General has offered to submit them to the Minister of Information for input, after which he will call media stakeholders to agree on one document that will enable the Attorney-General to produce a Cabinet Paper for discussion.

Land policy

The process of formulating a National Land Policy, which began in 2006, is now at the cabinet level waiting to become official. Over the course of 2008, several civil society organizations organized and sponsored public debates on the Kenya Land Policy before it was finalized and these institutions have offered indigenous peoples a forum by which to express their concerns. This was done by simplifying the content of the policy, thereby enabling indigenous communities to better understand and respond to it. The UN Committee on Economic, Social and Cultural Rights has recommended that the Government of Kenya “address disparities in the enjoyment of economic, social and cultural rights, including access to land, which particularly affect poor people in urban areas and minority and indigenous communities in rural areas”.⁹

Draft National Kenya Wildlife Policy

Wildlife is mostly found in areas inhabited by pastoralists and is thus important for their lives and livelihoods. The Draft Kenya Wildlife Policy that was prepared in 2007 is now in form of a Bill awaiting debate in Parliament. The positive side of this policy is that its drafting involved all stakeholders. Some of the views and demands expressed by indigenous peoples included recognition of indigenous peoples as highly important actors in wildlife conservation; that benefits accruing from wildlife conservation should be shared; that indigenous peoples should be obtaining 75% of the jobs within wildlife conservation pro-

grammes; that adequate compensation for loss of livestock, property and human life caused by wildlife should be ensured. However, European settlers living in Kenya, who also claim to be conservationists, are opposed to some of the views expressed by pastoralists, alleging that the interests of wildlife have not been adequately taken into consideration, particularly in cases where land is to be leased for wildlife corridors. This has also been the case with the Draft National Land Policy, where European settlers, calling themselves "land owners' associations" made attempts to challenge aspects of the policy that were favorable to indigenous peoples, particularly those claiming that historical injustices had to be addressed.

Reclaiming Mau Forest Complex

The Mau Forest Complex, which measures approximately 400,000 hectares and is the largest block of forest cover in Kenya, is located in the Narok District, one of the ancestral Maasai districts. The Mau Complex is of significance to the country's key sectors, primarily power generation, tea and tourism. At the same time, the vast majority of Kenya's population lives in the Lake Victoria Basin and derives their livelihood from forest products, including seasonal grazing, medicinal plants, fuel wood and others. The loss of vegetation cover in the Mau Forest, and the consequent threats arising from degradation, raised concerns in Kenya and beyond, prompting government - with the support of its development partners - to intervene. At the center of it all was the need to evict and resettle people residing in the forests, including the Ogiek and the Maasai indigenous communities, who have traditionally depended on the forest for their livelihoods. It is not the indigenous people who have degraded the forest, however, but private loggers and illegal encroachers. Indigenous peoples in Mau Forest feared that they would be evicted without compensation. However, the involvement of the World Bank in supporting the government of Kenya in the Mau Forest resettlement process has helped to ensure respect for the rights of indigenous peoples because the World Bank's policy on indigenous peoples and involuntary settlement states that proper procedures have to be followed when resettling people, including their compensation.¹⁰

The Prime Minister has appointed a Task Force to study the problem and make recommendations as to how to resettle people living in Mau Forest Complex.

Gender rights: Maasai daughters can inherit father's land

There is an awakening among indigenous communities that is beginning to challenge existing negative cultural practices that discriminate against women. A landmark case brought to the High Court in 2008 overruled the application of a Maasai custom which disentitles daughters from claiming their father's inheritance and ruled that the daughters of the late Lerionka Ole Ntutu, a Maasai paramount chief who had died without leaving a will, had a legitimate claim to inherit his property.¹¹

Samburu and Turkana finally get running water

The Samburu and Turkana pastoralists of Baragoi Division in Samburu District finally had their water problem solved when the International Medical Corps, working with the Western Union Foundation, drilled boreholes to supply water to the community. Everyone, including school children, have been trained in how to take care of the water facilities so that they can continue to have safe drinking water. Children had this to say:

When we have water, we go to school and when we don't have, we have to spend our days looking for it. "I used to miss school because, unlike boys, girls cannot go to school dirty! Also, when our mothers go out to look for water, it is girls who remain at home to take care of the very young children. But now I am happy that we have water and I don't have to stay at home any more."¹²

Cattle rustling in pastoralist areas

The government has been accused of doing too little too late to curb insecurity among indigenous pastoralists who have been engaging

in cattle rustling, resulting in the death and displacement of women and children. Though an old habit, cattle rustling has become a lucrative business involving many players who sponsor rustlers in order to obtain cheap livestock, which they then sell at major meat markets. Several incidents of cattle rustling were reported in the country during 2008, including one in which more than 100 animals (20 head of cattle and 78 goats and sheep) from Kaptul village in Marakwet District of Rift Valley Province were driven away by attackers armed with AK-47 rifles. They are suspected of coming from Resin in Keiyo District.¹³ In another incident, 13 people (most of them women) were killed in a cattle raid in Turkana Central District on the part of heavily armed Pokot people who escaped with 2,000 goats, 70 camels and an unknown number of donkeys.¹⁴ The government can halt cattle rustling among pastoralists by checking the proliferation of arms from neighbouring countries and by providing alternative sources of water, as this fuels inter-ethnic conflicts. During drought, pastoralist communities usually concentrate around the few existing water points, resulting in both competition and conflict.

Right to existence and livelihood of Ilchamus threatened

The Ilchamus pastoralists living in Baringo District have continued to agitate for their right to nominate a Member of Parliament to the current House. They base their claim on a Constitutional Court ruling of 17 July 2007 which stated that the Ilchamus should be considered as a special interest group. But the Electoral Commission of Kenya (ECK) dismissed the Ilchamus' application and refused to implement the court's directive.

The Pokot pastoralists have long been raiding the Ilchamus and other pastoralists in the region and Kenya's successive governments have done little to control this. The Ilchamus, who used to be rich, are now very poor, having lost most of their property and many lives to raiders. Schools and property belonging to the Ilchamus have been destroyed by Pokot raiders. While some Ilchamus have resorted to living together in groups to protect themselves from such attacks, others have migrated to urban centers. The Samburu community are now al-

so arming themselves against the Pokot. It is feared that, if this situation continues, the Ilchamus pastoralists may perish.

Kenyan girls taken to Ethiopia for Female Genital Mutilation (FGM)

The anti-FGM campaign, especially among indigenous communities in Kenya, is beginning to have an impact. The government has become so strict that some families now take their girls to neighbouring Ethiopia for FGM:

Some Kenyans especially the ones living near the Ethiopian border were, in the year 2008, reported to be taking their daughters to Ethiopia to be circumcised to avoid prosecution by the Government. However the UN has since urged the Ethiopian government to develop and operationalize policies to eliminate Female Genital Mutilation (FGM).¹⁵

In 2008, Kenya presented a report to the UN Committee on Economic, Social and Cultural Rights. In response to this report, the UN Committee on Economic, Social and Cultural Rights called on the government of Kenya to step up efforts aimed at:

criminalizing all female genital mutilation of adult women; train police, prosecutors, and judges on the strict application of laws prohibiting FGM; continue promoting alternative rite of passage ceremonies; educate parents on the harmful effects of FGM and combat traditional beliefs promoting the practice allegedly because it promotes prospects of girls getting married.¹⁶

Obama's Victory

The election of Barack Obama as President of the United States was received with pomp and celebration owing to his father's Kenyan ancestry. Expectations are high that Obama's election will boost efforts towards enforcing recognition of human rights, including the rights of

indigenous peoples and encouraging good governance, which will also benefit indigenous peoples. □

Notes

- 1 See the report of the Working Group on Indigenous Peoples/Communities of the African Commission on Human and Peoples' Rights.
- 2 Cry, the beloved country, *Sunday Nation*, 6 January 2008.
- 3 Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007.
- 4 Report of the Commission of Inquiry into Post Election Violence, October 2008.
- 5 Rising Unga and power costs are not enough, wait for your next water bill, *Daily Nation*, 4 December 2008, p. 14.
- 6 Members take state to task over rising prices of food, stories by David Ochami and Peter Opiyo, *The Standard*, 4 December 2008, p. 12.
- 7 A tacit case for Majimbo, by Edward Kisiang'ani, *The Standard*, 4 January 2009.
- 8 Kibaki has dealt a big blow to Press freedom, by Ayub Rays Osinde, Switzerland, *The Standard*, 4 January 2009.
- 9 Report of the Government of Kenya to the Committee on Economic, Social and Cultural Rights, Forty-first Session, Geneva, 3-21 November 2008.
- 10 Community Based Natural Resources Management and Livelihoods Improvement in Critical Watersheds in Kenya, Draft Aide Memoire, FAO/World Bank, 28 October 2008.
- 11 Daughters, too, can inherit property, *Daily Nation*, 24 November 2008, p. 4.
- 12 Running water finally *Sunday Standard*, January 13 2008.
- 13 Police tracking cattle rustlers, *Daily Nation* 8 February, 2008.
- 14 Raiders kill 13, injure villagers and steal cattle, *The Standard*, 3 December 2008, p. 4.
- 15 Kenyan sneaked to Ethiopia for a FGM, *Daily Nation*, 8 February 2008.
- 16 Report of the Government of Kenya to the Committee on Economic, Social and Cultural Rights, Forty-first Session, Geneva, 3-21 November 2008

Naomi Kipuri is an anthropologist and the executive director of the Arid Lands Institute as well a member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights. She has taught at Nairobi and Temple Universities. She is also a researcher and activist on the rights of indigenous pastoralists and hunter-gatherers.

UGANDA

Indigenous peoples in Uganda include the traditional hunter/gatherer Batwa, also known as Twa and Benet communities, pastoralist groups such as the Karamojong and the Ik. They are not recognized as indigenous by the government.

The Karamojong are transhumant pastoralists who live in the neglected Karamoja region of north-eastern Uganda. They number around 955,245¹ people, out of a total population of approximately 26 million in Uganda. The Benet, who number around 20,000 people, also live in the north-eastern part of the country. They 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 1991.² The Ik are a marginalized and isolated agricultural people, numbering approximately 12,000 people, who live exclusively in the Kaabong District in the northern part of Uganda.

The Constitution has no express protection for indigenous peoples but provides for affirmative action in favour of marginalized groups. The Land Act of 1998 and the National Environment Statute of 1995 protect customary interests in land and traditional uses of forests. However these laws also authorize the government to exclude human activities in any forest area by declaring it a protected forest, thus nullifying the customary land rights of indigenous peoples.³

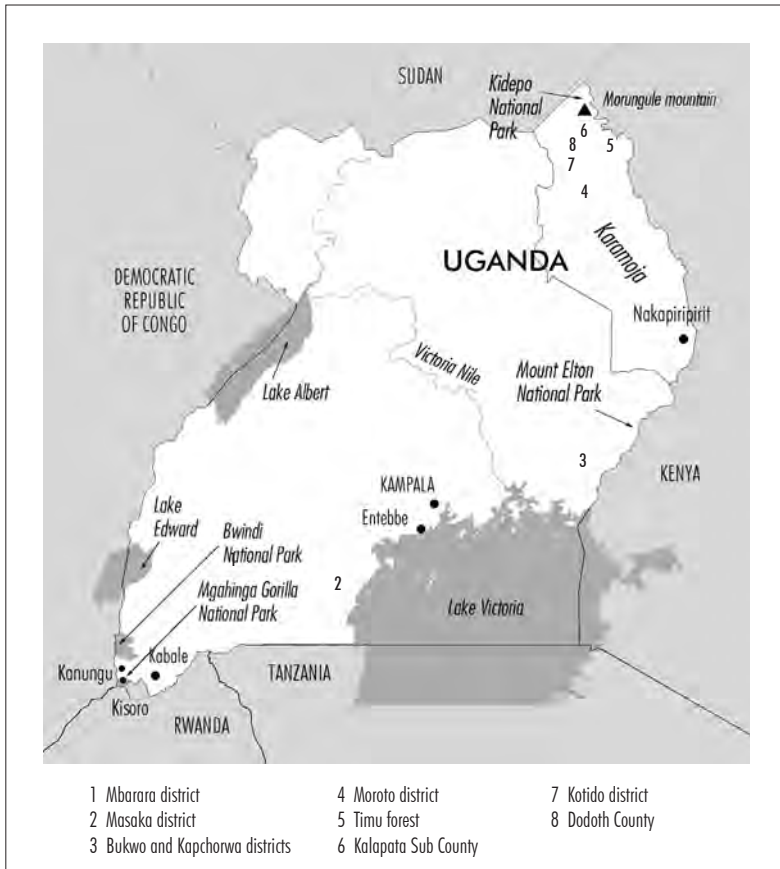
Main issues for the Batwa

The Batwa are the indigenous people of the south-west of Uganda and they formerly inhabited the mountainous forests where the

last remaining mountain gorillas are found. Successive conservation efforts over the years have marginalised the Batwa from their ancestral forests and now the Batwa live outside the forest as squatters on neighbouring land. No free, prior and informed consent was ever given by the Batwa to these conservation efforts and no compensation was received. A recent report by the Forest Peoples Programme (FPP), a UK based NGO, and the Batwa's own representative organisation, the United Organisation for Batwa Development in Uganda (UOBDU), highlighted the fact that, 17 years after the creation of these forests as national parks, the Batwa still have no involvement in the planning and management of these protected areas and receive little or no benefits.⁴ The Batwa are one of Uganda's smallest minorities and suffer extreme marginalisation, discrimination and violence against them.

Despite this, the Batwa's own organisation, UOBDU, has been continuing to fight for the rights of the Batwa locally, nationally and internationally. In 2008, with the support of various organisations, UOBDU provided support to its members through education and income generation, and pursued negotiations with local and central government. With external assistance, UOBDU provided agricultural support to six communities in Kisoro District through the provision of land, tools and seeds, and goats to a further three communities. 2008 also saw the completion of a housing project that built semi-permanent structures for eight families, as well as the completion of a management plan for land purchased in 2007.

Education has been a key area in 2008 and 10 Batwa have been supported to undergo leadership training and functional adult literacy (FAL) in both English and local languages. UOBDU received support for an extensive education programme that provides assistance to 40 children in primary schools and 15 students in secondary schools. Despite the existence of Universal Primary Education (UPE) and Universal Secondary Education (USE) in Uganda, many Batwa children are not able to access education because they lack the funds needed to provide scholastic materials, uniforms and food. UOBDU's support to education aims to provide these supplementary items so that the students can achieve a successful education. Additionally, UOBDU's education programme is carrying out FAL in 15 communities, reaching



over 300 individuals and providing support to over 30 adults to receive training in carpentry, tailoring and mechanics.

The Batwa were supported by UOBDU and FPP through increased negotiations with local and central government and lobbying at local, national and international level. Despite land donated by various groups since 2000, up to 45% of Batwa continue to be landless and live as squatters on their neighbours' lands. As a result, land has continued to be the main focus of all advocacy strategies as well as lobbying in the areas of protected area management, health, education and livelihoods. Representatives of the Batwa again visited the African Com-

mission on Human and Peoples' Rights in 2008 and, in September, they were present at the World Parks Congress in Barcelona to highlight their lack of participation in protected area management.

In February 2008, the respective ministers from Uganda, Rwanda and the Democratic Republic of Congo signed an agreement to create a transboundary biosphere out of the national parks that cover the Virunga landscape in the three countries. Once again this decision was made without the free, prior and informed consent of indigenous Batwa communities. As a result, indigenous organisations in the three countries, including UOBDU, prepared and delivered a letter to each of these ministers asking for this initiative to respect and safeguard the internationally accepted rights of indigenous people to their ancestral lands. No response was received.

In 2008, UOBDU extended its support to Batwa communities in Masaka and Mbarara districts and it hopes to continue to grow in 2009. Despite an increase in work on the part of both UOBDU and its partners, the Batwa are still one of the most marginalised and vulnerable communities in Uganda and their rights are denied at almost every opportunity. In 2009, the Batwa will continue to place pressure upon the government of Uganda and the international community to redress past wrongs in order to enforce their full rights as citizens of Uganda.

Main issues for the Benet

The Benet are a former hunter/gatherer group who live on the western side of Mt. Elgon in Uganda. Over the years, the Benet have been marginalised from their ancestral lands through conservation initiatives and were resettled in 1983 outside of Mt. Elgon Forest Reserve, which later became Mt. Elgon National Park. In 2005 the Benet and their supporters won a landmark case to have their lands within Mt. Elgon National Park returned to them. Additionally, the court ruling also demanded that the government of Uganda provide social services in lieu of the damages the Benet had suffered due to their marginalisation over the years from government policies and services.

Despite this success, the Benet have struggled to get the ruling implemented by the government. In 2008, some progress was made and

the Benet communities in Bukwo District have now been permanently resettled. In addition, approximately 1,000 Benet from Kapchorwa District, which the government had until now failed to recognise, have now been acknowledged and temporarily resettled ahead of a more permanent solution.

In 2009, the Benet, led by their representative organisation, the Benet Lobby Group, aim to continue to put pressure on the government to honour the court ruling, first by securing permanent land for all Benet and, secondly, by securing the affirmative action, in the form of social services, that they desperately need.

Main issues for the Ik

The Ik are an indigenous people who were referred to as the “mountain people” in Colin Turnbull’s controversial study of them.⁵ They are an agricultural people who live exclusively in the northern part of Kaabong District, in Dodoth County, Kalapata and Kathile Sub Counties. Their communities are located on top of a remote mountain escarpment along the Kenyan border ranging from Timu Forest in the south to Kidepo National Park in the north. They are bordered to the north by the Didinga and Toposa of Sudan, to the west and south by the Dodoth (an ethnic subgroup of the Karamojong), and to the east by the Turkana of Kenya.⁶

As a result of their location in relation to their neighbours, the Ik are incredibly vulnerable and liable to attacks from both Dodoth and Turkana warriors. They are historically a non-violent people and, as a result, they have become what one report has described as “the archetypal middlemen – unarmed, non-combative and numerically weak”. The Ik exist in a precarious situation on the top of the escarpments and whilst their physical isolation in the mountains helps to protect them from violence at the hands of raiding warriors, it also serves to marginalise them from government services. Additionally, due to periodic drought, the Ik often face famine. The vital relief aid that has targeted the region has often not reached them.

In 2008, the Ik communities living on Mt. Morungole, near Kidepo National Park, were visited by a representative of the Forest Peoples

Programme, a charity that supports forest peoples' rights. These communities explained that their problems mainly arise, both directly and indirectly, from the activities of the Dodoth warriors. They directly suffer when they are attacked and their crops are stolen, and indirectly when services are unable to reach them due to the persistent insecurity.

They are aware of "developments" (services such as health care, education, agricultural support, etc.) being implemented in the rest of their region, and can identify the many NGO and government projects located in the valleys. They wish that their children could access these services in order to successfully negotiate their future; however, they explained that none of these "developments" has ever targeted them in their locations. Instead, development is focused in the valleys, amongst the Dodoth and, as a result, the Ik feel isolated, marginalised and left out of the plans of government and civil society.

Although the Ik are politically represented in their local communities, their concerns are rarely dealt with. Additionally, when the LCI and the Parish Chief of Mt. Morungole travel to the sub-county offices, they are often pressurised into moving their people down from the mountains to resettle closer to government services in the valley. It has become a clear worry amongst the Ik communities that one day they will be forced by the government to abandon their ancestral areas in the mountains and move down to the valley where they fear they will become completely vulnerable to their more dominant neighbours.

The Ik that have been consulted want schools, health centres and basic services delivered to their current locations, where they can better access them. They urgently need programmes specifically tailored to their communities, from organisations that are committed to providing long-term support. □

Notes

- 1 According to the final results of the September 2002 National Population and Housing Census, Kotido District has a population of 605,322 (302,206 males and 303,116 females). Moroto District has a population of 194,773 (98,145 males and 96,628 females). Nakapiripirit has a population of 155,150 (78,284 males and 76,866 females) (See <http://www.ubos.org/preliminaryfullreport.pdf>).

- 2 **United Organisation of Batwa Development in Uganda (UOBDU), 2004:** *Report about Batwa data*. August 2004, Uganda, p.3.
- 3 Land Act (1998), Articles 2 and 44; National Environment Statute (1995), Article 46.
- 4 See **Kidd, Christopher and Zaninka, Penninah, 2008:** *Securing Indigenous Peoples' Rights in Conservation: A review of south-west Uganda*. Forest Peoples Programme, Moreton-in-Marsh
- 5 See **Turnbull, Colin M., 1972:** *The Mountain People*. New York: Simon & Schuster.
- 6 **Wiedemann, Sabine and Nannyombi, Prossy, 2007:** *Ik Language Assessment Report*, SIL International.

Moses Mwanga is the chairperson, and David Mukhwana a paralegal support worker for the Benet Lobby Group. The BLG is a representative organisation of the Benet people and has fought for their rights for the last 37 years. In 2009 it will continue work to ensure that the agreements from their court case against the government of Uganda are honoured. benetlobbygroup@yahoo.com. Penninah Zaninka works for the United Organisation for Batwa Development in Uganda, the representative organisation of the Batwa in south-west Uganda. Since 2000 this organisation has been working to support its members in the districts of Kisoro, Kabale and Kamungu. zaninkah@yahoo.com. Chris Kidd is an anthropologist working for the Forest Peoples Programme, a charity that supports the rights of forest peoples internationally. Chris previously completed his PhD thesis on the effects of conservation and development initiatives on the life projects of the Batwa in Uganda. chris@forestpeoples.org

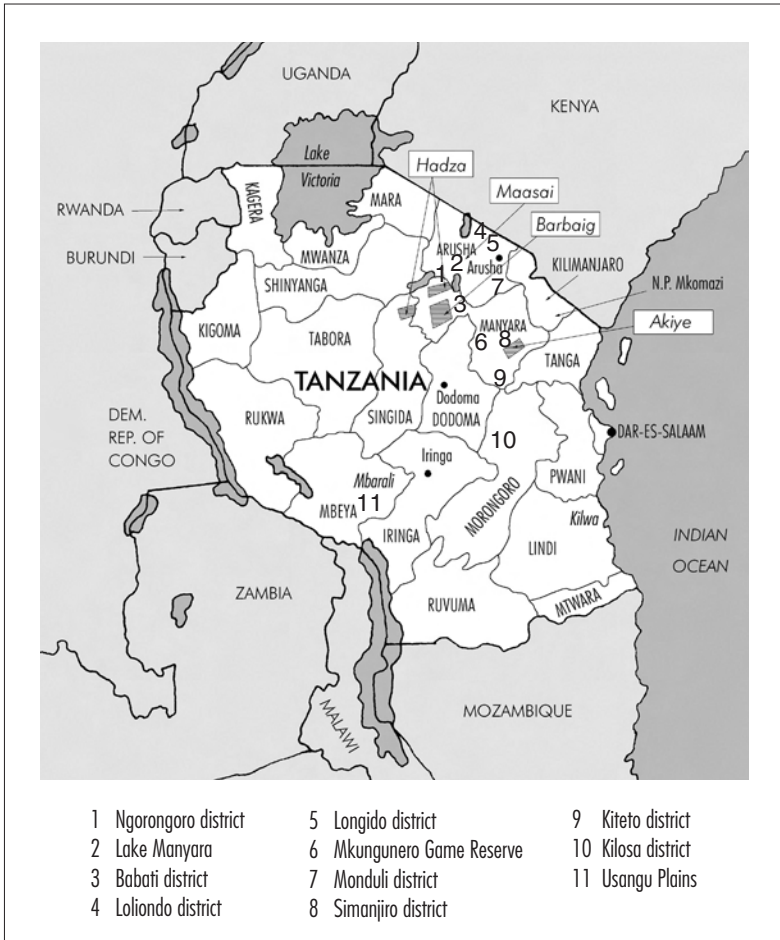
TANZANIA

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 such groups are diverse, they all experience similar features in relation to their attachment to the land, distinct identities, vulnerability and non-dominance. They experience similar problems in relation to resource tenure insecurity, poverty and inadequate political representation. While there is no specific national policy or legislation on indigenous peoples *per se* in Tanzania, a number of policies, strategies and programmes are, however, continuously being developed that do not reflect the interests of the indigenous peoples in terms of access to land and natural resources, basic social services and justice, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.

Policy developments

A routinely negative government attitude towards pastoralists and indigenous peoples, in general, in Tanzania is not new. In the Land Policy of 1995,³ for example, the policy statement on p. 36 is



straightforward: “Nomadism will be prohibited.” The intentions expressed here are followed up in, for example, the Strategic Plan for Implementation of the Land Acts (SPILL),⁴ where a number of negative statements about pastoralist production systems (p. 14) lead to conclusions such as: “Sustainable ownership of land rights requires land users to settle down and discourages nomadism” (p. 43). The implementation of SPILL and other policies is gradually contributing to a general worsening of the policy environment for pastoralists. As will

be seen below, new legislative and policy reforms pose further threats to the rights and livelihoods of indigenous peoples in Tanzania.

The Wildlife Conservation Act of 1974⁵ is the main legislation governing conservation of wildlife in Tanzania. This law provides for the creation of Game Reserves, Game Controlled Areas and Partial Game Reserves.⁶ This law has been used to declare indigenous pastoralists' village lands as Game Controlled Areas and Game Reserves respectively, hence vesting control of said lands in the Wildlife Division of the Ministry of Tourism and Natural Resources. Examples of Game Controlled Areas are Loliondo and Longido in northern Tanzania, where conflicts over land are the norm rather than the exception.⁷

In November 2008, the Government of Tanzania issued a new Wildlife Conservation Bill for public hearing to repeal and replace the above Law. During the public hearing, pastoralists discovered that, if passed into law, this Bill would be even more oppressive and draconian than the existing Wildlife Conservation Act of 1974. The 2008 Bill provides that the President may, after consultation with relevant local government authorities, and by order in the gazette, declare any part of Tanzania a game reserve.⁸ Unlike the current law, the new Bill does not contain an exemption relating to permit requirements for either people whose places of original residence are within the game reserves or those who were born in the game reserves. Instead, it criminalizes entry by any person (other than a person travelling through the said reserve along a highway or designated waterway) into a game reserve without a permit previously sought and obtained from the Director of Wildlife.⁹

As if that were not enough, the Bill has a specific provision that prohibits the grazing of livestock in the game reserve. The punishment for violating this prohibition is the payment of a fine of not less than the value of the livestock involved, or imprisonment for a term of not less than two but not more than five years, or both.¹⁰ It is also important to bear in mind that the said game reserves (and even national parks), such as the newly established Mkungunero Game Reserve (MNGR), are not separated from livestock pasture lands by way of fences, for example.

The Wildlife Bill of 2008 is also to the effect that the Minister can declare any part of Tanzania a Game Controlled Area. It provides that: "The minister may after consultation with relevant local authorities, by order in the gazette, declare any areas of Tanzania to be a game controlled area."¹¹ The power to declare a land a Game Controlled Area is tantamount to changing the said land from one category to another, that is from a village or general land as the case may be, to reserved land. This power conflicts with the requirements of Section 5 of the Land Act Number 4 of 1999 and sections 4 and 5 of the Village Land Act Number 5 of 1999 respectively. These pieces of legislation provide that this power is reserved for the President.¹²

It is important to note that the Wildlife Conservation Act of 1974 does not require people born, or whose places of ordinary residence are in, the game controlled areas to have permits in order to live (and graze livestock) in a game controlled area.¹³ In an extraordinary turn of events, the Wildlife Conservation Bill of 2008 provides that: "Any person shall not, save with the written permission of the director previously sought and obtained, graze any livestock in any game controlled area."¹⁴

As stated earlier, some game controlled areas form part of village lands, meaning that they were established on village lands. This is evident in Monduli, Simanjiro, Longido and Ngorongoro districts in northern Tanzania. This fact led the Wildlife Division to come up with the idea of Wildlife Management Areas. This is a land-use plan which aims to involve the community in the conservation of wildlife on their respective village lands. Implementing regulations for this idea were issued in 2003. To criminalize grazing of livestock in the above areas (save written permission of the Director previously sought for and obtained) is tantamount to denying the right to livelihood. This is because, in practical terms, it is very hard for a pastoralist in Ketumbeine village of Longido district to seek and obtain a permit from the Director, who resides in Dar-Es Salaam. Assuming there can be departmental arrangements to ensure the availability of such permits at the district level or even at the village level, the next relevant questions are: what if the Director refuses to grant a permit? Where will the pastoralists keep livestock while lodging an appeal with whatever other body?

The situation of indigenous peoples in Tanzania in 2008

The overall situation of indigenous peoples in Tanzania during 2008 continued to deteriorate due to land grabbing as well as private investments. Access to natural resources, social services and enjoyment of other civil and political rights continued to be constrained by various policy and legal instruments. The year saw further losses of land among the Maasai, Barabaig, and Akiye (Ndorobo), as indicated below.

Pastoralists

The Maasai

In 1984, Tanzania Breweries Limited (TBL) obtained 12,600 hectares of land in Soitsambu village, Ngorongoro district, northern Tanzania for barley cultivation. TBL, then a purely government parastatal organization, had requested the said piece of land from the Ngorongoro District Council. There has been a great deal of discussion on whether the land in question was given away properly or not. Villagers complain that the land was taken by TBL using improper methods. According to the speech read by the elders of the ruling party Chama Cha Mapinduzi (CCM) on the occasion of President Kikwete's visit to Ngorongoro in 2007, TBL obtained this farm by fraudulent means.¹⁵

TBL developed around 700 acres of the total land area, but only for a period of three years (1987-1989). The villagers of Soitsambu were not happy with the ownership and development of said farm and decided to register their grievances in a 1987 lawsuit which ended in TBL's favour in 1991. TBL was granted the right of occupancy (in the form of a certificate from the Land Commissioner) in 2003. Sometime in 2006, TBL leased their property to Tanzania Conservation Limited, an offshoot (subsidiary) of Thompson Tanzania Ltd, for 96 years.

Matters got worse in 2008 when more skirmishes were reported, including an alleged shooting incident which apparently claimed the life of one person. Following a series of problems, 13 leaders of the Soitsambu village government visited the Prime Minister, Hon. Mizengo

Pinda, in August to express their views.¹⁶ The Prime Minister, after listening to the elders, promised to establish a Commission of Inquiry to probe the ownership of the farm. The commission was formed as promised but its findings have yet to be made public. The elders were also dissatisfied by the composition of the commission, which did not include a single Maasai resident of Ngorongoro district.

On 19 November 2008, the District Executive Director of Kilosa district, Morogoro region in southern Tanzania issued a letter to all ward, village and division executive officers informing them that he did not recognize the Ngaiti sub-village and that its inhabitants should therefore vacate immediately to make way for wheat cultivation. Ironically, the village has been occupied by indigenous Maasai pastoralists since 1951. The problem started when the district authority earmarked Ngaiti village as suitable land for wheat cultivation. Instead of soliciting approval for this large-scale wheat cultivation from the Maasai through the principle of free, prior and informed consent, the district authority opted to derecognize the village and order the pastoralists to vacate with immediate effect.

The Kilosa district evictions seem to be a continuation of the 2006-2007 forcible evictions of pastoralists and agro-pastoralists from Usangu Plains in Mbarali district, Mbeya region, south-western Tanzania.¹⁷ The victims of those evictions have not been compensated, and the findings of a Commission of Inquiry that carried out a fact-finding mission to Mbarali in May 2007 have not yet been made public. No actions have been taken to address the human rights violations committed during the evictions process. The evicted pastoralists continue to suffer and there is an urgent need for appropriate measures to be taken. The evicted pastoralists and agro-pastoralists are now completely destitute and have not received any assistance in the new areas that they were forced to move to.¹⁸

The Barabaig

In 2008, the Barabaig continued to experience land alienation. A good example is that of their grazing land at the Vilima Vitatu village, close to Lake Manyara in Babati district, Manyara region of northern Tanzania. This land has been leased to a foreign investor to set up a tourist

camp. The Barabaig livestock herders have consistently refused to move from the area, despite threats from the district leaders and local officials. Following this tension, in April 2008 the police arrested 14 villagers and held them at Babati police station.¹⁹ The 14 individuals were allegedly ring leaders who had been persuading other villagers to undermine the district authorities' efforts to encourage foreign investment. These individuals have now been released and no charges were filed against them. This indicates that the idea behind arresting them in the first place was simply to instil fear, and not because they had broken any law. According to the lease agreement, at least 45 Barabaig families will have to be relocated outside the area to pave the way for the investment - unless such a lease agreement is successfully resisted by the Barabaig villagers.

Hunter-gatherers

The Akie

The Akie of Kiteto district in Manyara region continue to experience encroachment onto their land from neighbouring communities. Pastoralists and agriculturalists took further lands belonging to the Akie in 2008. It should be noted that Kiteto district, where the Akie live, is one of the worst districts in Tanzania for land conflicts. The district is characterised by competing interests between indigenous pastoralists and hunter-gatherers, immigrant farmers and government leaders.

Hunter-gatherer communities in the Napilukunya and Ngapapa sub-villages of Kimana village reported worsening environmental degradation in 2008. This has led to loss of habitat and a significant reduction in the flowers essential for honey production. The community reported that health-coping strategies were being further eroded by the depletion of some medicinal plants. □

Notes

- 1 <http://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 National Land Policy, URT, second edition 1997
- 4 URT April 2005
- 5 Cap 282, R.E 2002
- 6 In a Game Reserve, human settlement - besides that pertaining to sport hunting - is not allowed, whereas in a Game Controlled Area, human settlement is allowed.
- 7 **Sanna Ojalammii, 2006**: *Contested Lands: Disputes in Semi-arid Parts of Northern Tanzania. Case studies of the Loliondo and Salei Districts*. Publications Instituti Geographici Universitatis Helsingiensis C12, Helsinki. See also **Ringo W. Tenga, 2008**: *The Right to Food and Security of Pastoral Resource Rights in the United Republic of Tanzania*, in: Cotula, L. (ed.): *The Rights to Food and Access to Natural Resources*. IIED/FAO.
- 8 S. 13 (1) of the Wildlife Conservation Bill, 2008.
- 9 S. 14 (1) of the Wildlife Conservation Bill, 2008.
- 10 See S. 17 (2) and (3) of the Wildlife Conservation Bill, 2008.
- 11 See S. 15 of the Wildlife Conservation Bill, 2008.
- 12 See Section 4 of the Village Land Act Number 4 of 1999.
- 13 *bid*, Section 7 (1) (a) The Wildlife Conservation Act, cap 281 (R.E 2002).
- 14 S. 17 (2) of the Wildlife Conservation Bill 2008
- 15 See Taarifa ya Kero na Malalamiko ya Wananchi wa Wilaya ya Ngorongoro yanayowasilishwa na Wazee wa Chama cha Mapinduzi kwa Mwenyekiti wa CCM wa Taifa na Rais wa Jamhuri ya Muungano wa Tanzania, pg 3 (A Report by the residents of Ngorongoro district to the President of the United of Tanzania presented by the party elders, pg 3).
- 16 *Tanzania Daima*, 7 August 2008.
- 17 In the period May 2006 to May 2007, large numbers of Sukuma agro-pastoralists and IParakuiyo, Taturu and Barabaig pastoralists and their livestock have been evicted from the Usangu Plains in Mbarali district, Mbeya region. It is estimated that more than 400 families and 300,000 livestock have been moved, and that a large number of livestock have died or been lost in the process. The arguments given for the evictions are that the pastoralists are allegedly responsible for environmental degradation in the Ihefu and Usangu basins and the drying up of the Great Ruaha River (which is, in turn, linked to the power cuts that have plagued Tanzania for years). However, these accusations disregard scientific studies concluding that the drying up of the Great Ruaha River is not caused by the activities of pastoralists but rather by the expansion of irrigated cultivation, in particular the extension of rice and other crop growing into the dry season.
- 18 Research conducted by the DFID-funded SMUWC Project – Sustainable Management of the Usangu Wetland and its Catchment.
- 19 See “Barabaigs resist arrests, now vow to stick to leased land”, *The Sunday Citizen*, 6 April, 2008.

Elifuraha Isaya Laltaika is a Maasai from Ngorongoro in Tanzania. He holds a Bachelor of Law - LL.B from the University of Dar-Es-Salaam and a Master of Law -LLM (Environmental Law) from the University of Kwazulu Natal in South Africa. He is currently a lecturer of law at Makumira University in Arusha where he teaches Land Law and Constitutional Law. He also works with the NGO Community Research and Development Services (CORDS).



CENTRAL AFRICA

RWANDA

The Batwa population of Rwanda is known by various names: indigenous Rwandans, ancient hunter-gatherers, Batwa, Pygmies, Potters, the historically marginalized population. Their number is estimated at between 33,000 and 35,000 people, out of a total population of around 9,200,000 Rwandans, i.e. 0.41% of the population. Rwanda does not recognize their indigenous identity and the demographic pressure on Rwanda is leading to their assimilation. Prior to 1973, the year that the national parks were created in Rwanda, the Batwa lived mainly from hunting and gathering in the territory's natural forests. They were expelled from their ancestral lands with no warning, compensation or other means of subsistence. They now constitute the poorest and most marginalized group in Rwanda.

Statistics taken from a socio-economic survey carried out in 2004 by CAURWA (the Community of Indigenous Rwandans), now known as COPORWA (the Community of Rwandan Potters), in association with the Statistics Department of the Ministry of Finance and Economic Planning, clearly illustrate this. For example, 77% of the Batwa cannot read, write or count; only 30% of them have health insurance; more than 46% live in huts (straw houses); 47% have no farmland (this is nearly four times higher than for the national population); 95% of them produce pottery although their clay products are sold at less than the cost of production; 60% of Batwa barely eat even once a day.

Moreover, the Batwa are not represented in the decision-making authorities either at local or national level.

Education

The main reasons for the very low educational achievement of the Batwa are: exclusion and marginalization, a lack of funds and a



lack of interest on the part of Batwa parents in terms of educating their children.

In 2008, the Ministry of Local Government, Good Governance, Community Development and Social Affairs paid the secondary school fees for 139 potter children in Rwanda and the university fees for 11 more.

COPORWA helped with school materials for 250 potter children at primary school and 139 potter children at secondary school.

Health and HIV/AIDS

Because of their living conditions, their low income and their poor housing, the Batwa are unable to obtain medical treatment, and this affects their hygiene. They do not have access to medical centres, mainly because they cannot afford it.

Added to this is the fact that they are neither aware of nor informed about the ways in which HIV/AIDS is transmitted, how to prevent it, or the care available for those infected.

In 2008, the Ministry of Local Government, Good Governance, Community Development and Social Affairs paid the health insurance costs of 40% of Rwandan potters. COPORWA paid the health insurance costs of 1% of Rwandan potters and trained 80 community representatives in the fight against HIV/AIDS. COPORWA organised voluntary in-the-field HIV-testing for 150 potters in the Kigali region.

Housing

In 2008, the Ministry of Local Government, Good Governance, Community Development and Social Affairs built 50 houses for potter families in Rwanda. Through a partnership between the Catholic Church of Byumba and COPORWA, 45 houses were built for the potters of Gicumbi.

Access to land

In 2008, COPORWA led an enquiry into the situation of land rights in Rulindo District, North Province. Thanks to COPORWA's intervention, five potter families recovered fields that had been expropriated by other Rwandans.

COPORWA also supported more than 50 cooperative associations with small income-generating projects in agriculture, farming, modern pottery, small trading, etc.

Violation of rights, discrimination and marginalization

In some parts of the country, the Batwa are discriminated against and marginalized by the other populations. This can be seen in a refusal to share food, the absence of mixed marriages and a lack of equal opportunities in terms of accessing the country's development programs. Some Batwa are deprived of their land, and cannot afford to pay a lawyer to support them in cases of injustice.

In 2008, COPORWA identified and monitored more than 30 cases of violations of potters' rights. Seven cases were considered via legal proceedings and five were solved administratively. The others are currently with the courts or in the process of being considered.

In Rwanda, women are discriminated against in nearly all areas of development. Batwa women, estimated at 17,760 people, suffer even greater discrimination than other non-Batwa women. They are vulnerable because their living conditions, housing, medical situation and income are poor. Their education and literacy rates are very low, with 89% of them unable to read or write. They form part of, and take care of, very poor families, with no land, and often no shelter.

They are not included in the national development programs for women, nor in the structures intended for women at local level. They are thus neither aware of nor trained in the programs available in Rwanda (family planning, HIV/AIDS, development programs). They are also not aware of their fundamental civil, political, economic, social and cultural rights.

The majority of these women have neither knowledge of nor ability in the management of public assets, and they are not represented in the local politico-administrative decision-making authorities. Batwa women are often victims of early or illegal marriages, and the birth rate among them is very high. □

COPORWA asbl (la Communauté des Potiers du Rwanda) - formerly known as *CAURWA asbl* (Communauté des Autochtones Rwandais)- was founded in May 1995. COPORWA obtained its legal registration on 24 October 2007 and has observer status with the African Commission for Human and Peoples' Rights.

BURUNDI

A census conducted by UNIPROBA (*Unissons-nous pour la Promotion des Batwa*), with funding from IWGIA, estimates the number of Batwa in Burundi to be 78,071.¹ They live spread throughout all of the country's provinces and speak the national language, Kirundi, with an accent that distinguishes them from other ethnic groups (the Hutu and the Tutsi). No longer able to live by hunting and gathering, the Batwa of Burundi are now demanding land on which to live and farm.

Burundi has made efforts to recognise the existence of the Batwa as a specific group. In fact, the new Constitution of Burundi (28 February 2005) sets aside three seats in the National Assembly and three seats in the Senate for the Batwa. Since 2006, a Batwa representative has been appointed to the National Commission for Land and Other Assets in order to represent the interests of the Batwa with reference to land, another member of the Batwa community has been appointed as inspector within the General Inspectorate of the State and, more recently, a Batwa was appointed economic adviser to the Governor of Kirundo, in the north of the country. It should be noted that these appointments are all made following consultations with UNIPROBA, the only organisation created by and for the Batwa of Burundi.

In 2008, the Batwa of Burundi celebrated the International Day of the World's Indigenous People. Preparations for the day included a workshop to reflect on the situation of the Batwa in Burundi. This workshop was inaugurated by Immaculée Nahayo, the Minister for National Solidarity, Human Rights and Gender, and Bintou Keita, UN Deputy Special Representative for Burundi, and was widely attended by civil society and journalists.



The humanitarian situation

Burundi suffers from cyclical food crises due to climate changes and a lack of rain. The most severely affected provinces are those of the north (Kirundo, Ngozi, Muyinga and Kayanza) and east (Cankuzo and Ruyigi). The Batwa are disproportionately affected as they rarely have any food reserves. They survive by working in the fields of their Hutu and Tutsi neighbours, and by practising traditional activities such as pottery and metalwork. Civil society and the international partners have to support these people in periods of food crisis, and so prevent their exile into the countries bordering Burundi.

Peace and security

In June 2006, at Dar-es-Salaam in Tanzania, the government of Burundi signed a ceasefire agreement with the rebel Hutu movement PALIPEHUTU FNL. In August 2008, at Ngozi (in the north of Burundi), negotiations between the President of the Republic, Pierre Nkurunziza, and the President of PALIPEHUTU FNL took place to consider ways of implementing the Dar-es-Salaam agreement. This movement has now agreed to change its name so that it can become an authorised political party. This has led to a sharp decline in the number of murders that had been taking place throughout more or less the whole of the country.

Even though the war is at an end, however, murders due to armed robberies are still commonplace. Civilians who are illegally holding guns need to be disarmed. Awareness raising needs to take place amongst the population as a whole and support measures need to be implemented such as, for example, the creation of a fund aimed at compensating any person who voluntarily hands in their gun. This situation of insecurity also affects the Batwa, who are often the victims of these murders even though they never formed any part of the rebel movement in Burundi.

The political situation

The political situation in Burundi continues to go from bad to worse. For some time now, the political parties in Burundi - of which FRODEBU and CNDD-FDD are the main ones - have been breaking up. In June 2008, 22 MPs from the party in power (CNDD-FDD) were dismissed from the National Assembly. The main reason was that they no longer supported the party's ideals and were opposed to the imprisonment of Alexis Sinduhije, a former party chief. This latter was arrested in November 2008 for illegal meetings and high treason.

The next elections are planned for 2010 but there are observable delays in terms of putting the necessary structure in place to ensure that they go smoothly (the draft bill of law governing the National In-

dependent Electoral Commission, along with the names proposed by the President of the Republic, have not been approved by the two chambers of the Burundi Parliament).

Justice and human rights

The violation of fundamental human rights is a popular topic of discussion in Burundi. Since the end of January 2008, the National Police have been rounding up illegal foreigners² with an unspeakable brutality. Children are rounded up at school, teachers dragged from classes during lessons, parents taken by surprise at the market or at their place of work, loaded onto police lorries and deported, without proof of origin. Moreover, interrogations, which often last several hours, take place in the blazing sun. It is preposterous that family members of the people deported are often not informed of what has happened to them.

There are many cases of imprisonment. These include the former President of the CNDD FDD, a former journalist and founder member of the Movement for Solidarity and Democracy, a newspaper journalist and a union member.

The rights of the Batwa are often violated by the authorities. The aid distributed to starving people does not reach the Batwa. The people in charge tell the Batwa they must wait for aid that will be distributed by UNIPROBA, but UNIPROBA does not receive money for such aid. This demonstrates how marginalisation and exclusion towards this sector of the Burundi population still persists.

In an attempt to put a stop to the human rights violations in Burundi, the Independent Expert on the Situation of Human Rights in Burundi, Akich Okola, has proposed that a National Independent Human Rights Commission be established. The members of that Commission have been appointed.

Batwa advocacy in Burundi

During 2008, a series of advocacy activities were conducted with regard to protecting the rights of the Batwa of Burundi. After the World

Indigenous Day celebrations, a team was put in place by the Burundi Senate to closely monitor Batwa issues. This team has already conducted a field visit to find out about the situation of the Batwa of Burundi and has made recommendations with regard to protecting and promoting Batwa rights.

A survey on the land situation of the Batwa was completed and presented in November 2008 during a workshop attended by a number of the country's most senior officials. The then Minister for the Environment himself participated, along with different ministerial directors. With the aim of resolving the issue of Batwa access to land in Burundi once and for all, the Minister recommended that UNIPROBA work with the General Directorate responsible for land distribution. In his recommendations he suggested that at least half a hectare of land should be distributed to each landless Batwa family.

The National Commission for Land and Other Assets (CNTB) is in the process of drawing up an inventory of illegal land allocations, under the supervision of Vital Bambanze, President of the Land Inventories Sub-Commission within the CNTB and a Batwa community member. Land distribution procedures are now envisaged for the Batwa, in association with the Ministry for the Environment.

UNIPROBA, the Burundi Senate and the Association of European Parliamentarians for Africa (AWEPA) organised a field visit to Batwa families to assess their situation. The report of this visit formed the object of a workshop. Various recommendations were made, primarily with regard to land, children's education, Batwa involvement in the country's administration and, above all, ways of eradicating the marginalisation, discrimination and exclusion suffered by the Batwa in the past. □

Notes

- 1 UNIPROBA, *Rapport sur la situation foncière des Batwa du Burundi*, August 2006-January 2008, Bujumbura, p16
- 2 Most illegal foreigners are from DRC, Rwanda, Senegal and Mali.

Vital Bambanze is a Batwa from Burundi. He is a founding member of UN-IPROBA and the Deputy Chair and Central Africa Representative of the Indigenous Peoples of Africa Coordinating Committee (IPACC). He was appointed by the President as Batwa representative to the National Land Commission and the President of the Inventories. He has a degree in Social Arts from the Department of African Languages and Literature, University of Burundi.

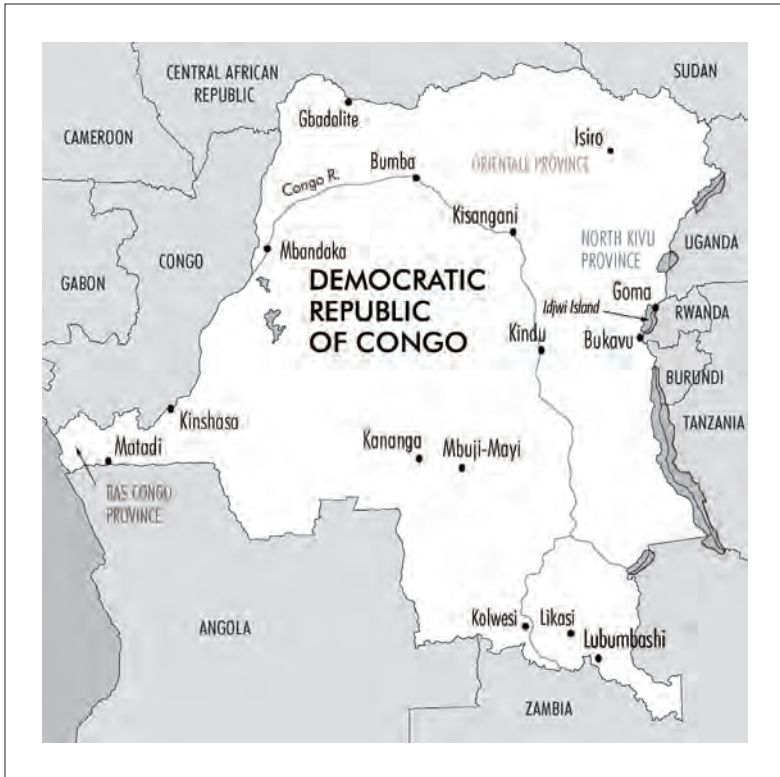
DEMOCRATIC REPUBLIC OF CONGO

There are four main groups of indigenous peoples in the vast territory of the Democratic Republic of Congo (DRC): the *Bambuti*, *Bacwa*, *Western Batwa* and *Eastern Batwa* (also known as Twa). In the absence of a census, their total number is unknown; however, estimates of the indigenous population range from 270,000 to 4 million, approximately 0.4%-7% of the total population.¹

As a direct result of historical and ongoing expropriation of indigenous lands for conservation and logging, many have been forced to abandon their traditional way of life and culture based on hunting and gathering and become landless squatters living on the fringes of settled society. Some have been forced into relationships of bonded labour with Bantu “masters”. Indigenous peoples’ overall situation is considerably worse than the national population: they experience inferior living conditions and access to services such as health and education.² Their participation in DRC’s social and political affairs is low, and they encounter discrimination in various forms, including racial stereotyping, social exclusion and systematic violations of their rights.

Peace and security

While much of DRC remained peaceful during 2008, violent conflict continued in parts of the country, particularly in the east. During the year, North Kivu in particular suffered,³ along with Orientale⁴, resulting in massive internal displacement and a continuation of human rights violations such as the forcible recruitment of child soldiers, torture and sexual violence against women.⁵ Despite talks held between the combatants in December 2008, there seems little sign of an end to the violence even into 2009.



Indigenous peoples have been disproportionately affected by armed conflict, with different factions committing atrocities, including summary execution, abduction, pillaging and cannibalism.

The humanitarian crisis and internal displacement

An NGO survey estimates that around 5.4 million people have died in DRC since 1998, and that 45,000 people continue to die every day.⁶ Internal displacement continues to be a huge challenge in DRC: displaced people in North Kivu alone have been estimated at as many as 250,000, bringing the national total at the end of 2008 to as high as 1.6 million people.⁷

Internally displaced people are also increasingly turning to refugee camps and external assistance rather than friends and relatives, the usual resort for most IDPs in previous years,⁸ a circumstance which adds pressure on provision of emergency support and facilitates the spread of disease.

Human rights

Human rights violations continued, particularly in the eastern part of the DRC, throughout much of 2008.⁹ In addition to the particular circumstances of the conflict in the east, other parts of the country have seen political repression, restriction of freedom of the press and detentions without trial.¹⁰

A significant positive move could be the trial of Thomas Lubanga at the ICC, opening in January 2009 in The Hague. He has been accused of forcibly recruiting child soldiers in Ituri¹¹ and his trial could be a milestone in the struggle of people in DRC and internationally against the use of child soldiers.

African Commission on Human and Peoples' Rights

The indigenous support group *Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables* (CAMV), supported by the Forest Peoples Programme (FPP), submitted a supplementary report¹² to the African Commission in response to the Congolese government's report of July 2007,¹³ documenting the situation of human rights for indigenous peoples in the DRC. The report documented the ways in which rights of indigenous peoples in the DRC are not currently recognised or respected. CAMV also made representations on the situation of indigenous girls and their access to education.¹⁴

DRC's forestry reforms and the impact on indigenous people

DRC's forests play an essential role in ensuring the physical, cultural and spiritual well-being of indigenous people, and they suffer extreme

levels of poverty and ill-health without them. As itemised in Indigenous World reports of previous years, the DRC does not as yet have any processes for recognising indigenous rights to land and forest resources and the relevant application decrees for the Forest Code of 2002 have not yet been completed.

During 2008, the key process that may have a major impact on the rights of indigenous peoples was the legal review of existing logging titles and the conversion of those titles deemed to be legal to new forest concessions, as recognised under the Forest Code.

In July 2008, the government's Technical Working Group formally submitted its report on the 156 logging titles submitted for review, representing 21 million ha of forest lands, all of which were allocated on land that forest communities perceive to be their own and many of which directly overlay indigenous lands. This work had actually been completed in February 2007. The review process had serious flaws, as highlighted in a letter sent by the World Resources Institute to the World Bank in December 2007 and outlined in a presentation made by the Independent Observer to a workshop in July 2008.¹⁵ Despite this, the Interministerial Commission (CIM), responsible for analysing the Working Group's reports and taking a final decision on the legality of the titles, went ahead. Two indigenous representatives had a seat on the CIM, along with two other representatives of civil society. The CIM reached its final decisions by 22 October 2008 and 65 of the 156 titles were deemed legal.¹⁶ These cover some 9 million hectares of forest lands.

These decisions are now open to appeal from the companies whose logging titles have been declared illegal. However, there is no provision made for communities affected by the decisions to appeal. Congolese civil society has been mobilising around the conversion process¹⁷ and the need to maintain a moratorium on the allocation of new concessions until such time as an appropriate land-use planning process has been developed that takes the rights of forest communities, particularly those of indigenous peoples, into account.¹⁸

Another key process underway is that of land-use planning and forest zoning. Here, Congolese civil society groups and indigenous and other forest dependent communities have been actively organising to ensure that they are not left off the map. Together with the Ra-

inforest Foundation, they have been mapping forest lands and documenting their occupation and ownership.¹⁹ These maps and the processes used are also informing the development of national methodologies and, so far, the draft principles for land-use planning decisions contain positive elements for the recognition of indigenous rights.²⁰

World Bank Inspection Panel

January 2008 saw the official release of the World Bank Inspection Panel investigation report on two Bank-funded projects affecting the forest sector.²¹ The report was extremely critical and highlighted problems with the Bank's actions in implementing its interventions in the forest sector²² and some real problems with the ongoing forest sector reforms,²³ already outlined above.

The Management Response from the World Bank did accept that it had not complied with its own operational policies and stated that the Bank would be developing an Indigenous Peoples' Development Plan in relation to one specific part of the projects being contested.²⁴

The Bank Management was due to publish a Progress Report in December 2008. It is expected to be published some time in March 2009.

International advocacy by indigenous peoples

Indigenous activists lobbied the World Bank and other members of the international community at a conference on the sustainable management of DRC's forests hosted by Belgium in February 2007. Activists also lobbied for indigenous rights at a side event to the International Monetary Fund (IMF)/World Bank Spring Meetings in Washington DC in April 2008.

With support from IWGIA, a CAMV representative participated in the UN Permanent Forum on Indigenous Issues and, with assistance from FPP and IWGIA, CAMV representatives participated in the May and November 2008 sessions of the African Commission on Human and Peoples' Rights. □

Notes

- 1 The estimate of 270,000 is found in: **African Commission on Human and Peoples' Rights (ACHPR) and International Work Group for Indigenous Affairs (IWGIA), 2005: Report of the African Commission's Working Group of Experts on Indigenous Peoples/Communities, submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa", adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session.** Gambia, Denmark, page 6. The estimate of 4,000,000 is found in: **ARD, Inc.: Conflict Timber: Dimensions of the Problem in Asia and Africa, Volume III: African Cases – Final Report Submitted to the United States Agency for International Development, Vermont, USA, page 17.**
- 2 A September 2006 report published by the UN highlighted the increasing prevalence of HIV/AIDS amongst indigenous communities, spread by sexual violence and left untreated due to their poverty and social isolation. **United Nations' Integrated Regional Information Networks (IRIN), 13 September 2006: DRC: Sexual violence, lack of healthcare spreads HIV/AIDS among Pygmies.** Available at: <http://www.plusnews.org/aidsreport.asp?reportid=6371>
- 3 Laurent Nkunda's CNDP was in conflict with the FARDC throughout much of 2008, with particular violence since the resumption of full-scale hostilities in August 2008. This conflict has also involved actors from the *mayi mayi* militias and armed groups from neighbouring countries such as the Lords Resistance Army from Uganda. See the reports submitted to the 8th Special Session of the UN Human Rights Council, November 2008: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/8/> . Also see a statement by civil society groups from North Kivu who explain the situation: <http://www.hrw.org/en/news/2008/11/19/plea-local-organizations-and-civil-society-north-kivu>
- 4 <http://ochaonline.un.org/News/Features/HumanitarianEmergencyinDRC/DRC251208/tabid/5361/language/en-US/Default.aspx>
- 5 According to a report by UNICEF, 1,000 women in eastern DRC were being raped every month during 2008. United Nations Children's Fund (UNICEF), 24 June 2008, As DR Congo crisis persists, UN classifies rape as weapon of war.
- 6 International Rescue Committee, 2008: *IRC study shows Congo's neglected crisis leaves 5.4 million dead*, 22/1/2008. Available at: <http://www.theirc.org/news/irc-study-shows-congos0122.html>. The IRC claims that the vast majority of deaths are caused by malaria, diarrhoea, pneumonia and malnutrition, i.e. non-violent and easily preventable and treatable conditions.
- 7 Amnesty International statement to the 8th Special Session of the Human Rights Council: A/HRC/S-8/NGO/1, 27 November 2008
- 8 Democratic Republic of Congo: Escalating displacement in North Kivu despite ceasefire agreement. September 2008. Internal Displacement Monitoring Centre / Norwegian Refugee Council.
- 9 See, for example, IDMC and Norwegian Refugee Council, 21 November 2008: Focus on North Kivu Province: IDPs on the move face grave human rights violations, available at:

- [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/554559DA500C8588802570A7004A96C7?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/554559DA500C8588802570A7004A96C7?OpenDocument)
- 10 See Human Rights Watch (2008) "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo. Available at: <http://www.hrw.org/en/africa/democratic-republic-congo>
 - 11 Of the 15,000 people Thomas Lubangi claimed to have at his command, 40% were estimated to be children. For further details, see <http://www.icc-cpi.int/iccdocs/doc/doc266175.PDF>
 - 12 http://www.forestpeoples.org/documents/africa/drc_achpr_supp_rep_apr08_eng.pdf
 - 13 http://www.achpr.org/english/state_reports/DRC/DRC_State%20Report.pdf
 - 14 http://www.forestpeoples.org/documents/law_hr/af_com_abuja_intervention_camv_nov08_fr.shtml
 - 15 Available at http://www.rdc-conversiontitresforestiers.org/notes-d-information-de-l-expert-independent/atelier-national-dinformation-sur-le-processus-de-conversion-des-contrats-fores_2.html
 - 16 Ministry of Environment, Nature Conservation and Tourism, DRC: *Communiqué officiel* n°4973/CAB/MIN/ECN-T/15/JEB/2008. Available at : <http://www.rdc-conversiontitresforestiers.org/>
 - 17 This has been done with the support of international groups such as the Rainforest Foundation, Greenpeace and Global Witness. Further details of recent activity can be found on their websites: <http://www.rainforestfoundationuk.org/DR%20Congo>; http://www.globalwitness.org/pages/en/democratic_republic_of_congo.html; <http://www.greenpeace.org/international/campaigns/forests/africa>
 - 18 Open letter from Congolese civil society to the Minister of the Environment, April 2008
 - 19 A publication documenting this process and some of the initial results is due to be published by the Rainforest Foundation UK during April 2009.
 - 20 The report of the National Workshop on Forest Zoning and Land Use Planning, May 2008, includes some recommendations for basic principles such as the recognition of traditional and customary rights to forest lands via a process of participatory mapping. These have since been integrated into a draft document on land-use planning methodology, produced in December 2008.
 - 21 World Bank Inspection Panel Investigation Report 40746-ZR (31 August 2007) DEMOCRATIC REPUBLIC OF CONGO: Transitional Support for Economic Recovery Grant (TSERO) (IDA Grant No. H 1920-DRC) and Emergency Economic and Social Reunification Support Project (EESRSP) (Credit No. 3824-DRC and Grant No. H 064-DRC)
 - 22 "The Panel found that the Bank underestimated the social and environmental implications of the forest-related components of the EESRSP, and failed to meet core Bank safeguard policy requirements relating to indigenous peoples and environmental assessment, among others. The Panel was particularly concerned that the Project documents presented at the time of Board approval failed even to identify the existence of the Pygmy peoples in the forests of the DRC" p 30, World Bank Inspection Panel Report 40746-ZR

- 23 See p 131, World Bank Inspection Panel Report 40746-ZR
- 24 INSP/R2006-0001/4: Management Response and Recommendation in response to the World Bank Inspection Panel Report (November 5, 2007)

Cath Long worked with the Rainforest Foundation for seven years as Programme Director, working with partners in the Congo Basin and in Latin America on the rights of forest dependent peoples, particularly indigenous peoples. Previous to that she worked in the UK, Uganda, South Africa and Sierra Leone on community led forest management and has a PhD in forest ecology. She has just started at the International Institute for Environment and Development (IIED), working on similar issues.

THE REPUBLIC OF CONGO

The Republic of Congo covers an area of 342 000 km² and has an estimated population of approximately 3 900 000, with an average density of 11 inhabitants per square kilometre.¹

More than half the people live in towns which are, for the most part, in the south of the country, in particular Brazzaville (the capital) and Pointe-Noire (the second largest town). The population comprises nine large ethnic groups subdivided into a number of sub-groups, comprising around 75 tribes in all. The main groups are: the Fang, the M'bochi, the Oubangui, the Kota, the Téké, the Makaa, the N'zabi, the Sangha and the Kongo. Alongside this primarily Bantu-speaking population can be found the indigenous people, commonly known as Pygmies.²

Estimated at around 300 000 individuals, the indigenous population represents approximately 10% of the country's total population.³ They can be divided into two main groups: the Babongo (in the south) and the Bambenga (in the north). These groups can themselves be sub-divided into a number of smaller groups: the Batswa, Baaka, Babi, Babongo, Bagyeli, Bakola, Baluma, Bangombe, Mbendjele and Mikaya.⁴ Although found throughout the whole national territory, the indigenous population live primarily in the departments of Niari, Lekoumou, Likouala, Plateaux and Sangha. Some have now settled on the land but most still live a semi-nomadic life based around hunting and gathering.

Despite various initiatives aimed at improving their access to civil and political, socio-economic and cultural rights, the indigenous groups still live in extreme poverty. They are the victims of marginalisation and discrimination of all kinds.



Law on indigenous peoples' rights

For more than three years now, with the support of the UN and civil society partners,⁵ the Government of Congo has been involved in drafting a bill of law on the promotion and protection of indigenous rights. This innovative initiative, though greeted positively by national and international-level defenders of indigenous rights, has been experiencing delays at the level of parliament, where it has not yet been examined.

Worried at the threat hanging over the survival, identity and culture of the indigenous peoples in the absence of a *sui generis* text protecting their rights, and with the support of the Office of the High Commissioner for Human Rights (OHCHR), the Ministry of Justice and Human Rights organised a seminar from 20 to 21 August 2008 within the Congolese Parliament to raise awareness among its members of the importance of adopting such a law. At the end of the seminar, the First Secretary of the Senate, Mrs Philomène Fouty Soungou,⁶ summed up the importance and challenges of the meeting and stated her enthusiasm for the draft law. The bill of law is still experiencing delays within parliament, however. UNICEF, along with its government and civil society partners, plans to conduct further lobbying in this regard, with funding from the European Union.

The Congo obtains programming tools

Despite the absence of legislation protecting the rights of indigenous peoples, some initiatives have been taken at national level with regard to developing a national policy and holistic vision in their favour. The Poverty Reduction Strategy Paper (PRSP), approved in 2008, sets out a general framework of action with which to improve the standard of living of the population, including indigenous peoples, who are described as “among the poorest of the poor”.⁷ In the same vein, the 2009-2013 National Action Plan, approved on 6 August 2008, aims to strengthen the national response towards indigenous peoples. The intended result of this plan, to be achieved by 2013, is the following: “at least 50% of indigenous women and children will have access to basic social services and the proportion of discriminatory practices will have been reduced”.⁸ This plan includes five priority areas:

- education,
- health, HIV/AIDS, water and sanitation,
- access to citizenship, strengthened legislation and the application of the law,
- cultural identity, access to land and natural resources, and
- capacity building.

European Union – UNICEF partnership on behalf of the indigenous population

Via the *Projet d'Appui à l'Etat de Droit (PAED)*, the European Union (EU) has provided a grant of 59,036,130 FCFA (90,000 EUR) to the United Nations Children's Fund (UNICEF) to implement a project to "Improve the quality of life of the indigenous population".⁹ According to the terms of the contract signed between the two institutions on 26 August 2008, this project will run for 12 months and will contribute to achieving the overall objective of the National Action Plan on behalf of indigenous peoples.

The following are some of the expected outcomes of this project, which is being implemented by the Ministry of Health, Social Affairs and Family (MSASF), UNICEF and the National Network of Indigenous Peoples of Congo (RENAPAC):

- The bill of law on the protection and promotion of indigenous rights will have been submitted to Parliament;
- 4,000 indigenous children will have received birth certificates and the system for registering births will have been consolidated;
- 25 local grassroots communities will have been made aware of their rights and will be fighting discrimination.

Social measures: what impact for the indigenous peoples?

The government has taken a series of measures, particularly in the area of health, with a view to improving the quality of life of the population, including the indigenous peoples. Among other things, a presidential decree has been issued proclaiming free health care for people who are HIV+, suffering from malaria¹⁰ or tuberculosis. The impact of these measures remains to be seen, however, particularly among indigenous women and children, whose lack of education, discrimination and distance from health centres does not encourage access to basic social services.

In terms of the schooling of indigenous children, a World Bank mission recently revealed that, in the context of a Project of Support to Basic Education (PRAEBASE), 54% of the 4,000 school kits had been distributed to indigenous children, going on to clarify that “the impact of this activity has yet to be evaluated” and recommending that “a more effective monitoring system should be developed as soon as possible with the support of national consultants and an international expert”.¹¹

The CIB, the TFT and the indigenous population

On 27 May 2008, the big logging company *Congolaise Industrielle des Bois* (CIB) and the Tropical Forest Trust (TFT) announced that the CIB had doubled its certified area within the Congo Basin tropical rainforest, now having the largest continuous area of certified tropical forest in the world, with a total of 750,000 hectares. In order to meet the necessary standards of the Forest Stewardship Council (FSC), the CIB called on the expertise of a team from the Tropical Forest Trust (TFT). According to Robert Hunink, vice-president of DHL, the group to which CIB belongs: “The TFT, with other partners, has provided us with technical assistance and access to new technology. This assistance has resulted in the use of a mobile mapping device that has enabled the Pygmies to inform us of resources that are important and considered sacred to them.”¹²

Despite this progress, some of the CIB’s activities have aroused the opposition of national and international NGOs such as Greenpeace and the Wildlife Conservation Society (WCS). The cause of the protest has been the construction of a sawmill in the Loundoungou UFA (Forest Management Unit), only a few kilometres from the Nouabalé Ndoki National Park. Moreover, it seems that the indigenous population has been a victim of the success of the CIB’s activities: more than 10,000 new inhabitants have been attracted into a region that was previously very sparsely populated. This demographic increase has naturally had consequences on the lives of the indigenous Mbenjele people, in terms of their plants and wildlife, and they have now become a minority in the area.

However, the CIB and the TFT, jointly and individually, have initiated and sustained a series of activities that are profitable to the indigenous peoples: the creation of a Centre of Social Excellence for the Forests of the Congo Basin,¹³ the creation of a cultural community radio station called “Biso na Biso” in Sangha department and support for the organisation of a training work placement scheme for teachers of indigenous children on the part of the *Groupement des Retraités Educateurs Sans Frontières* (Group of Retired Teachers without Borders - GREF).

Building capacity to fight discrimination

The *Projet d'Appui à l'Etat de Droit (PAED)* has conducted a mapping of civil society organisations, including those working with indigenous peoples. This assessment has, among other things, enabled the organisations' capacity-building needs to be identified so that they can play a full role as service providers or defenders of causes, particularly the indigenous cause. This is important given that, despite its relevance, the national response is still very weak in terms of reducing poverty amongst the indigenous population, or improving their access to land, citizenship, education and health. □

Notes

- 1 Estimate as of 1 January 2009 (Source: *Direction Générale de la Population*)
- 2 The term “Pygmy” has negative connotations since, etymologically, it refers to “people of very small size”.
- 3 This is an estimate made by a number of institutions, through lack of reliable data (Cf. UNICEF, *Rapport final UNICEF au donateur du projet d'amélioration des conditions d'accès aux services de base de la minorité pygmée (Baka) en République du Congo*, p. 4, August 2004; Comité National de Lutte Contre la Pauvreté, *Document final de Stratégie de Réduction de la Pauvreté*, 31 mars 2008, p.56). Data from the last General Population Census (in 2007) has not yet been broken down by ethnic group. In 1984, the General Census of Population and Housing listed more than 20,000 indigenous people, being 1.14% of the Congolese population at that time.
- 4 Observatoire Congolais des Droits de l'Homme (OCDH) and the Rainforest Foundation, *Les droits des peuples autochtones en République du Congo: analyse du contexte national et recommandations*. Report produced as civil society's contribu-

- tion to the “Law on the promotion and protection of the Congo’s Pygmies”, Brazzaville, June 2006, p.5.
- 5 These are: the Office of the High Commissioner for Human Rights (OHCHR), the International Labour Organisation (ILO) and the *Centre Sous-régionale pour la Démocratie et les Droits de l’Homme en Afrique Centrale* (Sub-regional Centre for Democracy and Human Rights in Central Africa).
 - 6 <http://www.congo-siteportail.info/index.php?action=article&numero=1275>
 - 7 Republic of Congo-CNLP, *Document final de Stratégie de Réduction de la Pauvreté*, Brazzaville, March 2008, p.56
 - 8 Republic of Congo, RENAPAC and UNICEF, *Amélioration de la qualité de vie des populations autochtones. Plan d’Action National 2009-2013*, Brazzaville, August, 2008.
 - 9 According to the Agreement (n°01/PAED/COB 8/2) signed between PAED and UNICEF (approved by the European Union) on August 26, 2008. Financed by the 8th European Development Fund (EDF), the *Projet d’Appui à l’Etat de Droit (PAED)* aims to support the achievement of a state of law in the Republic of Congo through the capacity building/reinforcement of public and private actors who are participating in its construction and contributing to good governance. This project is being implemented by Transtec SA (For more information, see www.paedcongo.org or www.transtec.be).
 - 10 This offers free malaria treatment for children aged 0 to 15 and pregnant women.
 - 11 Republic of Congo-PRAEBASE, Supervisory Mission from 20 October to 7 November 2008, Note, pp. 39-40.
 - 12 www.tropicalforesttrust.com/media/upload/TFT_CIB_Release_French.pdf
 - 13 Intended to deal with the problems related to deforestation and its impacts on local and semi-nomadic communities, the Centre for Excellence will offer a unique one-year programme to young graduates of Central African universities to reflect on innovative techniques enabling the sustainable management of the Congo Basin’s forests.

Emmanuel Bayeni (ebayeni@yahoo.fr) is a journalist, historian and jurist by training. He has worked for the Association pour la Promotion des Droits de l’Homme en Afrique Centrale (Association for the Promotion of Human Rights in Central Africa) of the Catholic University of Central Africa (APDHAC – UCAC, Cameroon), and as an Assistant in the Ministry of Justice and Human Rights (MJDH) where, among other things, he coordinated the process of drafting the law on the promotion and protection of the rights of indigenous peoples in the Republic of Congo. He recently worked for UNICEF Congo as a consultant responsible for protecting indigenous rights. He has run an NGO for the last 5 years: the Centre des Droits de l’Homme et du Développement (Centre for Human Rights and Development/CDHD). In

addition, he participates in the activities of the Projet d'Appui à l'Etat de Droit (PAED) as an expert responsible, among other things, for monitoring implementation of the Agreement between the PAED and UNICEF Congo (approved by the European Union) in relation to the project on "improving the quality of life of indigenous peoples". He is a member of various networks and research groups.

GABON

Indigenous hunter-gatherer communities (often referred to as Pygmies) are located throughout Gabon and include numerous ethnic groups (Baka, Babongo, Bakoya, Baghame, Barimba, Akoula, Akwoa, etc.) separated by locality, language and culture. Pygmy communities are found in a range of socio-economic situations: urban and forest-based. Their livelihoods and cultures remain inextricably tied to the forest areas of the country (85% of Gabon is forested). It has recently been estimated that the number of Pygmies in Gabon is approximately 20,000 out of a national population of 1, 520,911.¹

The last decade has seen the rise of the indigenous movement and four² officially recognised indigenous organizations.³ Two of the leaders currently hold regional positions in the Indigenous Peoples of Africa Coordinating Committee (IPACC) (the next elections to take place April 2009)

Since 2002, due to increasing environmental threats posed by expanding extractive industries, the country has received a large influx of foreign funding and human resources to support Congo Basin conservation initiatives, in particular the establishment of 13 national parks. Out of these developments has grown an awareness of the rights of local and indigenous peoples in matters concerning the conservation and development of the country. In 2005, Gabon agreed to its own Indigenous Peoples' Plan as part of a World Bank policy loan agreement for the Forest and Environment Sector Program (Schmidt-Soltau, 2005). This marked the government's first official recognition of the existence of and its responsibility towards indigenous peoples. In 2007, Gabon voted for the UN Declaration on the Rights of Indigenous Peoples.



Political and legislative developments

Forest-based hunter-gatherers have increasingly relocated to roadside locations, a process initiated by colonial resettlement programmes and sustained throughout post-independence and present-day development policies. Despite the rise in indigenous representation, and international funding, the majority of Gabonese hunter-gatherer communities based in roadside settlements continue to experience problems of marginalisation, poverty through lack of access to basic resources, and social segregation.

Current threats and challenges for the Pygmy population in Gabon include severe environmental damage to ancestral lands and resources, infrastructural transformations (roads, dams and railways), large-scale commercial bush-meat hunting, insecurity of land tenure and

encroachment through logging and extractive activities, conservation developments and regulations, resettlement and integration plans, insufficient representation in community land claims and lack of sufficient funding and support for indigenous organizations to function autonomously.

During 2008, there were no significant political or legislative developments affecting or concerning indigenous peoples at the national level. Many of the scheduled activities for the year remained dormant due to economic factors arising from the fall in global financial markets and through delays caused by ministerial restructuring. Forest policy and national park legislation remain areas of concern for the future. There are several implementation decrees tied to the Forestry Law (2001) in the process of being drafted, one of which recommends that logging companies pay compensation directly to local populations affected by activities in the area of their concessions. Current projects in the forest and environment sector which focus on local and indigenous peoples are predominantly channelled through and monitored by leading international conservation organisations working in the area. Namely, Wildlife Conservation Society (WCS) and World Wildlife Fund (WWF).

Following the adoption of the new National Park Law in September 2007 (five years after the establishment of 13 national parks in 2002), it is unclear how this legislation will affect indigenous populations through the implementation of individual park management plans. Negotiations continue between the ministries, park managers, legal experts and indigenous representatives on how to produce park-specific regulations that take into account the importance of traditional cultural activities. Indigenous populations are located in the proximity of (and their ancestral lands and hunting territories may extend to) several of the national parks, including Minkebe, Waka, Lope and Ivin-do.

After several years of inactivity in Gabon, the regional programme for the European Union, ECOFAC (*Ecosystèmes forestiers d'Afrique Centrale*) took up office again in Libreville at the end of 2007. In addition to currently working in Lopé National Park, the organisation will work in the office of ANPN (the National Agency of National Parks), overseeing all national park management plans and activities.

The official visit of the French President, Nicolas Sarkozy, in July 2007 which resulted in President Bongo's agreement to redirect foreign debt repayment into the Forest-Environment sector, has enabled significant funds (approx. 12-13 million Euros) to become potentially available. However, no payments can be made until there is a plan for approving investments.

Much of the attention in the Forest-Environment sector has turned to issues of climate change and carbon credits as this is now the Congo Forest Basin's main mechanism for funding. Lee White, former country director of WCS, is now Gabon's leading climate change expert and is working with the Gabonese government to channel related funding appropriately. In February 2008, indigenous leaders, sponsored by the World Bank, travelled to Burundi to attend a conference on REDD (Reducing Emissions from Deforestation and Forest Degradation). Building on the CDB (Convention on Biodiversity), this forum addressed the role of indigenous peoples in the face of climate change and in helping to reduce carbon emissions.

Negotiations concerning large-scale developments in the northeast of the country appear to be on hold. These entail the government's decision to sell iron-mining rights to Chinese firms in Belinga - involving the construction of a new railway line and a road to the proposed hydroelectric dam on the Kongou waterfalls within Ivindo National Park. This raised major concerns amongst national and international environmental agencies and NGOs. The area to be affected by these developments is close to two other national parks and local indigenous Bakoya and Baka communities.

Tensions between the Minister of the Interior and certain local environmental NGOs, in particular "Brainforest", a local offshoot of the Rainforest Foundation, came to a head at the end of 2007 and the beginning of 2008. The NGOs in question had been campaigning on the Internet against the potential environmental impacts of the above mentioned developments and calling for greater transparency from the government on these matters. In January (7-12), Mark Ono (head of Brainforest) was detained and accused of disturbing the peace with controversial propaganda and, in February, the activities of a number of environmental NGOs were suspended. Some Pygmy leaders reported that they had also been targeted by the authorities during these activities.

For the time being, the dam project seems to be in an indeterminate state. The workers have suspended activities awaiting further consultation with the Gabonese government. In the intervening time, the price of iron has fallen and the global economic crisis raises questions about the mine's prospects.

The implementation of the Indigenous Peoples' Plan (IPP) - part of a World Bank policy loan agreement - has been on hold throughout 2008. The IPP is part of the Forest Environment Sector Plan and is a national programme designed to streamline and coordinate all stakeholders' and partners' involvement in the country's natural resource management. It is thus a key document in the framing of future policy and national legislation. Through a number of specific projects focusing on, for example, mapping the demography of indigenous populations, capacity building of indigenous representation, resettlement programmes etc., the IPP aims to ensure that the respect, dignity and culture of indigenous peoples are protected during these developments, and due benefits and compensation received.

Policies, programs and projects

The UNICEF nationwide outreach project entitled "Integrated Development for Pygmy Communities", with its focus on improving basic health and access to birth certificates, awaits completion. Although children have gained birth certificates, many adult Baka and Bakoya have not yet received basic identity papers. However, this Project has raised awareness among a number of local and provincial officials to the challenges faced by indigenous peoples located in remote areas and, consequently, the process has taken on its own momentum. Following the official visit of the *préfet* (local government administrator) of Minvoul to Esseng village in December 2007, when UNICEF distributed birth certificates to Baka children, the *préfet* continues to encourage Baka adults to present themselves at the Prefecture in order to receive their papers. The adult Bakoya community is more remote and, consequently, progress has been slower.

In 2007, the indigenous organization MINAPYGA signed an agreement with IPACC, WCS and the Waka National Park Conservator to

help support local representation through the formation of community associations in the area of the Waka National Park. Between March–May 2008, the USAID-funded project aimed at empowering indigenous communities in national park management began in the Waka area. Leonard Odambo (MINAPYGA) worked closely with IPACC and WCS to facilitate dialogue and to create a Babongo grassroots organisation, comprising representatives from communities located around Waka National Park. The Babongo and Mitsogho communities have been seriously affected by large-scale destructive logging activities conducted by Sino-Malaysian companies. The situation is predicted to worsen due to a large contract to cut the rainforest between the Lopé and Waka National Parks, which are the traditional territories of the Babongo and neighbouring Bantu groups (Mitsogho, Masango, Akélé). This project is also aimed at assisting Baka groups around Minkébé National Park.

In May and June, experts employed by the Rainforest Foundation travelled to Gabon to work with Brainforest in training indigenous representatives and communities in MARP (*Méthode accéléré de recherche participative* – participatory mapping techniques). The project focused primarily on Baka and Bakoya in the northern regions of Minvoul and Mekambo.

In 2008, the first published results of regional genetic and linguistic studies of Pygmy and Bantu populations were released. Research in Gabon was carried out through the University Leon Mba (headed by Mouguiama-Daouda), in partnership with CNRS (*Centre national de la recherche scientifique*) and the University of Lyon (headed by Van de Veen; Hombert). The resulting evidence indicates that Pygmy populations in the eastern Congo can be traced back to some of the oldest inhabitants in Africa. The Gabonese data sheds light on the chronology and complexity of Pygmy-Bantu interactions.

Indigenous representation

Leonard Odambo (representing MINAPYGA) has become very strong in terms of training and carving out his position as the key spokesman

representing Gabonese indigenous issues on the national and international scene.

During the year, he attended a number of important regional and international fora, including the human rights conference hosted by the *Centre sous-régional pour les droits de l'homme et la démocratie en Afrique* and held in Yaoundé at the start of the year. Odambo also travelled frequently within Gabon to meet with Baka (in the northern border regions), Bakoya (in the north-eastern Gabon) and Babongo (in the Massif du Chaillu) groups to reinforce grassroots networks and to provide information on the rights of indigenous peoples. From September, he travelled to Geneva where for several months he attended the training programme in technical and secretarial skills for delegates who participate in the UN Permanent Forum on Indigenous Issues in New York. At the end of the year, UNESCO, in partnership with MINAPYGA, commenced the project entitled "The Promotion and Safeguarding of the Cultural Expression of the Forest Peoples". The project aims to create a cultural audit through film, focusing on the Babongo and Bakoya peoples, and to produce a final documentary. Despite these achievements, Odambo continues to work under difficult conditions, with neither permanent income nor office for MINAPYGA.

The Baka organization Edzengui had a very challenging year. Attempts to attend international fora had to be aborted due to administrative and leadership problems.

In December, the organisation voted in a new leader, Oke Minso Alex; to replace Helen Andou Nze. Helen nevertheless currently holds an important position in IPACC as the regional indigenous women's representative. WWF Libreville continues to support the organization in training and capacity building and planning future projects. WWF has worked closely with Edzengui to improve the condition of their permanent office in Minvoul, northern Gabon and they have attained considerable funding from FFEM (*Fond français pour l'environnement mondiale*) via *l'Agence française de développement* to promote alternative sources of income and promote cultural activities for ecotourism for Baka communities around the Minkébé Park. Likewise, through DACEFI (Developing Community Alternatives to Illegal Forest Exploitation), Edzengui, in partnership with WWF, still plans to promote agriculture amongst Baka communities. However, these projects re-

main dormant until the organisation is able to re-establish its credibility and effectiveness.

Mr. Dennis Massandé, leader of the Babongo organization ADCPPG (*Association pour le développement de la culture des peuples pygmées du Gabon*), continues to work in close consultation with government ministries. He has attended key national and regional meetings; for example, in October, he represented Gabon at REPLIAC (*Réseau des populations autochtones et locales pour la gestion durable de forêts denses et humides d'Afrique Centrale*), held in Kinshasa, DRC. ADCPPG is in the process of looking for investors for planned community-based projects linked to communication, such as the creation of *la Chaîne de télécommunication Pygmy* (Pygmy television channel) and income generation from forest products such as an indigenous honey-collecting business with plans to market the product nationally and internationally. □

Notes

- 1 In 2005, based on existing research and the current national census, the Association for the Development of Pygmy Peoples' Culture in Gabon (ADCPG) estimated the highest total to date for Gabonese Pygmy populations, at 20,005 out of a national population of approximately 1,400,000 (Massandé 2005). His figures for the Pygmy communities remain the most current and thorough; however, the national population figures from Gabon are now estimated at 1,520,911 (Ministry of Planning – personal communication 2008).
- 2 Kutimuvara was established as an indigenous NGO in 2002 to represent Varama groups and other southern indigenous minority groups e.g. the Bagama. The latter are widely recognized as “Pygmy” i.e. first inhabitants, forest specialists etc; whereas the Bavarama are one of a number of minority groups in Gabon with an ambiguous status between “Bantu” and “Pygmy” who are often called ‘Pygmy’ due to their hunting skills and traditional forest-based way of life. The Bavarama are linguistically close to the Eshira. Due to the challenge posed by Bavarama and the southern Pygmy communities being so dispersed, and the fact that the organization is based outside of the capital, without any strong partnerships or external support, this organization remains less developed than the other indigenous organizations.

References

- Massandé, D., 2005: Organisation Territoriale du Gabon Démographie Chiffres des Peuples Autochtones Pygmées de Gabon. *ADCPG report*, 30 June 2005.

Schmidt-Soltau, K., 2005: *Programme Sectoriel Forêts et Environnement (PSFE) Plan de Développement des Peuples Autochtones. Rapport Final.* July 2005. World Bank, Washington.

Judy Knight, is a consultant anthropologist based in Gabon. She has been working on various projects with Central African indigenous forest communities since 1992, and has worked in consultation with indigenous NGOs and major conservation organisations on indigenous peoples' rights and the safeguarding of traditional forest-related knowledge, in and around protected areas. Contact: jkanthro@yahoo.co.uk.

CAMEROON

Among Cameroon's more than 17 million inhabitants, some communities identify themselves as indigenous. These include the hunter/gatherer Pygmies, the nomadic Mbororo pastoralists and the Kirdi mountain communities. The indigenous Pygmies can be further divided into three sub-groups, namely, around 4,000 Bagyeli or Bakola, more than 40,000 Baka and around 300 Bedzan.¹ These communities live along the forested borders with Gabon, the Republic of Congo and the Central African Republic. Together the Pygmies represent around 0.4% of the total population of Cameroon. The Mbororo living in Cameroon are estimated to number over 1 million people and they make up about 12% of the population². The Mbororo live primarily along the borders with Nigeria, Chad and the Central African Republic.³ Three groups of Mbororo are found in Cameroon: the Wodaabe in the Northern region of Cameroon; the Jafun, who are found all over the national territory, especially in the North West, West, Adamawa and Eastern Regions; and the last group, the Galegi, popularly known as the Aku, 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 Constitution of the Republic of Cameroon uses the word "indigenous".⁴ 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.

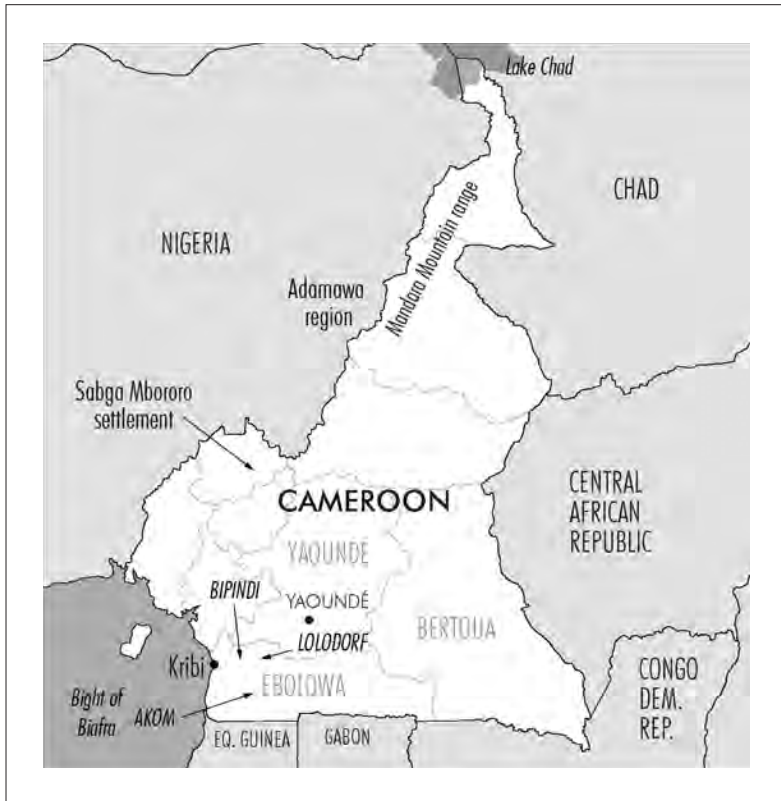
Changes in legislation and the participation of indigenous peoples

A draft law on Marginal Populations in Cameroon is being prepared by the Ministry of Social Affairs. The process started in 2007 and focuses on the promotion and protection of marginal populations. The Ministry of Social Affairs is the main actor. Though not officially consulted, in 2008 the indigenous communities made their contributions through the United Nations Sub-regional Centre for Human Rights and Democracy. The draft law has not yet been validated.

Groups to be protected by this law include the Mbororo, the Pygmies, the mountain dwellers (the Kirdi people), and the people of the creeks (people of the small islands). Indigenous leaders sent their contributions via the Indigenous Peoples Network initiated by the United Nations Sub-regional Centre for Human Rights and Democracy. The present draft law is favourable to indigenous populations, as it deals with delicate questions of land ownership, culture and social rights. With this law, indigenous people will have a legal base on which to make claims whenever such rights are violated.

Specific policies and programs

During 2008, the government involved indigenous leaders in specific policies and programs aimed at revising the Poverty Reduction Strategy Paper (PRSP). The Mbororo Socio-Cultural Development Association (MBOSCUDA) and other indigenous organisations in Cameroon participated actively in this process, supported by the ILO, within its PRO 169 project. It was an occasion for more than 100 Mbororo, Baka and Bagyeli/Bakola people to voice their concerns in relation to the government's action plan on the fight against poverty (PRO 169 E News No. 02), in which indigenous peoples had been largely overlooked. The indigenous representatives think that projects in their favour should be urgently conceived if the government wishes to reverse the negative trend towards the impoverishment of indigenous peoples.



Consultative workshops were organised that enabled participants to formulate recommendations, some of which called for the greater participation of indigenous people in the elaboration of development policies. Or better still for indigenous peoples' situations, concerns and needs to be genuinely and effectively incorporated into national strategies for combating poverty.

The indigenous representatives hope that their contributions, which reflect their preoccupations and their needs, will be taken into consideration in the Poverty Reduction Strategy Paper (PRSP).

Another important event for indigenous communities in Cameroon was the government's official commitment to celebrate the Day of the World's Indigenous People on 9 August 2008. This was the first time

the Government of Cameroon had been involved in organizing this day, thanks to strong lobbying and awareness raising seminars undertaken by indigenous organisations. The day saw the mobilisation of all Cameroon's indigenous groups to converge on the capital, Yaoundé. The day was celebrated with speeches, drama, sketches, dances, an exhibition of artefacts and a fashion parade. The government was represented by the Minister of Social Affairs, assisted by some of her colleagues. The UN agencies were also present.

Representatives of the Mbororo organization, MBOSCUDA, attended important meetings at international level during the year, including the new UN Expert Mechanism on the Rights of Indigenous Peoples that was inaugurated in Geneva in October 2008, at which the MBOSCUDA representative presented a joint statement with the Mbororo representatives of West Africa. MBOSCUDA also attended the 44th session of the African Commission on Human and Peoples' Rights (ACHPR) in Abuja, Nigeria in November 2008. A statement on the Mbororo refugees' problems in Cameroon, the Democratic Republic of Congo (DRC) and southern Sudan was presented as well as a statement on local government interference in the traditional institutions of the Mbororo community of Sabga in the North West Region of Cameroon.

Interference with Mbororo traditional institution in Sabga

The Sabga Mbororo settlement is situated in the North West Region and comprises around 5,000 people. In 1985, the large Elba cattle ranch was created in the area by Alhadji Baba Ahmadou Danpullo, a multi-millionaire international businessman and influential politician. This dramatically changed the course of the lives of the Mbororo pastoralists of this area. They suffered dispossession of grazing lands estimated at about 100,000 hectares, illegal arrests, long-term detentions and imprisonment, extortion and seizure of livestock, destabilization of traditional institutions and the forced marriage of minor Mbororo girls to Alhadji Baba Ahmadou Danpullo and his family members.

The Sabga Traditional Chieftaincy (Lamidat) is a well-structured institution that has existed for over a century and which is fundamental to the community life of the Sabga Mbororo people. The paramount

ruler died in June 2006 and the Sabga Mbororo community thereafter chose a new paramount ruler. However, in August 2007, the Senior Divisional Officer of the locality and Alhadji Baba Ahmadou Danpullo forcibly enthroned another person, against the wishes of the Mbororo people. Mbororo women and youth protested at this and blocked all entrances to the village for many hours. However, they had to desist due to heavily-armed soldiers and anti-riot police units using grenades, rubber and live bullets against the young people, wounding many of them.

2008 was characterized by protests from the Sabga Mbororo community, who came in large numbers to stage sit-ins in front of governments offices and the US Embassy. This was greatly embarrassing for the government. 40 Mbororo youths staged a sit-in at the Ministry of Territorial Administration in protest at the fact that youth activities had been banned in Sabga by the Sub-Divisional Officer. Around 30 women staged a sit-in for a third time at the Prime Minister's office, demanding a resolution of the conflict and the restitution of the paramount ruler of their choice.

Many youth, women and elders from this community demonstrated for the first time and showed a high sense of organization and determination to get their problems solved. Among other things, they blocked an important highway at a very crucial electoral period. By doing so, they paralysed the Regional Administration, which was holding a provincial coordination meeting on the Elba Ranch premises. There was substantial media coverage of these events.

Despite all the promises made by government, MBOSCUA's interventions at all levels, the interventions of the UNHCHR through the Special Rapporteurs on Indigenous People and on the Independence of Judges and Lawyers and, most recently, the ACHPR, the situation remains unchanged. The effects are devastating: no community life, no cultural or religious activities and all community projects grounded.

Banditry and kidnappings

There has been an improvement in the security situation in the eastern region of Cameroon and no major incidences were reported in 2008.

However, there were many kidnappings of Mbororo children in the northern region and the security forces are still struggling to get the situation under control.

Forestry exploitation

There were no particular actions in 2008 with regard to improving the rights of indigenous peoples relating to forest exploitation. Such rights are becoming increasingly restricted, especially as regards hunting, for which the indigenous communities must have hunting permits. Such restrictions are harsh, especially in protected areas such as the Dja reserve. The Pygmies are the victims of massive exploitation of their forest and they are neither aware of nor participating in the REDD process. □

Notes

- 1 **Barume, A.K., 2005.** Etude sur le cadre légal pour la protection des droits des peuples indigènes et tribunaux au Cameroun. International Labor Organization, ILO, Geneva, p.24.
- 2 MBOSCUA statistics study , INADES FORMATION, 1996.
- 3 Ibid, p.25.
- 4 The preamble to the Cameroon Constitution stipulates: “the State shall ensure the protection of minorities and preserve the rights of indigenous populations, in accordance with the law”.

*Hawe Boub*a is the National Vice President of MBOSCUA and *Hassoumi Abdoulaye* is the Deputy Secretary General of MBOSCUA.

CHAD

The Mbororo Peul are indigenous to Chad and live essentially from pastoralism and subsistence agriculture. According to the 1993 census, they number around 250,000 individuals, living primarily in the dry centre and tropical south of Chad, where pastures can be found. It is difficult to estimate their exact number but they represent approximately 10% of the Chadian population. In fact, many of them have now departed for neighbouring countries (Cameroon, Central African Republic, Niger). They can be identified by their way of life, their culture, their language and by the discrimination they suffer. They are a poor population, 99% of them are illiterate, and they have no national political representation.

Political and legislative context

Elections

National elections are preceded by a census in order to issue voting cards. Mbororo Peul rarely find themselves within the registration areas, however, as they are always on the move looking for remote pasturelands. So when the time comes to vote, most of them -- often lacking information -- either have no voting cards or do not understand who to vote for. In fact, there is no awareness raising programme for the Mbororo Peul with regard to their rights and duties as citizens.

Given the lack of any laws protecting indigenous peoples and their lack of national political and legislative representation, problems are increasing between indigenous and non-indigenous peoples. For example, there are various problems occurring between farmers and pas-

toralists in relation to the occupation of indigenous lands, and disputes regarding access to water points.

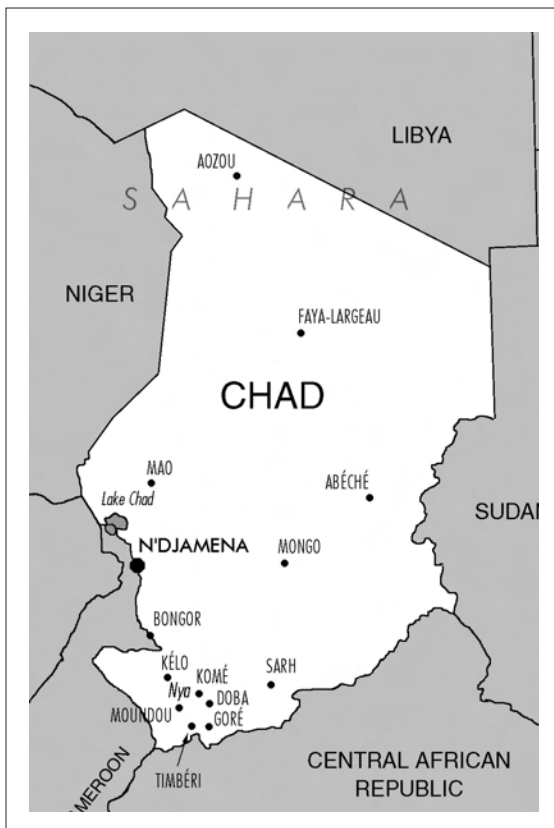
In 2006, faced with multiple political, legislative and social problems and a failure to respect indigenous rights, Mr Mansour Mahamat Abbas, an Mbororo himself, called on the country's leaders to respect the rights of indigenous peoples and of the Peul community as a whole. In 2008, he decided that he wanted to become involved in politics as the national representative of the Peul and the indigenous Mbororo population. To do this, he had to join an officially recognised political party. Marginalisation and discrimination of the indigenous Mbororo, meant that meetings to support Mr Mansour were boycotted on several occasions, and members of the organising committee were arrested by the police. Moreover, the Minister of the Interior intervened to prevent the indigenous people from organising politically.

Legislation

Legislation does not take the specific nature of indigenous peoples into account. The geographical division of the country means that their nomadic/semi-nomadic way of life takes them across a number of administrative districts and so they have to pay taxes on their livestock several times.

Protected areas are defined without their prior consultation or consent, and this is increasingly depriving them of vital living space and pastures. In 2008, deforestation meant that the Mbororo had to travel much further than before to find pasture and they frequently came into conflict with other communities in the south of the country.

In Chad, the land, natural resources and subsoil are owned by the state. Remote lands inhabited or used by indigenous peoples are often governed by customary law but also form part of the "national domain". These lands very often therefore end up in the hands of companies. This is indicative of the fact that the indigenous peoples have no right of access to the land or natural resources, despite their good management of them. Although Chad is a party to various regional and international instruments, children, women and indigenous communities are overlooked in the rights process. The UN Declaration on the Rights of Indigenous Peoples bears witness to this, as it is not under-



stood by all the population and is not sufficiently binding in a country where indigenous identity remains at the heart of the debate.

Programmes, policies and projects

Chad has adopted national action plans to adapt to climate change (NAPA) but still does not include the indigenous peoples, despite their traditional knowledge of environmental and biodiversity man-

agement. Through the NAPA, workshops were organised during 2008 but these did not involve the indigenous peoples and so their experiences could not be utilised, even though they are the primary victims of climate change. The indigenous population is, however, involved at international level to achieve enforcement of its national consultation and participation rights. Arenas for national negotiation are limited due to their lack of representation in the highest institutions (government, parliament ...).

Even though civil society and the indigenous organisations are consulted when national policies and strategies are being produced on

poverty reduction, the environment and climate change, their traditional knowledge is not taken into account.

Education

The timid strategies for nomadic education, designed and produced by the department responsible for education, have given no satisfactory results. Reasons for this can be the difficulties of working with different nomadic ways of life in the north and south of Chad and that those who are responsible for programmes divert education projects away from nomads in favour of their own communities. This happens since the Mbororo nomads have no representatives in government. Indigenous children are the least educated, and have the highest rates of illiteracy. In fact, the rate of school enrolment is very low amongst indigenous families: less than 1% for boys and virtually nil for girls. Education is only in French or Arabic.

Given the need, and the poor results, 2008 was announced as the year of promotion of nomadic schools.¹

Occupation of their territory by companies

Oil exploitation has restricted the available pastures for the nomadic population. Moreover, ESSO's (EXXONMOBIL) facilities² spilt more than 35 barrels of oil into the environment this year, polluting the local people's fields, pastures and a water source used by the villages of Bitah and Beto and by indigenous Mbororo families' animals in the areas of Timberi and Jomé, in the south of Chad. EXXONMOBIL confirms the incident but does not appreciate the extent of the damage caused to the environment and the population.

It was first noted by people from Beto on Monday, 25 August 2008. Initially no more than a trickle, the oil began to pollute the countryside and water sources. Delegates of EPOZOP (*Entente des populations de la zone pétrolière*/Oil Zone Populations' Understanding) who live in the area were alerted and they informed the TOTCO officials, the company

that manages the pipeline, but emergency teams did not arrive in the area until Thursday, 28 August 2008, i.e. three days after the spillage.

This accidental oil spillage was confirmed by the Minister for Oil during a press conference held on Monday, 1 September 2008 in N'djamena. According to Minister Mahamat Nasser Hassane, the spillage was caused by the breakage of four bolts. The pipeline constructor was contacted. Tests and laboratory analyses are underway to determine the actual cause of the breakage of these four bolts. The amount of crude oils spilt is estimated at around 35 barrels. The polluted soil, estimated at 4 m³, was removed and taken to Komé for treatment.

On 2 September 2008, local people found dead fish all along the affected watercourse. According to the accidental oil spillage emergency plan, this area of Nya is highly vulnerable in terms of drinking water, water for domestic use, for watering and for livestock and fish. This leak has revived civil society's fears with regard to ESSO's guarantees of zero risk because of the high performance of the technology being used.

Conflicts between farmers and pastoralists

Pressure for land and land management bring different communities into conflict, including the nomadic and semi-nomadic Mbororo pastoralists and sedentary farmers. It has also brought about a change in the socio-economic relations between the two communities and the farmers marginalise the Mbororo. Open conflict is manifested in confrontations, damage to goods (fires, slaughtering of animals, etc) and even physical aggression (attacks and injuries). There have been numerous examples since 1992 and, given the marginalisation of the indigenous peoples by other communities and the lack of laws protecting them, they are incapable of defending themselves as citizens. As an example, in 2008, the father of a Tchikali girl refused to agree to give her hand to a sub-prefect of the region. As a consequence, the sub-prefect sent an army to the village who beat up the villagers and arrested almost all the young people, fining them. There were many victims in this incident, including pregnant women.

Indigenous women

Peul Mbororo women suffer double discrimination within Chadian society, firstly because they are Peul Mbororo and, secondly, because they are women. And yet women play an important role in the community in terms of traditional education, the "Pulaaku", and above all, in terms of passing on traditional knowledge.

There are a number of barriers preventing indigenous women from being involved in politics and development in Chad. Some of the most significant are their low visibility and their lack of adequate training. This is why Mbororo women are increasingly calling for the need to coordinate the defence of their rights and interests. Solidarity amongst them, but also within the community, shows that they can take up the challenge in terms of politics and development and establish a movement that will carry forward the hopes of generations to come, particularly in terms of community improvement. There were a number of meetings between Mbororo women to discuss human rights and, above all, climate change during 2008.

Indigenous movements

The indigenous movements are all linked within the *Association des Femmes Peules Autochtones du Tchad* (Association of Indigenous Peul Women of Chad/AFPAT),³ an officially recognised organisation that works with the whole Mbororo indigenous community in Chad (men and women). Through this organisation, indigenous people can claim their rights to education, development, political representation and health.

This organisation was very active during 2008: awareness raising on the UN Declaration on the Rights of Indigenous Peoples at local, national and regional level, workshops on the rights of indigenous peoples, climate change, adaptation and mitigation in relation to the UNFCCC, identifying the needs of indigenous women and children for their chosen development, awareness raising around national policy and integration, etc.

The movement is limited financially given the government's failure to recognise the indigenous peoples. All Mbororo show an interest in claiming their rights but are limited by their low level of education. However this organisation is supported by other organisations such as IPACC, Mboscuda, OCDH, IWGIA, OWAGA, UNHCHR, ILO etc.□

Notes

- 1 Report from the Ministry of National Education
- 2 Report on the accidental spillage of oil at Komé, vers la fin des conflits agriculteurs-éleveurs, in N'Djamena Bi-Hebdo, n°549 ; Rapport du Groupe Externe de Suivi de la Conformité Environnementale (ECMG), 9ème visite,
- 3 AFPAT Report

Hindou Oumarou Ibrahim is the coordinator of Association des Femmes Peules Autochtones du Tchad (AFPAT) and representative of Sahelian women within IPACC. She was a beneficiary of the UN Indigenous Fellowship Programme and a trainee at the ILO in the International Standards Department (PRO 169 Section) in 2008, plus a volunteer promoter for the indigenous network for human rights in Central Africa and a member of the Coordination Autochton Francophone (CAF).



SOUTHERN AFRICA

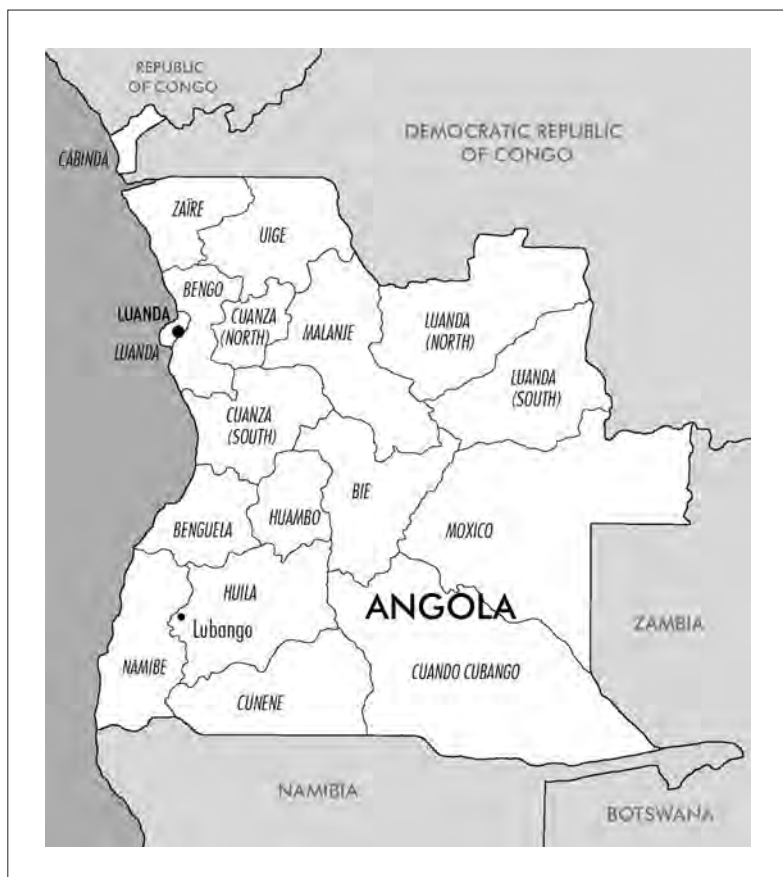
ANGOLA

The indigenous San peoples of southern Angola, also known as Bushmen, are the oldest inhabitants of Angola and southern Africa and are mainly located in remote and inaccessible areas. Many (mainly in Kuando and Kubango provinces) still live as hunter-gatherers, staying in rudimentary shelters and moving within their ancestral territories, while others have settled in homesteads where they practise agriculture, surrounded by Bantu neighbours, or live in urban communities.

The population of Angola numbers around 15.5 million people and the San are estimated to account for approximately 0.04 percent of that figure. The majority of the San reside in Huíla, Kunene and Kuando Kubango provinces in southern Angola and probably also in Moxico province in south-western Angola. The exact number and location of all San communities is not, however, known.

Angola has ratified ILO Convention 107, Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries. However, there are no specific laws on indigenous peoples' rights in Angola.

Twenty-seven years of civil war in Angola largely destroyed the traditional social structure of the San communities. With the help of WIMSA (Working Group of Indigenous Minorities in Southern Africa) and Trocaire (Irish Catholic Agency for a Just World) a needs assessment of the situation of the San was carried out by OCADEC one year after the peace agreement was signed in 2002. The assessment resulted in a written and video report entitled *"Where the First Are Last"*. The NGO OCADEC Angola (Christian Organisation Supporting Community Development)¹ is currently fulfilling some of the recommenda-



tions of the above-mentioned report by implementing a food security programme in the Huíla, Kunene and Kuando Kubango provinces of southern Angola. Part of this programme is aimed at raising awareness amongst the San communities about their constitutional rights in Angola, including human rights issues. The programme also includes:

- Land rights campaigns and access to natural resources
- Land use and development planning within the communities
- Assisting the San to obtain identity documents
- Access to primary education and health services

- Legal and human rights
- Leadership issues
- Food security

OCADEC represents about 5,000 !Xun and Khwe San communities of Huíla, Kunene, Kuando Kubango and Moxico provinces. The San are a small, vulnerable ethnic minority and, in Angola, they live in extreme poverty, often in areas not yet cleared of landmines. Development interventions, even though extremely difficult, are greatly appreciated by the San and they have participated in the entire process.

Since the 2007 Conference, OCADEC has been implementing the following development programmes:

- Goat breeding programme;
- Capacity building within the San on leadership and resource management;
- Advocacy and lobbying to encourage the government of Angola to create a specific programme for the San;
- Establishing village schools and clinics in San villages;
- ID registration of San people;
- Advocacy so that San people living around the Bicuari National Park can be employed in the park;
- Providing the San of Huíla and Kunene provinces with oxen and ploughs in order to increase food security;
- Childhood programme;
- Promoting national-level campaigns on the rights of indigenous people.

The literacy rate among Angolan San adults and youth is very low and only a few San children attend schools. The majority of children do not attend school because their parents are unable to afford to pay the registration fees, the schools are far from their home villages and some of them have experienced discrimination from both teachers and fellow students.

Angola has not set specific priorities to address San issues, despite having signed ILO Convention 107. However, ILO Convention

107 urges governments to create specific programs and education systems for indigenous peoples, tribes, and other minorities in independent countries. An important part of OCADEC's work has been to encourage the government to change its attitude toward the San, and, through consultation, to find solutions to improve their living conditions and to help to implement development initiatives.

San culture, language and identity

San identity is still intact in most parts of Angola where they live. However, the communities are experiencing transition and change, especially the young people. San languages are known and spoken by all the San in Angola, including children. Most San also speak the languages of their neighbours.

In the provinces, San healing traditions are still very much alive, and the traditional healing dance and the use of traditional medicine are frequently practised. For example, in Kipungo, Huíla province, some of the San people heal epilepsy using traditional herbs. Although in some of the areas of Huíla and Kunene these kinds of activities are practised on a reduced scale, they are still an important aspect of San culture and identity

In order to facilitate the transmission of traditional knowledge and skills to the youth and children, in 2008 and 2009, and with financial support from Terre des Hommes, OCADEC is implementing a post-war project that focuses on mobilising elderly people to pass on their experience to the new generation; healing San people from traumatic experiences due to the war or due to discrimination and social exclusion; working with children on developing their skills, for example dance, practising sport, etc. This involves talking about and / or practising various aspects of their culture, including: the trance dance for social healing and/or healing the soul of individuals; beliefs about their rituals; hunting and gathering. An important aspect of the project is to encourage different age groups and social sectors (men, women and children) to talk about their losses and injuries. This takes place in the evenings when people are sitting around the

fire. This project has contributed to revitalizing the culture and self-esteem of the San.

The project also focuses on the San women's daily activities and initiatives, such as basketry. The project also aims to motivate San women to continue and further develop this practice and help them with pricing and selling.

While implementing this project, OCADEC is simultaneously lobbying the government and other non-governmental and civil society organizations to protect and respect the rights of the San children, for instance to prepare and assist them to be able to enter pre-schools.

Engagement of the Government with San people

The provincial government of Huíla is engaged in the following activities:

- Building two clinics and two schools in two different San villages in Kipungo municipality;
- Registration of 1,250 San people for birth certificates and providing IDs to San communities in Kipungo, Kacula, Chibia and Lubango districts;
- Providing clean water by installing three boreholes with hand pumps;
- In December 2008, OCADEC, the UN Food and Agriculture Organization (FAO) and the Government of Huíla began demarcating the ancestral land of the San in Kacula district. The process will demarcate the lands to which the San are entitled, issuing them with a Land Certificate stating their ownership and that they should use the land according to their culture and practices. Currently the San people of this area are waiting for a title deed, which will be issued in April 2009. □

Note

- 1 OCADEC is a non-governmental organisation which was established in conjunction with WIMSA – the Working Group of Indigenous Minorities in South-

ern Africa - in 2001. OCADEC's main objectives include assisting the Angolan San communities with their struggle against discrimination and social exclusion, assisting them with their efforts to obtain political and cultural rights and helping them identify development strategies.

Gaspar Daniel is the administrator of OCADEC Angola.

NAMIBIA

Half a dozen groups in Namibia see themselves as indigenous. The best-known of these groups is the San (Bushmen) who number some 38,000 in Namibia. There are over a dozen different San groups in the country, each speaking their own language and having distinct customs, traditions and histories. Many San today have diversified livelihoods, combining limited hunting and gathering with agricultural and livestock production, working as domestic servants, doing odd jobs in rural and urban areas and engaging in small-scale businesses and services, including farm labor. San are scattered throughout many parts of Namibia, especially in the central and northern parts of the country. San groups include the Khwe, 4,400 people mainly in Caprivi Region and in Tsumkwe West, the Hai//om in the Etosha area of north-central Namibia (11-12,000), and the Ju|'hoansi, who number some 7,000 and live mainly in Tsumkwe District East in the Otjozondjupa Region. 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.

Another group usually recognized as indigenous to Namibia is the Himba, who number some 25,000 and who reside mainly in the semi-arid northwest (Kunene Region). The Himba are pastoral (herding) peoples who have close ties to the Herero, also pastoralists who reside in central and eastern Namibia. Another indigenous group is the Nama, a Khoe-speaking group who number some 70,000. The Nama include the Topnaars of the Kuiseb River valley and the Walvis Bay area in west-central Namibia, a group of some 1,800 people who live in a dozen small settlements and depend on small-scale livestock production, use of *!nara* melons (*Acanthosicyos horrida*), and tourism. The Rehoboth Basters, a group of Afrikaans-speaking people

who number 35,000 and who reside in the south of Namibia also claim indigenous identity. Taken together, the indigenous peoples of Namibia represent some 8% of the total population of the country.

Namibia does not have any national legislation that deals directly with indigenous peoples and the Namibian Constitution does not mention indigenous peoples. The Office of the Prime Minister has a San Development Program aimed at helping San citizens as a poverty-stricken minority. Namibia voted in favour of the Declaration on the Rights of Indigenous Peoples, which was adopted by the United Nations General Assembly in New York on September 13, 2007.

Land and resource rights issues

Sizable numbers of indigenous people in Namibia are landless, poverty-stricken and have high rates of unemployment. Indigenous peoples are found in both rural and urban areas in the country. A substantial proportion of them resides on land that was designated in the past as commercial or private farms, where they work as farm laborers and domestic servants. Indigenous peoples are also found in the communal areas of Namibia, which make up approximately 27% of the country's surface area of 824,000 sq km. An important trend affecting the indigenous peoples of Namibia, including the Himba of Kunene Region, is urbanization, the impacts of which include the loss of cultural traditions, increased involvement in the cash economy, and greater social and economic stratification.¹

The only parts of Namibia in which local people can be granted customary rights, and where they can have some control over natural resources, are in those areas designated as conservancies and community forests under Namibian government legislation.² In the Otjozondjupa Region there are currently two San majority conservancies: one is the Nǀa Jaqna Conservancy in Tsumkwe District West; the other is the Nyae Nyae Conservancy in Tsumkwe District East. The Nǀa Jaqna Conservancy is the largest communal conservancy in Namibia and has

a resident population consisting largely of !Xun, Khwe, Hai//om, and Ju/'hoan San along with some Kavango and Herero families.

In 2008, the Namibian Government continued to focus attention on achieving a more equitable land distribution through a land allocation and resettlement scheme that was aimed at giving the historically disadvantaged majority (mainly Africans) access to some of the commercial land that in the past had largely been owned by whites. In 2008, part of the land in Tsumkwe District West, although already gazetted as a conservancy in 2003, the Nǃa Jaqna Conservancy, was designated as prime land for agricultural resettlement by the Ministry of Lands and Resettlement (MLR). There was considerable debate about this land zoning change in 2008, and most indigenous peoples opposed it as they feared that it would mean that outsiders would be brought onto their land to establish farms instead of their being given rights over farmland themselves.

Indigenous farm workers, who numbered some 30,000 of the total 220,000 farm workers and their dependents in Namibia in 2008, continued to face uncertainties. Indigenous farm workers are often the last ones hired and the first ones fired in times of economic uncertainty. Land reform initiatives in 2008 provided inadequate coverage for farm workers, some of whom were expelled from farms that they had worked on for many years.

One of the issues facing indigenous peoples in Namibia and other parts of southern Africa in 2008 revolved around intellectual property rights, including the right to benefit from high-value plants such as Devil's Claw and *Hoodia gordonii*, a succulent that is believed to possess significant medicinal properties affecting hunger and thirst and which could thus potentially serve as a kind of diet drug that would generate enormous profits. Indigenous groups and their lawyers continued to refine the agreements that they had made with the Hoodia Growers Association and other organizations in the region in order to ensure fair distributions of benefits from the sale of Hoodia products.³

Tourism, dams and protected areas

Tourism represents one of Namibia's most important sources of income, along with mining, manufacturing, agriculture and fishing. In-

mili. In 2008, there were also four community-owned campsites and two so-called cultural villages in the East Caprivi Region.⁴

Another concern of indigenous peoples in 2008, notably the Himba in Kunene Province, was the possibility that the Epupa Dam on the Kunene River, a key area of Himba land, would go forward.⁵ The dam, if it is indeed built, will destroy the Epupa Falls, sacred to the Himba, flood at least 17,500 hectares of permanent grazing land and impact another 70,000 hectares of grazing used for drought relief purposes, also inundating some 160 Himba graves. These graves are far more than burial places – they are the focal points of Himba belief systems and religious ceremonies. They serve as symbols of identity, markers of social relationships and connections to their ancestors.

Progress in indigenous peoples' rights in Namibia in 2008

Because many of the indigenous groups of southern Africa remain unrecognized in the nation-states in which they reside, they are seeking to organize themselves and to lobby in defense of their human rights. There were some notable achievements in the area of indigenous peoples' rights and well-being in Namibia in 2008. Notable among the new projects in 2008 was Foxfire in the Kalahari Project sponsored by the Kalahari Peoples Fund and local non-government organizations such as the Nyae Nyae Development Foundation of Namibia. In this project, a high-speed satellite-based internet connection was created in Tsumkwe in north-eastern Namibia. The heritage recording and story transcriptions are done by 10 Ju/'hoan trainees, and they include oral histories, fables and discussions with elders.

The Kalahari Peoples Network (KPN) Project also began in 2008.⁶ This project is run through local schools with support from non-government organizations and the Kalahari Peoples Fund. This project's two main goals are: (1) to provide a networking site and opportunity for creative expression by San and other peoples who have access to the internet through schools and community organizations, and (2) (eventually) to provide a comprehensive site for primary, secondary and tertiary educational materials on the San, to which San themselves will have input.

On July 3, 2008, the Kalahari Peoples Net website was launched by its Cape Town editor in Windhoek, Namibia, and on July 23 it was launched by the KPN editor in the remote area of Tsumkwe, Namibia. More than 20 San schools and community organizations in Namibia, Botswana and South Africa were notified of the services to be provided by the new website, and several of them had by launch time provided updates about their work, notifications about meetings and training opportunities, pictures of community members, heritage materials and other items. One exciting focus of the update from Tsumkwe, Namibia, was news from the Tsumkwe Transcription and Dictionary Update Projects, complete with recent essays by San people in both their mother tongue, Ju/'hoan, and in English.

Towards human resource development and training

On 23 May 2008, a San Arts and Crafts exhibition was held in Omaheke in which San from many groups in Namibia and Botswana took part. Called "the Song of the Shaman", the exhibition included arts, crafts and dance in which women, men and children participated. This kind of event represents an important means of instilling cultural pride among indigenous peoples while at the same time enabling people to generate income and share knowledge about material culture and practices.

In 2008, the San Development Program, which is tied into several different ministries in the Government of Namibia and managed out of the Deputy Prime Minister's office, had a budget of N\$300,000 (US\$46,000) for bursaries and small projects. Training programs were sponsored, including one for Khwe in Caprivi, 13 members of whom had a course in bee-keeping and honey production. Funds are used by the office to help launch small-scale businesses among San with an eye to alleviating poverty and enhancing livelihoods. In December 2008, Deputy Prime Minister Liberthine Amatila presented tour guide certificates to 24 San men and women from the two conservancies in Tsumkwe District who had been trained with support from the Working Group of Indigenous Minorities in Southern Africa (WIMSA) and the Namibia Nature Foundation (NNF).

Libertine Amatila also opened the newly-constructed Nǃa Jaqna Conservancy office in Mangetti Dune. As she put it, "I think within our program of San development, we are moving forward now."⁷

Other indigenous peoples-related projects in Namibia included the following: 1) protection of water installations from elephants in Cunene and Tsumkwe Districts with funds from the European Union and the Kalahari Peoples Fund; 2) an education project for Topnaar in the Kuiseb Valley of Namibia—a group of some 1,800 Nama people who live in a dozen small settlements and depend on small-scale livestock production, and tourism; 3) a Tracking Academy held in Tsumkwe aimed at providing training so that local people can get jobs in the tourism industry, and 4) provision of education and training in the Khwedam language to Khwe children in the Caprivi Region and the launching of a new Khwe language primer in 2008.⁸

Efforts were made to deal with the issue of Hai//om families that settled in the vicinity of the Etosha Park employees' area inside the boundaries of Etosha National Park, one of the premier national parks in southern Africa. Originally, the Hai||om were forcefully evicted from their ancestral land in the Etosha National Park in 1953. In 2008 discussions were held between the Hai//om and the Government of Namibia about setting aside two farms adjacent to the Park where the Hai//om could be resettled and could develop conservancies and engage in local-level development activities. The resettlement had yet to take place by the end of the year but the Millennium Challenge Corporation (MCC), a U.S. based development organization, was planning for an assessment of the situation in early 2009 in conjunction with the Namibian Government.

Poverty, climate change and HIV/AIDS

Namibia, like other countries in southern Africa, was seriously affected by the economic downturn in the latter part of 2008. Fewer tourists were visiting Namibia, and community-based tourism operations declined as a result. There were also indications that climate change was having negative impacts on agricultural and livestock productivity,

fisheries, and wild animal and plant populations, which in turn had effects on local incomes and employment.

HIV/AIDS was on the increase among virtually all of the indigenous populations in Namibia in 2008. It was estimated that the AIDS prevalence rate for San living around Tsumkwe was 10-12% and rising.⁹ In the country as a whole, there were some 200,000 people living with HIV as of July 2008.¹⁰ At the national level, efforts were being made by the Government of Namibia's National Coordination Agency (NAC), along with various non-government organizations and international agencies, to cope with the AIDS crisis. □

Notes

- 1 **Stephanie Hanes, 2008:** Urbanization Threatens Namibia Traditional Himba Culture. *Christian Science Monitor*, February 5, 2008. <http://www.csmonitor.com/2008/0205/p20s01-woaf.html>
- 2 Conservancies in Namibia are locally planned and managed multipurpose areas on communal land in which land users have pooled their resources for wildlife conservation, tourism and wildlife utilization. Conservancy members are granted wildlife resource rights under Namibia's *Nature Conservation Amendment Act of 1996*.
- 3 Axel Thoma, Roger Chennels, personal communications, 2008.
- 4 Data obtained from the Ministry of Environment and Tourism, Namibia, www.met.gov.na/maps/attractions.htm
- 5 See **Peter Tarr, 2007:** Epupa Dam Case Study. *International Journal of Water Resources Development* 23(7):473-484.
- 6 See www.kalaharipeoples.net
- 7 See the *Namibia Economist*, Friday, December 19, 2008 – Thursday, January 8, 2009, Volume 22, No. 5.
- 8 For a summary of some of these activities, see the websites of the Kalahari Peoples Fund (www.kalaharipeoples.org) and the Working Group of Indigenous Minorities in Southern Africa (www.wimsanet.org).
- 9 Estimate from Richard Lee of the University of Toronto and from Health Unlimited, Tsumkwe, Namibia, 2008.
- 10 **UNAIDS, 2008:** *Namibia Country Situation July, 2008*. New York: UNAIDS.

Robert K. Hitchcock is Professor and Chair of the Department of Anthropology, Michigan State University, East Lansing, Michigan, USA and a member of IWGIA's Board. **Megan Biesele** is Director of the Kalahari Peoples Fund, Austin, Texas, USA. **Ryan T. Klataske** is a graduate student in anthropology at Michigan State University. His research currently focuses on

*Namibia and includes social and environmental interactions of conservation, community-based natural resource management, and issues of land use and land rights. **Adrienne M. Daggett** is a post-graduate archaeology student in the Department of Anthropology at Michigan State University who worked in Botswana and Namibia in 2008.*

BOTSWANA

The Botswana Government does not recognize any specific groups as indigenous to the country, maintaining instead that all its citizens are indigenous. There are, however, peoples in Botswana who consider themselves to be the country's indigenous people, including the San (known in Botswana as the Basarwa). As of July 2008, the San, who are made up of dozens of distinct groups, each with their own language, history and traditions, numbered some 52,000. These groups include the Ju/'hoansi, Bugakhwe, //Anikhwe, Tsexakhwe, !Xoo, Naro, G/wi, G//ana, Kua, Tshwa, Deti, †Khomani, †Hoa, =Kao//'aesi, Shua, Danisi, and /Xaisa. The vast majority of San in Botswana today combine small-scale agriculture and livestock raising with rural industries and a small amount of hunting and gathering. In many ways, they are some of the poorest and most marginalized members of Botswana society. Living in some 70 small settlements scattered across the country, as well as in towns and on freehold farms, San have argued for greater access to land and resources. Other groups in Botswana who see themselves as indigenous include the Nama, Khoesan-speaking people who number approximately 1,500 and who reside mainly in the south-western part of the country, and the Balala, who number 2,200 and who live in the southern part of Botswana, many of them on the Molopo Farms in Southern District. The percentage of people in Botswana who consider themselves to be indigenous is 3.4%. There are no specific laws on indigenous peoples' rights in Botswana but the country has voted in favor of the Declaration on the Rights of Indigenous Peoples in 2007.

The Universal Periodic Review of the human rights situation

In early December 2008, the Government of Botswana presented its national report on the human rights situation in the country to the 3rd session of the Universal Periodic Review (UPR) of the United Nations Human Rights Council. In the discussions that followed Botswana's presentation, Botswana Government representative and Minister of Defense, Justice and Security, Mr. Dikgakgamatso Seretse, responded to written questions put forward by various countries concerning Botswana's human rights situation and the treatment of minorities. Mr. Seretse said that there was no discrimination against ethnic minorities in Botswana. He went on to say that the Botswana Government had implemented the Central Kalahari Game Reserve (CKGR) Court Order fully. He also pointed out that additional consultations were on-going with the residents and former residents of the reserve in late 2008 and early 2009 and efforts were being made to reach amicable solutions. As of the end of 2008, such amicable solutions had yet to be reached.

Among the many recommendations made by the Working Group of the UPR, Botswana was asked to take immediate action to 1) ensure respect for the rights of the indigenous people living in the areas of interest to companies active in the diamond business; 2) provide access to land, and support for the residents of the Reserve, as specified in the United Nations Declaration on the Rights of Indigenous Peoples, 3) work with the land boards of the various districts in the country to ensure equity in land allocation among all applicants for residential land, arable land, grazing land, water sources and business sites; and 4) pursue a policy of mother-tongue language education in conjunction with the national languages of Setswana and English.¹

Land and resource rights

A major challenge for the San and Bakgalagadi in 2008 was the failure of the Government of Botswana to implement the decisions that had



been reached in the Botswana High Court legal case involving the rights of residents of the Central Kalahari Game Reserve (CKGR), which was concluded on 13 December 2006. Although in 2006 the Botswana High Court judges awarded the former occupants of the game reserve the right to reoccupation as well as the right to hunt in the reserve, government officials have continued to prevent people from moving back and have, on several occasions, arrested those caught hunting within the bounds of the reserve. Such has been their frustration that, in November 2008, a group of San appealed to Pope Benedict XVI to support their cause. One person said, "We beg the Pope to help, to pray for us so that government changes its attitude towards us and

respects our rights as indigenous peoples of this land.”² In 2008, small groups of people quietly returned to the reserve, where they tried to make a living as hunters and gatherers, supplementing their subsistence with food they brought with them or which they purchased in the settlements on the peripheries of the reserve.

Despite the recommendation of the Botswana High Court that the former residents of the CKGR be allowed access to Special Game Licenses, subsistence hunting licenses had yet to be implemented as of the end of 2008. On 3 November 2008, President Ian Khama said in his State of the Nation address to the Botswana Parliament: “The notion on the part of some outsiders that any segment of our society wishes to subsist today on the basis of a hunter-gathering lifestyle is, however, an archaic fantasy.”³ The lack of legal clarity and understanding of the subsistence hunting issue remains a sore point among the indigenous peoples of Botswana.

Today, there are some 75 to 100 adults and children in the Central Kalahari Game Reserve. They are facing major constraints because of the lack of water as well as regular arrests of individuals for alleged violations of fauna conservation laws. There was also a huge bush fire in the Central Kalahari in September 2008 that destroyed many of the trees, shrubs and grasses on which these people depend.

In 2008, the Government of Botswana allowed private tour companies to take sizable numbers of international visitors into the Central Kalahari. G/wi, G//ana, and Kua San and Bakgalagadi have pointed out the irony of large numbers of wealthy foreign tourists spending time in the Central Kalahari, seeing animals and magnificent vistas, driving around on delicate pan surfaces and fossil river beds and drinking iced water when they themselves are not allowed to live, have access to water or utilize the resources there.

Diamond mining to take place after all

The debate relating to the Central Kalahari Game Reserve centered partly on the reasons why the Government of Botswana chose to relocate people outside of the reserve in the period between 1997 and 2002. Botswana Government spokespersons explicitly rejected the charge

that people were relocated because of diamond mining, arguing that relocation was done for environmental conservation purposes, in order to facilitate development and poverty alleviation, and to ensure adequate provision of social services.

While the Botswana Government maintained throughout the lengthy High Court trial (2004-2006) that there were no plans to develop mines in the Central Kalahari, it was announced on 17 November 2008 that a mining company, Gem Diamonds, would be developing a diamond mine at Gope in the south-eastern part of the reserve, to be operational by 2010. Gope used to be a traditional area of the Tsila, a San group, and was also occupied in the past by G/wi, G//ana, Kua, and Bakgalagadi.

Prior to this announcement, an environmental impact assessment (EIA) had been carried out in 2008 by a South African company, Marsh Environmental Services, on behalf of Gem Diamonds and the Government of Botswana. The EIA was done in two phases, the first of which was a public consultation and scoping process; the second phase consisted of environmental and social assessments in the field.

The results of this environmental impact assessment were made public in mid-November 2008, and accepted by the Botswana Government. One major concern regarding the EIA that was expressed by non-government organization representatives and members of the public was that it was carried out by an environmental company that had individuals working for the mining company, which they saw as a direct conflict of interest. Numerous former residents of the reserve said that they were not consulted either by the company or the government. Finally, concerns were raised about the accuracy of some of the environmental and socio-economic data in the EIA reports.

Community-based natural resource management and livelihoods

Other indigenous groups in Botswana also faced challenges throughout the year. To take one example, the 600 Ju/'hoansi, San, and Mbanderu of /Kae/kae in western Ngamiland, on the Botswana-Namibia border, were told in May 2008 that it was likely that the area they

had gained rights over in 1997 would be re-zoned for photographic safari purposes.

The /Kae/kae Tlhabololo Trust, a conservation and development organization that is the oldest of its kind in Botswana, was in 1997 granted access to two community-controlled hunting areas by the North West District Council and the government's Department of Wildlife and National Parks. These two areas, Ngamiland (NG) 4 and 5, cover some 16,916 square kilometers in north-western Botswana, an area rich in natural, cultural and human resources. In the latter part of 2008, the Ju/'hoansi, Mbanderu and other people in /Kae/kae expressed concerns at the proposed land use change, which they felt would limit hunting and gathering and access to the funds of the safari hunting operations that had earned the /Kae/Kae Tlhabololo Trust and its members as much as 1,000,000 Pula (approximately US\$250,000) over the past 5 years (2003-2008). There were also fears on the part of /Kae/kae residents that the G/wihaba Caves (also known as Drotsky's Caves), which lie inside NG 5, were going to be opened up to larger numbers of tourists and the areas around the caves zoned for conservation purposes, possibly as a World Heritage Site similar to the Tsodilo Hills to the north, thus reducing access on the part of local people, most of them Ju/'hoan San, to an area that had long been important to them.

Fears of resettlement

Many local people, the majority of them San, Bakgalagadi and other minority groups, have in the past been required to relocate out of areas where veterinary cordon fences were built. These fences were established in order to prevent livestock and wildlife movements and this way prevent the spread of livestock disease. In 2008, debates continued as to whether to increase the numbers and distribution of veterinary cordon fences, which in the past were documented as having had negative impacts on wildlife populations and thus on the subsistence security and incomes of rural communities.

In 2008, indigenous and other residents of commercial ranching areas in Central, Kgalagadi, Kweneng, and North West Districts had to

move out of areas that were leased for commercial livestock production. People also lost jobs on ranches as the owners downsized their labor force. In the area between the Kgalagadi Transfrontier Park in south-western Botswana and the Central Kalahari Game Reserve, the on-going plans to create the Western Kgalagadi Conservation Corridor (WGCC) continued to generate concerns that San and other people would be required to move out of the government settlements that were created for them in the 1970s and 1980s. Kgotla (council) meetings were held in several of the Corridor communities by government officials in 2008, at which people were told that it was likely that they would be relocated, something that local people were vehemently opposed to.

Language, education, gender and health issues

A serious educational obstacle for San and other linguistic minority students and their parents is the Botswana government's language policy. An important part of Botswana's state-building strategy since independence in 1966 has rested upon the identification of all of its citizens with the Batswana ethnic identity. The building of this national identity has relied heavily upon the promotion of Setswana as the primary language of its citizens. Accordingly, the first years of schooling are taught in Setswana before switching to English as the medium of instruction. There are no governmental provisions for mother-tongue primary education for minority-language children in Botswana. As a result, some minority children face difficulties in school, and drop-out rates are high. It is for these reasons that San and other minority groups would like to see the Botswana Government change its language and education policies, aiming towards promoting cultural and linguistic diversity. At least one advocacy group, RETENG, a multicultural coalition of organizations devoted to the promotion and preservation of the linguistic and cultural diversity of Botswana, exists to champion this cause. In September 2008, RETENG spokespersons voiced protests at the failure of the Botswana state media to provide programmes in indigenous languages.⁴

While women's rights have been officially recognized in Botswana, there are still significant challenges to be overcome. Indigenous women continue to face severe constraints in terms of access to employment, credit and education. Gender-based violence, including beatings and rape, is pervasive in Botswana, and indigenous women tend to be the targets of this violence to a greater degree than is the case among other groups, according to non-government organizations in Botswana.⁵ In addition, many of the children of indigenous people in Botswana, unlike the members of other groups, are sent to remote area primary boarding schools, where girls and boys are sometimes mistreated by teachers and older students. In response to concerns such as these, in June 2008 a gender-based violence project was launched by three partner organizations in Botswana, Emang Basadi, Bana ba Letsatsi and Women against Rape in Maun.⁶

Indigenous peoples would like to see the Botswana Government address the serious health issues that they face more directly, especially HIV/AIDS, tuberculosis and malaria. These diseases are increasing more rapidly among indigenous peoples than other groups, who have greater access to health services and to Anti-Retroviral drugs (ARVs) and other kinds of medication. According to a 2008 report, around 300,000 children and adults aged 49 and under in Botswana are HIV positive; however, as of September 2008, only around 117,000 people living with HIV had received ARV treatment.⁷ It was estimated by one NGO representative in Botswana that less than a quarter of indigenous individuals with HIV had received ARVs. Indigenous peoples in Botswana continue to maintain that they should be treated in the same way as everyone else in the country. □

Notes

- 1 Both the official report and the Draft Report of the UPR Working Group are available on the UPR website: <http://www.ohchr.org/EN/HRBodies/UPR-Main.aspx>
- 2 <http://allafrica.com/stories/200812011247.html>
- 3 **Khama, Seretse Khama Ian, 2008:** *Empowering the Nation through Democracy, Development, Dignity, and Discipline*. State of the Nation Address to the Opening of the Fifth Session of the Ninth Parliament, Gaborone, 3 November 2008. Gaborone: Republic of Botswana.

- 4 <http://allafrica.com/stories/200809260138.html>, see also <http://www.reteng.org>
- 5 Many of these issues were addressed in discussions held at meetings in Botswana, the Permanent Forum on Indigenous Issues of the United Nations and at a symposium entitled 'Southern Africa and the UN Declaration on the Rights of Indigenous Peoples: How Can International Mechanisms Work in Local Communities and Contexts?' organized by Jennifer Hays of the University of Tromsø, Norway and held at the 107th annual meetings of the American Anthropological Association (AAA), San Francisco, California, USA on November 21, 2008. See also **Physicians for Human Rights, 2007: Epidemic of Inequality: Women's Rights and HIV/AIDS in Botswana and Swaziland. An Evidence-Based Report on the Effects of Gender Inequality, Stigma, and Discrimination.** Boston: Physicians for Human Rights (PHR); **Ida Susser, 2009: AIDS, Sex, and Culture: Global Politics and Survival in Southern Africa.** Hoboken, New Jersey: Wiley-Blackwell.
- 6 This project, which is entitled "Reducing Gender-Based Violence: Making the Invisible Visible" receives financial support from the European Commission. <http://allafrica.com/stories/200806120925.html>
- 7 **UNAIDS, 2008: Report on the Global AIDS Epidemic.** Cited on <http://www.pepfar.gov/press/81551.htm>

Robert K. Hitchcock is Professor and Chair in the Department of Anthropology at Michigan State University, East Lansing, Michigan, USA and is a Board member of the International Work Group for Indigenous Affairs. Adrienne Daggett is a postgraduate archaeology student in the Department of Anthropology at Michigan State University who worked in Botswana and Namibia in 2008. Wayne A. Babchuk is a lecturer in anthropology in the Department of Anthropology and Geography, University of Nebraska-Lincoln, Lincoln, Nebraska, USA.

SOUTH AFRICA

The various First Nations indigenous groups in South Africa are collectively known as Khoi-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 includes 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.

As the awareness of heritage and history increases, so more are people embracing their African heritage and identifying with their San and Khoekhoe or KhoeSan identities. San, Khoekhoe and KhoeSan are used interchangeably depending on the context.

South Africa's total population is 47 million, with the indigenous groups comprising less than 1%. In South Africa today, the Khoi-San communities exhibit a range of socio-economic and cultural lifestyles and cultural practices. First Nations indigenous San and Khoekhoe peoples are not recognized in the 1996 Constitution but it does promise redress for past racial discrimination and affirmative action.

As this article documents, the challenge for the First Nation indigenous San and Khoekhoe peoples of South Africa is not only a lack of effective government support and seriousness to implement and devise systems and procedures to address the San and Khoekhoe peoples' issues but also the role of academic institutions in KhoeSan research and development as well as the fragmentation and disunity



of KhoeSan communities and structures. Fourteen Years into the new dispensation, with its human rights enshrined Constitution and most of the United Nations instruments for human and indigenous rights signed, a concern now arising amongst the San and Khoekhoe leaders and activists is the ill-capacity of their communities in terms of using these rights-based mechanisms as well as the lack of a unifying umbrella NGO. The challenge is therefore whether the San and Khoekhoe peoples are able to effectively and sustainably exercise their rights to self-determination, control and restitution of their lands and resources, cultural integrity and their right to development.

San and Khoekhoe engagements with relevant government institutions

Since the new dispensation in South Africa and the adoption of a human rights enshrined Constitution, various commissions have been established as agents for social change, promoting constitutional democracy and taking up the challenge of changing the racist and segregationist ideals of the recent Apartheid past into a nation unified in its diversity and embracing its Africanness.¹ San and Khoekhoe leadership and activists have been actively engaged in the programmes of these institutions. As mentioned in *The Indigenous World 2008*, the San and Khoekhoe peoples are “expanding their areas of political dialogue”.

The National KhoeSan Council (NKC) and the Department of Provincial and Local Government (DPLG)

The National KhoeSan Forum, later Council, was formed in 1999 as the official liaison body of the KhoeSan peoples to negotiate their Constitutional accommodation in terms of historic, cultural and economic redress. After years of deliberations and negotiations, Chief Jean Burgess argues that the focus of the negotiations was strategically shifted from issues concerning their constitutional accommodation to legislation addressing KhoeSan leadership. As was described in the previous Indigenous World article, the leadership issue caused great fragmentation amongst KhoeSan organisations.

In 2008, the National KhoeSan Council held a second (since its establishment) election of office bearers and representatives of the five recognised groupings, namely, the San, the Griqua, the Korana, the Nama and the Cape Khoekhoe. In collaboration with the National KhoeSan Council, the DPLG developed a Draft Document depicting the criteria for KhoeSan leadership, which was also handed to cabinet mid-2008. A national process of consultation with the KhoeSan communities was to be implemented but, once again, this was pushed

aside. Many argue that it is due to the current national party's political disruptions.

It is important to note that it is the responsibility of the DPLG to call and arrange the meetings of the NKC. Hence the power of the NKC is sorely limited. Members of the NKC have often indicated their frustration at the scant regard the DPLG has for the NKC process. According to Chief Joseph Little, the elected chairperson of the NKC, confirmation of meeting dates is dragged out. Many a time, discussions held between the liaison body and DPLG are regarded as confidential, and not for the broader KhoeSan arena. This absence of information and reporting regarding the liaison process has been a major cause of frustration for KhoeSan activists. It seems that government has doubts as to who the KhoeSan peoples are and, in so doing, violate the KhoeSan peoples' right to self-determination and self-identification.

A new development which could be a result of the frustration KhoeSan groups are feeling is the establishment of a KhoeSan political party, namely the KhoeSan Aboriginal and Other Movements, in January 2008 in Upington, Northern Cape. They intend to take part in the next national elections, which should take place around April 2009.

San and Khoekhoe attempt to re-establish a unifying umbrella body

On 27 January 2008, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities in South Africa (CRL Commission) held a conference called the "National dialogue on diminished heritage of the KhoeSan Peoples of South Africa". There was much controversy amongst the KhoeSan organisations concerning the confusion regarding the invitation list of the organisers, namely the CRL Commission. Individuals were selectively chosen and did not properly represent the KhoeSan community in South Africa. As a result, the conference made the recommendation that: "This conference undertakes, with the support and advice of the CRL Rights Commission, to initiate the formation of a legitimate Khoe and San unifying body." An Interim Committee was elected from the

San and Khoekhoe present at the conference, with a mandate to organise a national inclusive KhoeSan Conference.

The interim committee met twice. The committee received no financial or other support from the CRL Commission, however, and the proposed inclusive² conference required to establish a legitimate unifying body has not been achieved. The committee has since been constituted and is now called the National Khoi-San Conference Facilitating Agency.

In the Northern Cape Province, a movement concentrating on KhoeSan Land restitution is well underway. The organisation, called the United Griqua,³ boasts a membership of 10,000 and their main aim is to address land restitution.

The National KhoeSan Language Board

The Pan South African Language Board of South Africa has established language boards for all the 11 official languages, as well as KhoeSan and Sign language. The National KhoeSan Language Board is currently engaged, in collaboration with representatives from Namibia and Botswana, as well as language specialists, in creating a Khoekhoegowab dictionary.⁴

The National Heritage Council of South Africa

During 2008, the National Heritage Council⁵ held consultative conferences in each province with stakeholders. San and Khoekhoe representatives made meaningful input in most provinces. For example, the Free State Griekwa and Koranna raised the issue of the promotion, development and practical implementation of the revitalisation of Khoekhoe culture and language. They reiterated that although the President had made a call for KhoeSan cultural upliftment, a great deal more had yet to be addressed in order to do justice to this call. They called for a specific San and Khoekhoe desk within government departments, especially the Sport, Arts and Culture Department, as well as the Education Department, and that a National Policy for San and

Khoe language development should be devised that would direct policy development at provincial level.⁶ In the end, the Draft Transformation Charter included a recommendation that KhoeSan issues receive special attention as their heritage is the most eroded in South Africa. Developments in this regard have yet to take place.

The Sarah Bartmann Reference Group

A Reference Group was formed in 2002 to advise the Minister of Arts and Culture on the Sarah Bartmann reburial and legacy.⁷ Sarah Bartmann's (a Khoekhoe ancestor) remains were repatriated on 3 May 2002. Sarah Bartmann was taken to Europe in the early 1800s to be portrayed as a freak of nature and, perhaps, within the discourse of Social Darwinism, the missing link between apes and humankind. European scientists studied her body to justify scientific racism. Her genitals and brain were preserved in jars, with her skeletal system intact, perched and displayed like a prehistoric animal in a museum in France. It was still on display as we entered the 21st century.

Since her return, the Group has met to discuss this legacy and the desires of the KhoeSan peoples for the erection of a monument in Cape Town and an Information Centre in Hankey. The Council is currently engaged in establishing a Sarah Bartmann Centre of Remembrance in Hankey, Port Elizabeth.⁸ The National Department of Arts and Culture is preparing for the official launch of the Centre Project on 8 March 2009.

San and Khoekhoe Academic Research and Development

As reported in *The Indigenous World 2008*, a Unit for KhoeSan Studies was established in 2007 in the Anthropology Department at Free State University (UFS) in Bloemfontein. Two indigenous academics who were employed in the Unit for Khoekhoe and San Studies have had their contracts terminated because they dared to speak out against the abusive behaviour of the project manager.

In 2007, the UFS established a Collaboration Agreement with Tromsø University (Norway). This agreement resulted in a three-year grant programme funded by the South African-Norwegian Research Programme and the National Heritage Council of SA for the KhoeSan Culture and Memory Project based at the UFS. Whilst an indigenous academic was pivotal in acquiring the agreement and funding, her contract was not extended to the at least three years she was expecting. Engagement in these projects highlighted the powerlessness of indigenous employees and communities in research projects about them. For example, controversy arose between the indigenous academics and the KhoeSan community in Bloemfontein on the one hand and the non-indigenous academics in the department on the other hand regarding a 50% representation of KhoeSan on the Board of the Unit for Khoekhoe and San Studies. The non-indigenous academics argued that there were not enough “experts” within the KhoeSan communities. This highlighted the hierarchy that exists between academic and indigenous knowledge.

The two indigenous academics were actively involved in the KhoeSan Culture and Memory Project as well as the KhoeSan Early Learning Pilot Project. When the indigenous academics’ contracts were not renewed, The KhoeSan Early Learning Centre Pilot Project was consequently terminated and all the work which the indigenous academics and the target KhoeSan community had been implementing went to ruin.

Richtersveldt Land Claim

Since 1994, some San and Khoekhoe communities have received land and compensation for losses. The management of compensation funds by the indigenous peoples has not been totally successful, unlike the Richtersveldt story. The Richtersveldt Community Property Association (CPA) accepted R190 million (about 19 million USD) in compensation for loss of land from the government. This payment is being made in three instalments of approximately R63 million (6.3 million USD). To date, two payments have been made. The unique part of this management plan is that the money is placed

in a fixed investment and the community only uses the interest earned.

According to Ms Emily Smith, a member of the CPA, this is a unique way of maintaining sustainability for their descendents. She explained that 60% of the interest is invested in capacity-building programmes for the community and 40% is shared amongst the community's 3,000 members. The CPA is in the process of drawing up a 10-year strategic business plan in which all the stakeholders (the municipality, the mining companies, government institutions established to assist in social development and, of course, the community) are involved. She says that the plan for managing the payout is unique and a "good deal" as they move towards total ownership and sustainability of their natural resources.

However, a shadow is now looming over their rights to the land and minerals. In 2003 the Richtersveldt community was awarded their land and mineral rights. But in 2004 the government decreed that all mineral rights belonged to the state, causing obvious uncertainty regarding the court's decision in favour of the Richtersveldt community's land claim.

Fragmented KhoeSan community

In conclusion, the San and Khoekhoe peoples have come a long way since 1994. The call for a National San and Khoekhoe Conference has become urgent as they seek empowerment through unity. At the CRL's Conference in January 2008, the conference expressed a dire need to reassess the movement and effectively address the fragmentation of the KhoeSan community. Currently many feel isolated and un-informed and thus fall prey to business ventures such as tourism that do not necessarily empower them. The current disunity and fragmentation further allows provincial and local government as well as academic institutions and the developers to consult with unsuspecting individual members of the San and Khoekhoe community and then claim to have consulted or engaged widely. It also allows individuals to pose as elected or delegated and mandated representatives

or leaders of San, Khoekhoe or KhoeSan peoples of South Africa on both national and international platforms and arenas. □

Notes

- 1 **De Wet, Priscilla, 2006:** A case study of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic communities in SA with specific reference to the emerging Khoe and San indigenous peoples in SA. Thesis submitted for the Degree of Master of Philosophy in Indigenous Studies, Faculty of Social Sciences, University of Tromsø, Norway.
- 2 Inclusive refers to all San and Khoekhoe organisations and civil society or community-based structures
- 3 www.khoiandsan.com
- 4 The dictionary is a list of Nama words translated into Afrikaans.
- 5 www.nhc.org.za
- 6 Mr Anthony Petersen, February 2008: The Free State Khoekhoe and San. Report presented to the National KhoeSan Language Board. Upington. South Africa.
- 7 The group comprises a KhoeSan representative (Chief Jean Burgess), a Gender Equity Commissioner (Dr Yvette Abrahams), a heritage expert (Prof Juttie Bredekamp), the poet (Ms Dianne Ferus), a geneticist, a human rights practitioner and three female ANC Veterans. Dr N Swartz, a KhoeSan leader, was co-opted into the group from the Hankey community.
- 8 Hankey is the little town on the Gamtoos River where Sarah Bartmann's remains were respectfully interned.

Priscilla De Wet is an indigenous academic and KhoeSan activist in South Africa. She has a Masters in Indigenous Studies from the University of Tromsø. Her interest is in the bridge between academic institutions and communities working on indigenous language and cultural revitalisation and rebuilding. She is currently engaged in a Rock Art project concerning ancient knowledge in contemporary knowledge production.

PART II

INTERNATIONAL
PROCESSES

THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: ITS FIRST YEAR

In 2007, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was formally adopted by the United Nations as a comprehensive international standard on human rights. The Declaration emphasises the collective rights of indigenous peoples. It elaborates upon existing international human rights norms and principles as they apply to indigenous peoples. It catalogues the kinds of violations that have historically plagued and, sadly, continue to plague indigenous peoples, such as attacks upon their culture, their land, their identity and their own voice. In short, the Declaration lays out minimum standards for the survival, dignity and well-being of indigenous peoples.

Human rights law

The Declaration on the Rights of Indigenous Peoples (UNDRIP) newly appears in the jurisprudence of human rights treaty bodies, as a diligent compilation has already noted.¹ The most interesting case was when it was invoked by the Committee on the Elimination of Racial Discrimination (CERD) in relation to the United States, a country that voted against it in the UN General Assembly.

The CERD informed the United States that, regardless of its position on the UNDRIP at the time of its adoption, it now had to take it “as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples”. The Committee stated that this was despite the fact that the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) makes no reference to indigenous issues, because indigenous peoples’ rights are now added by the UNDRIP.²

It is clear that the UNDRIP now forms a part of universal human rights law, regardless of how each state voted in the General Assembly or what their subsequent position is. The human rights treaty bodies must abide by the interpretation and application of the corresponding Convention, as for example the CERD does with regard to the ICERD, but they cannot ignore other human rights instruments in this interpretation and application. The CERD's jurisprudence is actually only binding upon states that have ratified the ICERD, a significant number, certainly (currently 185), but not all. If, in relation to indigenous peoples, this jurisprudence – that of the CERD itself – may now take on a potentially global value, then it is precisely because of the UNDRIP.

Reference should also be made to the 11th General Comment of the Committee on the Rights of the Child (CRC), issued at the start of 2009, as it relates to the rights of indigenous children. "In 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples which provides important guidance on the rights of indigenous peoples, including specific reference to the rights of indigenous children in a number of areas."³ In general, as the CRC categorically indicates, the human rights treaty bodies will need to refer to the UNDRIP, as an integral part of human rights law, whenever dealing with indigenous rights.

Resonance and silence

Albeit without referring expressly to the UNDRIP, the Committee on the Elimination of Discrimination Against Women (CEDAW) is now finally beginning to address the issue of indigenous women, who are particularly vulnerable to discrimination.⁴ In fact, this new concern of the CEDAW may have something to do with the adoption of the UNDRIP. Its spirit can be detected here and there, although a commitment to take it into consideration is, for the moment, rare. There is an exception. The Committee on Economic, Social and Cultural Rights (CESCR) is encouraging Nicaragua to promote and apply "the principles of the United Nations Declaration on the Rights of Indigenous Peoples."⁵

The Human Rights Committee or Committee on Civil and Political Rights (CCPR) is the most important treaty body, with jurisdiction

over not only civil and political rights but also the rights of people belonging to minorities and the right of peoples to self-determination, all in line with the International Covenant on Civil and Political Rights (ICCPR). Although it has obviously already had the opportunity, the CCPR has not expressly taken the novelty of the UNDRIP on board. How come it has not even welcomed it? We shall see later on. Given the importance of the CCPR, I shall devote the final paragraph to this committee.

The most striking case of indifference to the innovation of the UNDRIP is, however, that of the Human Rights Council (HRC), in relation to the Universal Periodic Review (UPR) mechanism in particular. The HRC was decisive in approving the UNDRIP but now it seems to be ignoring it, as if it has already fulfilled its commitment, as if its adoption was the culmination of the process rather than the beginning. The HRC's indifference is not absolute but specifically during the UPR, it pays it no heed.

The specific bodies

The Special Rapporteur on Indigenous Peoples

A couple of weeks following the adoption of the UNDRIP by the General Assembly, the HRC decided to maintain the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and, renewing its mandate, established that it must "promote the United Nations Declaration on the Rights of Indigenous Peoples."⁶ The Special Rapporteur undertakes the new mandate by handling specific cases in such a way as to contribute to forming a true jurisprudence on the UNDRIP. The Special Rapporteur constantly takes the UNDRIP into consideration. Allow me to describe one particular moment that I think noteworthy. I am referring to the Special Rapporteur's report on Ecuador following his visit at the end of May 2008, when that country was in the middle of drafting a new Constitution. In his report, the Special Rapporteur linked the draft Constitution to the UNDRIP in such a way that the constitutional option of a plurinational state, including the indigenous nations in particular, with their own autonomy, found a firm

basis in international human rights law.⁷ This is just one example. The Special Rapporteur is currently providing the most detailed contributions to international jurisprudence on the UNDRIP.

In his first annual report to the HRC, the new Special Rapporteur, James Anaya, presented an analysis of international law on indigenous peoples, in which he highlighted the significance of the UNDRIP. He positioned it in relation to the Human Rights Covenants: "The Declaration affirms in its article 3 the right of indigenous peoples to self-determination, in terms that restate the common provisions of article 1 of the two 1966 International Covenants." He summarised its content thus:

The Declaration affirms rights of a collective character in relation to self-government and autonomous political, legal, social and cultural institutions; cultural integrity, including cultural and spiritual objects, languages and other cultural expressions; lands, territories and natural resources; social services and development; treaties, agreements and other constructive arrangements; and cross-border cooperation.

*The Declaration relates to already existing human rights obligations of States, as demonstrated by the work of United Nations treaty bodies and other human rights mechanisms, and hence can be seen as embodying to some extent general principles of international law.*⁸

The Expert Mechanism on the Rights of Indigenous Peoples

The HRC, however, made no reference to the UNDRIP when specifying the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the successor to the historic Working Group on Indigenous Populations. The resolution establishing the EMRIP is limited to noting the existence of the UNDRIP as a motivation.⁹ At the first session of the EMRIP, in October 2008, the UNDRIP came to life through the speeches of all parties present. The indigenous caucus proposed, and it was agreed, "that the agenda of the Expert Mechanism include a permanent item on the United Nations Declaration on the Rights of Indigenous Peoples."¹⁰

The inaugural speech of the first chairperson of the EMRIP, John Henriksen, was, in turn, unequivocal regarding the importance of the operationalization of the rights affirmed in the Declaration and in mainstreaming them into the Council's work: The Chairperson-Rapporteur stated that the normative framework for the work of the Expert Mechanism included all relevant international mechanisms on the rights of indigenous peoples, including the United Nations Declaration on the Rights of Indigenous Peoples. He added that the Expert Mechanism had an important role in promoting the operationalization of the rights affirmed in the Declaration and in mainstreaming them into the Council's overall efforts to promote and protect all human rights. This is an important statement in terms of the need to raise the awareness of the HRC itself, particularly in the UPR process.¹¹ By exercising its mandate in accordance with the UNDRIP, the EMRIP's contribution to the international jurisprudence that will operationalise the UNDRIP is thus assured.

The Permanent Forum on Indigenous Issues

For its part, the Permanent Forum on Indigenous Issues (PFII) openly raised the very same issue at its seventh session in 2008. The UNDRIP will become a permanent agenda item for all forthcoming sessions. Already on the agenda of the 2008 session, the "implementation of the United Nations Declaration on the Rights of Indigenous Peoples" was included as an agenda item under the section on "Human Rights". Furthermore, the Permanent Forum will apply the UNDRIP "as a key and binding framework" amongst its recommendations. Given the initial reluctant attitude towards the UNDRIP on the part of some UN agencies, the PFII insists: "The Forum urges the Development Group to give priority to the promotion, use and implementation of the United Nations Declaration on the Rights of Indigenous Peoples as the most universal, comprehensive and fundamental instrument on indigenous peoples' rights, and to fully reflect this in the next edition of the Group's guidelines." The reference is to the *United Nations Development Group Guidelines on Indigenous Peoples' Issues*.¹² It is urging that the UNDRIP be taken up in all its wide-ranging value (arts. 38 and 42, both fully cited later).

A message is also openly aimed at the HRC: “The Permanent Forum recommends that the Human Rights Council include the United Nations Declaration on the Rights of Indigenous Peoples as a normative basis for universal periodic review.”¹³ This is something that really must be insisted on in relation to the whole UN human rights system. The Office of the UN High Commissioner for Human Rights offers the most authoritative information on the human rights bodies and instruments. And yet, on its website, the UNDRIP is categorised in a section on the “rights of indigenous peoples and minorities”, alongside the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), despite this website having another section devoted to “the right of self-determination” and despite, of course, the position of the UNDRIP itself.¹⁴

The PFII’s welcoming of the UNDRIP at its seventh session, the first following its adoption, was particularly reflective of its own commitment and of the commitment it expects from all UN members, bodies and agencies with responsibilities in this regard:

The Permanent Forum hails the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly. The 13th of September 2007 is a historic day for the United Nations, indigenous peoples and States and marks the beginning of a new era of renewed partnerships for the promotion and protection of the human rights of all indigenous peoples and each indigenous person around the world. The Forum notes its new responsibility under the Declaration and pledges its commitment to making it a living document throughout its work. The Forum thus invites the international community as a whole, States, indigenous peoples, non-governmental organizations, the private sector, academia and the media to promote the Declaration and apply it in their policies and programmes for the improvement of indigenous peoples’ well-being around the world.

For its part, “the Permanent Forum affirms that the United Nations Declaration on the Rights of Indigenous Peoples will be its legal framework”, in these categorical normative terms.¹⁵ □

Notes

- 1 http://www.forestpeoples.org/documents/law_hr/bases/law_hr.shtml: Ferguson MacKay (ed.), *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of UN Treaty Body Jurisprudence and the Recommendations of the Human Rights Council, 2007-2008*, vol. III, Forest Peoples Programme, 2009, with a brief introduction that offers a good overview.
- 2 <http://daccessdds.un.org/doc/UNDOC/GEN/G08/449/20/PDF/G0844920.pdf?OpenElement>: A/63/18, Report of the CERD, 2008, par. 500.
- 3 <http://www2.ohchr.org/english/bodies/crc/docs/CRC.GC.C.11.pdf>: CRC/C/GC/11, General Comment n° 11 of the CRC, 2009 pars. 10, 29, 45, 52, 58, 66 and 82.
- 4 <http://www2.ohchr.org/english/bodies/cedaw/sessions.htm>: 2008 sessions of the CEDAW, reports on Nicaragua, Sweden, Finland, Canada and Ecuador; F. MacKay (ed.), *Indigenous Peoples and United Nations Human Rights Treaty Bodies*, vol. III, ps. 95, 102, 106 and 108.
- 5 <http://daccessdds.un.org/doc/UNDOC/GEN/G08/456/31/PDF/G0845631.pdf?OpenElement>: E/C.12/NIC/CO/4, Concluding Observations of the CE-SCR, Nicaragua, 2008, par. 35.
- 6 http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_12.pdf: HRC, Resolution 6/12, 2007, par. 1(g).
- 7 <http://daccessdds.un.org/doc/UNDOC/GEN/G08/150/81/PDF/G0815081.pdf?OpenElement>: A/HRC/9/9/Add.1, Report of the SRIP, Addendum: Summary of cases transmitted to Governments and replies received, Annex I, Ecuador, 2008.
- 8 <http://daccessdds.un.org/doc/UNDOC/GEN/G08/149/40/PDF/G0814940.pdf?OpenElement>: A/HRC/9/9, 2008 Report of the SRDHI to the HRC, par. 37, 38 and 41. As an academic, the new special rapporteur is the author of the best consideration of the issue prior to the DRIP: James Anaya, *Indigenous Peoples in International Law*, Oxford University Press, updated ed., 2005.
- 9 http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_6_36.pdf.
- 10 <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/1st/docs/A-HRC-10-56.pdf>: A/HRC/10/56, Report of the EMRIP's President on the First Session, 2008, par. III.28.
- 11 <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/1st/docs/A-HRC-10-56.pdf>: Report on the First Session, par. III.11.
- 12 http://www.undg.org/docs/8646/UNDG_Guidelines_indigenous_FINAL-01FEB08.pdf: United Nations Development Group Guidelines on Indigenous Peoples' Issues, 2008, ps. 9-10, representing the position initially also taken by the UN Inter Agency Support Group on Indigenous Peoples' Issues, the *development* and *indigenous issues* groups mostly being formed by the same UN agencies. The International Labour Organization is a member of both groups.

- 13 <http://daccessdds.un.org/doc/UNDOC/GEN/N08/338/82/PDF/N0833882.pdf?OpenElement>: E/2008 /43-E/C.19/2008/13, Report on the 7th Session of the PFII, 2008, par. 16, 61 and 152.
- 14 <http://www2.ohchr.org/english/law>: Office of the High Commissioner for Human Rights, Human Rights Instruments.
- 15 <http://daccessdds.un.org/doc/UNDOC/GEN/N08/338/82/PDF/N0833882.pdf?OpenElement> : E/2008 /43-E/C.19/2008/13, Report on the 7th Session of the PFII, 2008, par. 128 and 132.

Bartolomé Clavero is professor of constitutional history at the University of Seville. His latest books are: "Geografía Jurídica de América Latina: Pueblos Indígenas entre Constituciones Mestizas", Mexico City, 2008; and "Genocide or Ethnocide, 1933-2007: How to Make, Unmake and Remake Law with Words", Milano, 2008. He is a member of the UN Permanent Forum on Indigenous Issues.

THE UN PERMANENT FORUM ON INDIGENOUS ISSUES

The UN Permanent Forum on Indigenous Issues (Permanent Forum) is a subsidiary body of the United Nations Economic and Social Council (ECOSOC). It is mandated to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights.

The Permanent Forum is made up of 16 independent experts. Governments nominate eight of the members, and the other eight members are indigenous experts to be appointed by the President of ECOSOC. The Permanent Forum meets every year in a regular session in May for two weeks in New York.

Over the past seven years, the Permanent Forum has become one of the largest conferences held at the United Nations. The participation of indigenous representatives has grown enormously since its first session in 2002, with approximately 2,000 participants attending the seventh session. With 30 United Nations agencies, 70 member states, 30 Indigenous Parliamentarians and over 60 side events, the Forum has gained global recognition.

The seventh session of the Permanent Forum was memorable since it was the first session held since the adoption of the UN Declaration on the Rights of Indigenous peoples by the UN General Assembly in September 2007. The session was held a month earlier than usual. Attending the seventh session were 11 newly appointed expert Members of the Forum, in addition to four other members who were nominated for a second three-year term.¹ The seventh session was also historical as it was attended by the President of Bolivia, Evo Morales, who was the first head of State to address the Permanent Forum.

The Seventh Session of the Permanent Forum

In 2008, the seventh session of the Permanent Forum was held from 21 April – 2 May in New York and this was its first session since the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP or the Declaration) by the UN General Assembly in September 2007. Around 2,000 delegates participated in this session, including representatives of indigenous organizations, Member States, UN agencies, other inter-governmental organizations as well as NGOs and academia.

Every year, the Permanent Forum has a special theme and this year it was “Climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges”. In addition to the formal meetings of the Forum, a total of 61 side events were organized by indigenous peoples’ organizations, NGOs, UN agencies and states. All of these formal and informal meetings informed the discussions of the members of the forum and directly or indirectly influenced the outcome of the session, which is contained in the Report on the Seventh Session.

This article summarises the discussions on the special theme.²

Preparatory activities

Prior to the Permanent Forum session, a number of preparatory meetings were held and various reports were prepared on the issue of indigenous peoples and climate change.

In April 2008, a UN international expert meeting on indigenous peoples and climate change was held in Darwin, Australia. The expert meeting discussed the effects of climate change on indigenous peoples, adaptation measures to climate change, carbon projects and carbon trading, and factors that enable or obstruct indigenous peoples’ participation in the climate change processes.³

A number of regional preparatory meetings were held, among others in Asia, Latin America and in the North America Region, where the indigenous representatives discussed the special theme and prepared

statements and strategized on how to ensure that indigenous peoples' concerns are taken into consideration in the climate change discussions.

Other meetings included a two-day conference organised by IWGIA on "Indigenous Peoples and Climate Change" in February 2008. The Conference focused on the key issues facing indigenous peoples in the context of climate change, including the human rights. The discussions went beyond the impacts of climate change and looked at how global mitigation policies, political processes and regulations facilitate or prevent indigenous peoples in their efforts to respond and adapt to climate change.⁴

Reports informing the Permanent Forum discussion on climate change

In September 2007, the Inter-Agency Support Group on Indigenous Issues (IASG)⁵ held a meeting on climate change and indigenous peoples and a collated paper was prepared. The paper presents an overview of the impact of climate change on indigenous peoples, especially the social, cultural, human rights and development impacts and the work of the different UN agencies, which are part of the AISG, on the issue of climate change and indigenous peoples.

In November 2007, the Secretariat of the Permanent Forum prepared an overview paper analysing the threats and challenges faced by indigenous peoples in relation to climate change. The paper notes that, despite the fact that **climate change is impacting intensely on indigenous peoples, they are very rarely considered in public discourse on climate change.** It concludes that, given past experiences with adjusting to environmental and socio-economic changes, an assessment of the adaptive capacity of indigenous peoples and their communities must take into account not only their inherent resiliencies but also differential rights, discrimination and other social processes that limit access to resources, power and decision-making.⁶

At its sixth session, the Permanent Forum appointed Victoria Tauli-Corpuz and Aqqaluk Lynge as special rapporteurs to investigate the impact of climate change mitigation measures on indigenous peoples

and on their territories and lands. The report summarizes the effects of climate change on indigenous peoples, and reviews mitigation and adaptation measures and their impacts on indigenous peoples. The report concludes that there are many strategies that can be used effectively to both mitigate climate change and facilitate adaptation to climate change, such as sustainable forest management and sustainable agriculture, but that these strategies need to take into account ecological and human rights dimensions to ensure that indigenous peoples are not further adversely affected by climate change and its proposed solutions.⁷

The opening session

The meeting of the UN PFII in New York was opened with an address by President Evo Morales of Bolivia, the first Head of State to address the Permanent Forum, and UN Secretary-General Ban Ki-moon, who both stressed the stewardship role of indigenous peoples in managing the environment. The UN Secretary-General applauded the choice of climate change as the special theme, emphasising that indigenous peoples “can and should play a role in the global response” to climate change due to their accumulation of first-hand knowledge on the impacts of environmental degradation, including climate change.

In her opening speech, the President of the Permanent Forum, Victoria Tauli-Corpuz, said that climate change was an issue of particular importance to indigenous peoples throughout the world, not only because they were being directly affected both by the problem and by the possible solutions but also because of the contributions that they can make to mitigate it and the way in which they are adapting to the new situation. She said that climate change was the fundamental proof of a lack of sustainability in the current predominant development model. Despite the fact that indigenous peoples have adapted to climate change for thousands of years, the scale and speed of what we are currently experiencing is unprecedented and raises serious challenges in terms of indigenous peoples’ ability to adapt. This is due not only to the scale of the impact but also to a lack of support from the international community. As guardians of the world’s bio- and cultural diver-

sity, with their traditional ways of life and environmental knowledge, indigenous peoples can and must be able to contribute to the design and implementation of the most appropriate and sustainable adaptation and mitigation measures. Victoria Tauli-Corpus also stated that the indigenous peoples could help to forge a path towards developing sustainable communities with reduced carbon emissions.

Dialogue with governments and UN agencies

In the dialogue with governments, government representatives acknowledged that climate change poses a threat to indigenous livelihoods and that capacity building and more research is urgently needed on the impact on indigenous peoples. Despite being most adversely affected, indigenous peoples are only rarely consulted in discussions on climate change and numerous governments emphasized indigenous peoples' role as primary actors on the frontline of climate change and fragile ecosystems and that they should be included in climate change planning as their traditional knowledge could help to confront the challenge of widespread environmental degradation.

The UN agencies were almost unanimous in reporting on their efforts to implement provisions of the UNDRIP and their plans to use the Declaration as a framework in formulating their future programmes for indigenous peoples, including on the issue of climate change. In 2008, 17 UN agencies made written submissions to the Permanent Forum, which is an important development as it is the way forward in terms of crystallizing the provisions of the Declaration in customary international law, thus strengthening its binding nature.⁸

In the numerous statements by the various regional and thematic caucuses as well as collective statements, indigenous peoples told very similar stories of how they have the smallest ecological footprint and yet are the most severely impacted by the adverse effects of climate change due to their dependence upon and close relationship with the environment and its resources. They emphasised that climate change exacerbates the difficulties already faced by indigenous communities, including political and economic marginalization, loss of land and resources, human rights violations, discrimination and unemployment.

They also raised concerns with the solutions to climate change being offered at the moment by the international community as these solutions tend to overlook the rights of indigenous peoples. Indigenous peoples therefore called for the implementation of the UNDRIP as an effective response to climate change. The main issues brought up during the dialogue included the effects of climate change on indigenous peoples' human rights, the concerns over proposed climate change mitigation initiatives and a call to the industrialized countries to reduce their greenhouse gas emissions.

The effects of climate change on indigenous peoples' human rights

Indigenous peoples stressed that the UN system and governments should recognise the critical importance of the effects of climate change on indigenous peoples' human rights. Indigenous peoples see the negative impacts of climate change on their land, forest and marine resources as a matter of life and death. The growing impact of climate change, which in some cases has led to the loss of lives and has forced indigenous peoples to leave their lands, is a violation of the rights of indigenous peoples to self-determination and an entire range of other fundamental rights.

Climate change mitigation initiatives

Indigenous peoples expressed concern with both the problem of climate change and the proposed solutions. They also criticised not being invited by the UN Framework Convention on Climate Change (UNFCCC) to participate in creating a new climate change framework and the closed-door environment that prevails in the meetings of the UNFCCC, including those concerning the Kyoto Protocol. Indigenous peoples, as stewards of biological diversity and with their traditional knowledge, could contribute significantly to the identification of proper and sustainable solutions, as opposed to the present market-based solutions such as carbon trading and agro-fuels production, which are

questionable both ethically and environmentally because they violate the rights of indigenous peoples and often result in more greenhouse gas emissions.

Indigenous peoples also expressed concern with the Clean Development Mechanism (CDM) projects, some of which have caused the deaths of indigenous peoples, who refused to hand over their territories for the purpose specified in the projects, as well as the recently adopted programme on Reducing Emissions from Deforestation and Forest Degradation (REDD), which makes no reference to indigenous peoples' rights. Carbon trading has turned the earth into a commodity, while the promotion of agro-fuel production, single-species tree plantations and other similar initiatives are countering the possibility of sustainable solutions by contributing to further environmental degradation.

Indigenous peoples therefore urged the world's decision-makers to be cautious when planning climate change mitigation strategies. Despite having contributed the least to the problem of climate change, many indigenous peoples are bearing the brunt of misguided mitigation measures when, for example, hydro-power plants flood their lands, geothermal plants displace their sacred sites and nuclear power plants affect their health.

The industrialised countries must act

Indigenous peoples stressed that the industrialised countries are responsible for global climate change with their wastefulness and over-consumption. The polluter, i.e. the industrialised countries, must take the responsibility for their share of the harm that climate change has brought to indigenous peoples' lives and prevent further acceleration of climate change by developing respect for the world and its environment.

Indigenous peoples also expressed concern with the industrialised countries promoting reductions of greenhouse gas emissions in developing countries as a precondition for taking responsibility for reducing emissions at home. The industrialised countries must demonstrate

leadership by reducing emissions within their own borders and committing to substantial emissions reductions.

Indigenous concerns about the World Bank's Forest Carbon Partnership Facility and BioCarbon Fund and the policy debates on reducing emissions from deforestation and ecosystem degradation (REDD)

On the last day of the seventh session, some participants expressed their concern at some of the Forum's recommendations. At the heart of their concerns was a first draft of recommendations concerning the World Bank's Forest Carbon Partnership Facility and BioCarbon Fund and the policy debates on reducing emissions from deforestation and ecosystem degradation (REDD). These participants were advocating more critical language on these initiatives. The final version of the Permanent Forum recommendations took these concerns into consideration, even if the Forum did not explicitly condemn these policies.⁹

The recommendations of the Permanent Forum on climate change

Based on the dialogues with UN agencies, governments and indigenous peoples and the recommendations presented in their statements, as well as the reports from the preparatory activities, the Permanent Forum members made their general observations on the issue of climate change and indigenous peoples.

The Permanent Forum noted that the unprecedented magnitude, accelerated pace and compound effects of climate change today present major challenges for indigenous peoples. Further, some of the mitigation measures seen as solutions to climate change are having negative impacts on indigenous peoples. As stewards of the world's bio- and cultural diversity, indigenous peoples have ecological knowledge and experience of adapting to a changing environment, which can significantly contribute to designing and implementing holistic, appropriate and sustainable mitigation and adaptation measures. Indigenous peo-

ples can also assist in crafting the path towards developing low-carbon release and sustainable communities.

The mechanisms designed to fight climate change must respond to the needs of indigenous peoples and include them as partners in designing and implementing programmes that are responsive to local problems and to the goals and visions of indigenous peoples. A human rights-based approach to development and the ecosystem approach should therefore guide the design and implementation of local, national, regional and global climate policies and projects.

The seventh session's report

The Permanent Forum closed its seventh session with the adoption of its report. The report includes six sets of draft recommendations, which the Forum wishes to seek to implement with the assistance of the UN system, states, intergovernmental organizations, indigenous peoples, the private sector and non-governmental organizations, and three draft decisions.¹⁰

The report includes a substantial number of recommendations on its special theme, namely "Climate change, bicultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges". These recommendations strongly promote indigenous participation in all aspects of the international climate change dialogue and relate to a wide range of issues, including the current negotiations on adaptation and mitigation measures, which must be implemented in accordance with the standards set out in the UNDRIP.¹¹

The regional focus given to the Pacific region also resulted in a number of important recommendations. The Forum's recommendations pay special attention to the human rights situations of indigenous peoples in the Non-Self Governing Territories and call for an expert seminar to be held to examine the impact of the United Nations decolonization process on indigenous peoples of these Territories.

As in previous sessions, the Permanent Forum continued to give special emphasis to monitoring the implementation of previous recommendations. Hence recommendations on how to follow up former proposals on the Forum's six mandate areas, as well as on its ongoing

priorities and themes such as indigenous languages, indigenous children and youth, the Second International Decade of the World's Indigenous People, urban indigenous peoples and migration were also made.

The UN Declaration on the Rights of Indigenous Peoples was again one of the crucial topics throughout the whole session, since it was the first session to take place following the Declaration's adoption by the UN General Assembly in September 2007. The Forum pledged its commitment to making the Declaration a "living document" throughout its work and invited the international community as a whole to apply the Declaration in their policies and programmes for the improvement of indigenous peoples' well-being. The Forum's recommendations on the Declaration place a major focus on looking into how the Forum can implement the mandate given in Article 42 of the Declaration, which explicitly mentions the Forum as one of the UN bodies that should play a key role in following up and promoting the implementation of the Declaration. □

Notes

- 1 The 11 newly appointed experts were: Margaret Lokawua (Uganda), Lars-Anders Baer (Sweden), Elisa Canqui Mollo (Bolivia), Tonya Gonnella Frichner (United States), Mick Dodson (Australia), Paimaneh Hasteh (Iran), Carlos Mamani Condori (Bolivia), Bartolomé Clavero Salvador (Spain), Carsten Smith (Norway), Simeon Adewale Adekanye (Nigeria) and A. A. Nikiforov (Russian Federation).

The four other members who were nominated for a second three-year term were Hassan Id Balkassm (Morocco), Victoria Tauli-Corpuz (Philippines), Pavel Sulyandziga (Russian Federation) and Liliane Muzangi Mbella (Democratic Republic of the Congo),

- 2 This article is based on statements and discussions held during the special theme on climate change during the seventh session of the Permanent Forum. Further information is available in various Permanent Forum documents at: http://www.un.org/esa/socdev/unpfii/en/session_seventh.html. A full report on the seventh session can be found at: <http://daccessdds.un.org/doc/UNDOC/GEN/N08/338/82/PDF/N0833882.pdf?OpenElement>
- 3 A summary report and meeting documents from the expert meeting is available at http://www.ias.unu.edu/sub_page.aspx?catID=107&ddlID=650
- 4 See the reports of the conference at: <http://www.iwgia.org/sw29087.asp>
- 5 The Inter-Agency Support Group on Indigenous Issues has been established to support and promote the mandate of the UN Permanent Forum on Indigenous

- Issues within the United Nations system. <http://www.un.org/esa/socdev/unpfii/en/iasg.html>
- 6 The paper is available at: http://www.un.org/esa/socdev/unpfii/documents/EGM_cs08_Overview.doc
 - 7 The report is available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N08/277/65/PDF/N0827765.pdf?OpenElement>
 - 8 Tebtebba Indigenous Information Service UNPFII 7th Session Update No. 5
 - 9 The Permanent Forum's report states that "...the current framework for REDD is not supported by most indigenous peoples... In order to directly benefit indigenous peoples, new proposals for avoiding deforestation or reduced emissions from deforestation must address the need for global and national policy reforms and be guided by the United Nations Declaration on the Rights of Indigenous Peoples, respecting rights to land, territories and resources; and the rights of self determination and the free, prior and informed consent of the indigenous peoples concerned."
 - 10 The Report of the seventh session and all other relevant materials are available on the Permanent Forum website.
http://www.un.org/esa/socdev/unpfii/en/session_seventh.html

Lola García-Alix has been IWGIA's Human Rights Programme Coordinator before becoming its director in 2007.

UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES (EMRIP)

In December 2007, the UN Human Rights Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples.¹

The Expert Mechanism reports directly to the Human Rights Council (the main human rights body of the United Nations). Its mandate is to assist the Council by providing thematic expertise and making proposals pertaining to the rights of indigenous peoples.

It consists of five independent experts. The independent experts are appointed for a three-year period and may be re-elected for one additional period. In June 2008, the Human Rights Council appointed five independent experts for the period 2008-2010.

The Expert Mechanism meets once annually for up to five days. Its first meeting took place in Geneva from 1 to 3 October 2008 and was attended by representatives of states, United Nations bodies and agencies etc., as well as by a large number of indigenous peoples' representatives.²

Mandate

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is tasked with assisting the Human Rights Council in the implementation of its own mandate, through the provision of thematic expertise on the rights of indigenous peoples, in the manner and form requested by the Council. EMRIP may also submit other proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council.

The Council resolution which established EMRIP stipulates that the thematic expertise of the Mechanism shall focus mainly on studies and research-based advice.

In addition to the mandate stemming from the Council resolution that established the EMRIP, Article 42 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) provides an additional task for EMRIP, as it does for all other UN bodies and organizations. Pursuant to Article 42 of UNDRIP, all UN bodies and agencies have the duty to promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this instrument. Although, UNDRIP Article 42 only refers to the Permanent Forum by name, it should be interpreted as being equally applicable to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and EMRIP, as well as all other relevant UN bodies and entities – within the scope of their respective mandates and work.

Consequently, at its first session, EMRIP decided to include UNDRIP as a separate agenda item at its second session. Under this particular agenda item, it intends to focus on possible regional and national processes and mechanisms for the implementation of UNDRIP, including processes and mechanisms identified in the Declaration itself.

Despite the fact that the mandate of EMRIP is somewhat limited, it still adds an important pillar to the United Nations' human rights structure. EMRIP is also complementary to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Permanent Forum on Indigenous Issues.

EMRIP has a rights-specific mandate. Hence, it provides 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.

Composition of EMRIP and participation

EMRIP is composed of five independent experts, appointed by the UN Human Rights Council. The current members are the following: (1) Ms Catherine Odimba Kombe (Congo), (2) Ms Jannie Lasimbang (Malay-

sia), (3) Mr. José Carlos Morales (Costa Rica), (4) Mr. José Mencio Molintas (Philippines) and (5) Mr. John B. Henriksen (Norway).

The annual meetings of EMRIP are open to the participation, as observers, of states, United Nations mechanisms, bodies and specialized agencies, funds and programs, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, national human rights institutions and other relevant national bodies, academics and experts on indigenous issues, non-governmental organizations in consultative status with the Economic and Social Council. Moreover, the meetings are also open to indigenous peoples' organizations and non-governmental organizations whose aims and purposes are in conformity with the spirit, purpose and principles of the Charter of the United Nations, based on arrangements, including Economic and Social Council Resolution 1996/31 of 25 July 1996, and practices observed by the Commission on Human Rights, through an open and transparent accreditation procedure in accordance with the rules of procedure of the Human Rights Council.

This open-ended arrangement for participation greatly facilitates the work of EMRIP. Of particular importance is that indigenous peoples' organizations and representatives without regular ECOSOC consultative status are able to participate. Strong and broad indigenous peoples' participation is of outmost importance for the work of EMRIP, as borne out by earlier UN experience in similar situations. It is required for EMRIP to develop further methods of work that ensure full and effective indigenous peoples' participation. Indigenous peoples have an important role to play in providing EMRIP with information about their respective situations, as this will assist the members of the mechanism in carrying out studies, and in identifying future areas of studies and research. The General Assembly has adjusted the mandate of the UN Voluntary Fund for Indigenous Populations, a fund that provides financial support to indigenous representatives to participate in UN meetings, in order to take into account the creation of the EMRIP. This is extremely timely and important, as it will greatly facilitate indigenous peoples' participation in the work of EMRIP. In its first report to the Human Rights Council, EMRIP proposed that the Council suggest to the General Assembly that it broaden the mandate of the fund further to help indigenous peoples to participate in the sessions of the Human Rights Council and the treaty bodies.

Work of EMRIP

The success of EMRIP in promoting indigenous peoples' rights is not only determined by the collective work of the expert members. EMRIP can only be as successful as the member states of the United Nations allow it to become. This is a political reality applicable to most UN mandates, including the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

For EMRIP to become an effective vehicle and process for the advancement of indigenous peoples' rights, it is crucial that member states and indigenous peoples, and other stakeholders actively engage themselves in its work. It is vital that EMRIP is perceived as meaningful and useful for indigenous peoples. For this to happen, it is of crucial importance that EMRIP is able to address issues that are truly important for indigenous peoples.

Whether this will happen largely depends on future decisions of the Human Rights Council, as the specific requests from the Council will largely determine what issues EMRIP will be dealing with in the future.

The question of which thematic issues the Mechanism should focus on presents many challenges, as there are many equally pressing issues to address. Moreover, other issues are perceived by some states as being too sensitive at this stage in the process. However, none of the rights affirmed by UNDRIP should be off-limit for EMRIP, as the General Assembly has acknowledged that the Declaration contains minimum standards for the survival, dignity and well-being of the indigenous peoples.

The 1st session of EMRIP

During its inaugural session from 1-3 October 2008, EMRIP was occupied with addressing issues which the Human Rights Council had specifically requested it to look into,³ as well as discussing what EMRIP's

working methods should be, and how best it could contribute to the promotion and protection of indigenous peoples' rights.

The Council had requested that the Mechanism submit recommendations to the Preparatory Committee of the Durban Review Conference. This request is related to the General Assembly's decision to hold a review conference in 2009 on the implementation of the Durban Declaration and Program of Action, which was adopted by the World Conference against Racism in 2001.

At its first session, EMRIP affirmed its support for the Durban Review process. It noted the achievements in the area of indigenous peoples' rights since the 2001 Durban Conference and, in particular, the adoption of the UN Declaration on the Rights of Indigenous Peoples, the establishment of the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in 2001, the Permanent Forum on Indigenous Issues which held its first session in May 2002 and the creation of EMRIP. EMRIP welcomed the positive steps taken by some governments to address the discrimination faced by indigenous peoples, including through the introduction of legislation and ratification of ILO Convention 169 on indigenous and tribal peoples in independent countries. EMRIP recommended that the Durban Declaration and Programme of Action (DDPA) be revised to take into account the above-mentioned developments. In particular, the DDPA should acknowledge that the right of self-determination and the principle of free, prior and informed consent are now universally recognized through the adoption of the Declaration, making paragraph 24 of the Durban Declaration obsolete.⁴ EMRIP recommended that these principles be included in the future outcome document of the Durban Review Process.⁵

Secondly, the Mechanism was requested to prepare a study on lessons learned and challenges to achieving the implementation of the right of indigenous peoples to education, and to conclude the study in 2009. EMRIP has entrusted two of its members, Ms Jannie Lasimbang and Mr. José Molintas, to take overall responsibility for preparing this study. EMRIP requested the Office of the High Commissioner for Human Rights to send out notifications to indigenous peoples' organisations, member states, relevant international and regional organisations, the Special Rapporteur on Education, relevant UN agencies, national

human rights institutions and civil society organisations to submit, by February 2009, information pertaining to achieving the implementation of the rights of indigenous peoples to education, including lessons learned, case studies, challenges and recommendations, which may be in the form of written reports or audio-visually. Moreover, it especially invited the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues to contribute to the study.

The future work of EMRIP

In light of the mandate of the Mechanism, the main elements of its future work are likely to be the following:

- Thematic studies and research. This is likely to become the main method of work for EMRIP. The Human Rights Council has clearly stated that the thematic expertise of the Mechanism will focus mainly on studies and research-based advice.
- Adoption of general thematic comments and recommendations. Such general comments and recommendations could be based on EMRIP's thematic studies and research. They have the potential of adding value to EMRIP's thematic studies and research, as they may be of value not only to the Human Rights Council but also to indigenous peoples, governments, UN bodies, mechanism and agencies, and other stakeholders.
- Review of UN policy documents. EMRIP has an important role to play in relation to reviewing UN policy documents. The Council has already requested that EMRIP provide it with thematic advice in one such review process: the review of the Durban Declaration and Program of Action.
- Other proposals to the Human Rights Council. EMRIP is mandated to submit proposals to the Council at its own initiative, for its consideration and approval. This offers EMRIP the possibility of bringing specific thematic issues to the attention of the Council without having to wait for a specific request from the Council. Such proposals may be generated by EMRIP's

study and research activities, or may emerge as a natural outcome of the discussions and consultations during the annual sessions of EMRIP, or elsewhere.

- Multilateral forum for dialogue on indigenous peoples' rights. EMRIP has the potential to become an important multilateral forum for dialogue on indigenous peoples' rights. EMRIP provides an important space for discussions on indigenous peoples' rights. Hence, it has an important role to play in making the UNDRIP operational, and in contributing towards a better understanding of the scope and content of relevant international provisions.
- Cooperation with other UN bodies and mandates. This as an important part of the work of EMRIP. It has already engaged in dialogue with the Special Rapporteur on the human rights and fundamental freedoms of indigenous people and other mechanisms under the Council structure, plus the Permanent Forum, UN treaty bodies, and specialized agencies on specific thematic issues as well as with regard to possible cooperation.

Cooperation between the three UN mandates on Indigenous Peoples' Rights

The Human Rights Council has requested that EMRIP establish close cooperation with the Special Rapporteur on the human rights and fundamental freedoms of indigenous people and the Permanent Forum. The three mandates have been asked to avoid duplicating each other's work, which is certainly important but may prove difficult given the overlapping nature of the mandates.

It should also be pointed out that the responsibility for enhancing cooperation between the three mandates, and avoiding duplication, rests not only with the mandates but also with their parent bodies. For instance, EMRIP's capacity to actively cooperate and coordinate its activities with the two other mandates is closely linked to the financial resources made available for its work. At present, the financial resources allocated to the Mechanism through the regular UN budget are limited to funding of its annual session.

Furthermore, a certain part of the responsibility for avoiding duplication rests with the Human Rights Council, as it will often be the Council that decides which issues EMRIP should focus on, and not the other way around.

The three mandates are tasked with promoting full application of the rights of indigenous peoples. Whether, or to what extent, the mandates are able to make a difference in this regard is closely connected to the seriousness and will of member states to actually honor their own commitments towards indigenous peoples. □

Notes

- 1 Resolution 6/36
- 2 For more information on the EMRIP see: <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/index.htm>
- 3 Resolution 9/7. Human rights and indigenous peoples http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_7.pdf
- 4 "We declare that the use of the term "indigenous peoples" in the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance is in the context of, and without prejudice to the outcome of, ongoing international negotiations on texts that specifically deal with this issue, and cannot be construed as having any implications as to rights under international law;" <http://www.un.org/WCAR/durban.pdf>
- 5 For further information about the first session of EMRIP, please consult EMRIP's report to the Human Rights Council: UN Document A/HRC/EMRIP/2008, 31 October 2008. <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/1st/docs/A-HRC-10-56.pdf>

John Henriksen is a Sami lawyer from Norway. He is a former legal and human rights advisor to the Saami Council, human rights officer at the OHCHR and human rights advisor to the Norwegian Ministry of Foreign Affairs. He was elected as the Chairperson-Rapporteur for the inaugural session of EMRIP.

UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLE

On 26 March 2008, the Human Rights Council appointed Professor S. James Anaya as the second Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, for an initial period of three years. He assumed the mandate on 1 May 2008 and has focused his initial efforts on examining country situations, establishing dialogue with governments and developing methods for improving coordination and cooperation with other mechanisms tasked with promoting and protecting indigenous rights, and with United Nations bodies in general.

In May 2008, Professor S. James Anaya of the United States assumed the mandate as the second Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, following the highly successful tenure of Professor Rodolfo Stavenhagen. In September 2008, Professor Anaya presented his first report to the Human Rights Council, providing reflections on the international human rights standards that have been reaffirmed by the United Nations Declaration on the Rights of Indigenous Peoples and announcing the goals and priorities for his term as Special Rapporteur.¹

In his report, Professor Anaya indicated that the emphasis of his work would be on engaging governments in constructive dialogue regarding the concerns of indigenous peoples and building on best practices already achieved. The principal working methods that are being used to facilitate this dialogue include written communications, on-

site visits and public statements and reports. Additionally, Professor Anaya endeavours to ensure that the mandate of the Special Rapporteur functions in close coordination with other relevant mechanisms of the United Nations.

Coordination with existing human rights bodies

The United Nations Human Rights Council has called on the Special Rapporteur to work closely with other United Nations mechanisms, including but not limited to those mandated to focus on indigenous issues, specifically the Permanent Forum on Indigenous Issues and the newly established Expert Mechanism on the Rights of Indigenous Peoples.² One of the objectives of the Special Rapporteur is to ensure that his work is carried out so as to complement and not unnecessarily duplicate the work of these other mechanisms in the promotion of indigenous peoples' rights.

Unlike the Permanent Forum and Expert Mechanism, the Special Rapporteur is specifically mandated with the task of engaging governments directly on issues affecting indigenous people. Thus, the Special Rapporteur has decided to concentrate his efforts on establishing a constructive dialogue with governments on the most pressing issues and building on advances made by governments, by gathering and exchanging information and written communications with governments, indigenous people and non-governmental organizations on positive developments and good practices achieved as well as alleged violations of the human rights of indigenous people; and by undertaking on-site visits that may take the form of country missions, working visits or technical consultations.

Written communications

Holding one of the most active mandates of all special procedures of the Human Rights Council, Professor Anaya receives written communications alleging violations of the rights of indigenous peoples on a daily basis from various sources. These written communications draw

the attention of the Special Rapporteur to a wide range of issues, from the lack of implementation of existing laws to physical attacks on indigenous people and lack of access to justice. Due to the high volume of information received, Professor Anaya has developed a process for assessing communications with the goal of enhancing the effectiveness of this method of addressing indigenous peoples' concerns and directing attention and energy to the most pressing situations. Professor Anaya gives priority to written communications that raise concerns ultimately affecting the survival of a community, particularly those that describe events or issues that are representative of systemic issues and violations. He also targets countries and regions in which there are no functioning human rights mechanisms, and the concerns of communities that lack the means to make effective use of such mechanisms, where they do exist.

Actions taken by the Special Rapporteur vary depending on the situation. As a first step, the Special Rapporteur often sends follow up questions to the indigenous community or organization that drafted the communication, asking for additional details or more up-to-date information. Responses to these questions often provide vital information that assists the Special Rapporteur in determining how to proceed. In appropriate circumstances, the Special Rapporteur will send a letter to the government concerned asking it to respond to the allegations or, in situations that appear urgent, to take immediate corrective action. In some cases, the dialogue initiated by a letter to a government has resulted in an invitation by that government to conduct a country mission or working visit. These visits provide an opportunity for governments to continue dialogue with the Special Rapporteur and indigenous organizations, with a possible view towards receiving technical or advisory assistance from the Special Rapporteur, or developing good practices.

On-site visits

Since assuming his mandate, Professor Anaya has undertaken missions to Brazil and Nepal to examine the overall situations of indigenous peoples in those countries. He has also conducted a number of work-

ing visits to other countries to engage in consultations on particular issues or developments. Many of the issues he addressed in these visits had been first brought to his attention in written communications.

In the mission to Brazil, from 14 – 25 August 2008, Professor Anaya travelled to the capital of Brasilia and the states of Mato Grosso do Sul, Roraima and Amazonas to meet with government and indigenous representatives and non-governmental organizations, and he met with officials at the Ministry of Foreign Affairs, Ministry of Justice, the Special Secretariat for Human Rights, the Office of the General Prosecutor of the Republic, the Office of the Attorney General, the Mixed Parliamentary Front for Indigenous Peoples, the Ministry of Education and the National Foundation for Health.

In a press release conveying his initial observations following his visit on the situation in Brazil, Professor Anaya observed that one of the major challenges still facing indigenous peoples in that country is their limited ability to exercise the right to self-determination.³ He found this to be particularly true in relation to decisions regarding their lands, which are threatened by non-indigenous outsiders and mining companies that have even targeted lands previously demarcated and registered to indigenous occupants.

Additionally, the Special Rapporteur commented on the inadequate educational opportunities and health resources available to most indigenous peoples in Brazil. Finally, he observed persistent discrimination against indigenous people, which he perceived to be prevalent at many levels of society and underlying the development of policies, delivery of services and administration of justice.

From 24 November to 2 December 2008, Professor Anaya conducted a mission to Nepal.⁴ During his visit, the Special Rapporteur met with government and indigenous representatives in Kathmandu and made field visits to the districts of Ilam, Jhapa, Chitwan and Kailali. At the conclusion of his visit, he reported in a press statement that one of the primary issues presented by indigenous organizations in Nepal was the slow progress in the implementation of ILO Convention 169 on Indigenous and Tribal Peoples. Nepal is the first Asian country to ratify the convention, and while the state has indicated its willingness to adopt measures to improve the lives of indigenous peoples in accordance with the Convention and the UN Declaration on the Rights of

Indigenous Peoples, indigenous people conveyed great concern to the Special Rapporteur regarding the adequacy of the participation of indigenous peoples in the constitution-making process and in other policy-level decisions that will ultimately affect the realization of their rights.

An interactive approach to addressing multiple issues facing Indigenous Peoples

Like his predecessor, Professor Anaya has adopted an interactive approach for addressing country situations and allegations of human rights violations, which combines written communications, on-site visits and consultations, with press releases and other public statements, among other methods. Using these methods, Professor Anaya has been able to engage more substantively with governments and indigenous communities on some of the most significant challenges faced by indigenous peoples today.

Legal reform and the implementation gap

Among the greatest impediments to the full realization of indigenous peoples' rights remains the lack of an adequate or effective legal framework at the state level to implement applicable human rights standards, including those embodied in the United Nations Declaration on the Rights of Indigenous Peoples.

In consultation with the indigenous peoples concerned, the Special Rapporteur has worked with a number of states to develop legal frameworks that reflect international standards on indigenous peoples' rights. In May 2008, at the invitation of indigenous organizations and the president of the Constituent Assembly of Ecuador, the Special Rapporteur undertook a working visit to that country to provide technical assistance to the Constituent Assembly in its constitutional revision process.⁵ After his visit, he transmitted a series of observations to the government, which called for the inclusion in the Constitution of recognition of the "plurinational" character of the country, collective rights, rights over traditional lands and territories, and the principle of

free, prior and informed consent. Many of these observations were later reflected in Ecuador's new constitution approved by referendum in September 2008.

The Government of Suriname has demonstrated its commitment to advancing the rights of indigenous peoples by extending an invitation to the Special Rapporteur to provide technical and advisory services to the government as it develops legislative and administrative measures to protect the rights of indigenous peoples in the country. The request was made by the Minister of Regional Development of Suriname, who is charged with the responsibility to implement the judgment of the Inter-American Court in the case of *Saramaka People v. Suriname*. This judgment represents the most in-depth jurisprudence to date on the right to free, prior and informed consent. The Special Rapporteur has accepted the invitation to assist with this important initiative to develop the legal framework to recognize indigenous peoples' communal tenure rights, their right to juridical personality and their right to effectively participate in decisions that affect them.

On 7 November 2007, Bolivia set an example to the world in becoming the first country to fully incorporate the UN Declaration into its domestic legal framework through Law No. 3760. Although this was a tremendous advance in the recognition and protection of indigenous rights at the national level, persistent racism often leading to violence against indigenous people illustrates the significant gap between the legal recognition and actual realization of these rights. In a series of press releases, Professors Anaya and Stavenhagen expressed concern over information received regarding specific outbreaks of violence and racism, and condemned the policy of violence adopted by regional departments to counter measures taken by the national government to promote the rights of indigenous peoples.⁶

Lack of consultation

Among the most frequently raised concerns in written communications to the Special Rapporteur is the lack of adequate consultation, which is enshrined in Article 32 of the UN Declaration, providing indigenous peoples the right "to determine and develop priorities and strategies for the development or use" of their lands or resources. This

right creates an affirmative duty for states to consult in good faith with the affected indigenous peoples in order to obtain their free, prior and informed consent to the approval of development projects that may affect their lands and resources.

The Special Rapporteur received information regarding the construction of a hydroelectric project in Changuinola District, Bocas del Toro Province, Panama that adversely affects indigenous peoples living in the area. Professor Stavenhagen first addressed the situation in an urgent appeal to the government in April 2008. Subsequently, Professor Anaya raised his concern over the situation, first in an urgent appeal in June 2008 and then in a press release issued in August 2008, denouncing the alleged displacement of the indigenous Charco la Pava community from their lands and failure of the Government of Panama to adequately obtain the consent of the affected community in accordance with international standards.⁷ In early 2009, Professor Anaya traveled to Panama at the urging of the community, and with an invitation from the government, to observe the situation at Charco la Pava and provide an analysis and recommendations to the government to address the major issues involved.

Rights to land, territories and resources

In a much anticipated move to recognize and protect indigenous lands, the Government of Nicaragua completed the demarcation and titling of the traditional lands of the Awas Tingni community, an indigenous Mayangna community living on the Atlantic Coast.⁸ In December 2008, Professor Anaya was invited to attend the ceremony in Awas Tingni, Nicaragua, during which the government handed over to the indigenous community the title to its ancestral lands. Over seven years after the Awas Tingni community received recognition of its land rights from the Inter-American Court, the Special Rapporteur praised the Government of Nicaragua for taking affirmative steps to implement the judgment, calling it "a model for other governments to comply with their international obligations to recognize and protect the rights of indigenous peoples to their traditional lands and resources in practice."⁹

Gender and indigenous rights

As noted in Professor Anaya's presentation at the 9th Session of the Human Rights Council on the integration of the gender perspective and frequently illustrated in written communications received by the Special Rapporteur, indigenous women face multiple forms of discrimination that result in significant barriers to the enjoyment of their human rights. Following one of his own recommendations to the Human Rights Council to engage indigenous women directly, Professor Anaya participated in a consultation with Special Rapporteur on Violence Against Women, Yakin Ertürk, on defending the rights of indigenous women in Asia and the Pacific. The regional consultation, which took place in New Delhi, India, on 15-16 October 2008, provided a forum for indigenous women to discuss the causes and forms in which violence against women is occurring in the region, and to identify strategies and draft recommendations for the Special Rapporteurs, states, non-state actors and civil society to more effectively respond to violations against indigenous women, particularly those due to globalization and increased militarization in the region.

Thematic work

In past years, Professor Stavenhagen concentrated on thematic research as one of his main spheres of work, noting the importance that thematic reports can play in initiating dialogue at the policy level on issues that significantly impact indigenous peoples. Taking into consideration Human Rights Council Resolution 6/36 of December 2007, which establishes the Expert Mechanism on the Rights of Indigenous Peoples, with a mandate to provide thematic expertise and recommendations to the Council on issues affecting indigenous peoples, Professor Anaya plans to engage in thematic research in ways that are complementary and not duplicative of the work of the Expert Mechanism and consistent with his own mandate. In this regard, he will focus on best practices and models for tackling patterns of violations. In 2009, the Special Rapporteur is planning to participate in a technical meeting on natural resource extraction on indigenous territories aimed at promoting a dialogue between governments, indigenous peoples and

transnational corporations. Additionally, Professor Anaya is developing a research partnership to examine best practices and develop strategies for the recognition of indigenous legal systems. □

Notes

- 1 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, A/HRC/9/9, 11 August 2008.
- 2 Human rights and indigenous peoples: mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Human Rights Council, Resolution 6/12, 28 September 2007.
- 3 UN Special Rapporteur on Indigenous People concludes visit to Brazil, James Anaya, 26 August 2008.
- 4 UN expert urges action on Nepal's commitment to indigenous rights, James Anaya, 2 December 2008.
- 5 Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, S. James Anaya, Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/9/9/Add.1, 15 August 2008.
- 6 UN Special Rapporteur expresses concern regarding recent events in Bolivia, Rodolfo Stavenhagen, 10 April 2008; Special Rapporteur of the United Nations condemns recent acts of violence in Bolivia, James Anaya, 4 June 2008; UN Special Rapporteur denounces anti-indigenous actions in Bolivia, James Anaya, 18 September 2008.
- 7 United Nations Expert on Indigenous Peoples denounces human rights violations committed against the Charco la Pava community in Panama, James Anaya, 8 August 2008.
- 8 UN expert praises Nicaragua for formally confirming land ownership for indigenous group, James Anaya, 17 December 2008.
- 9 Id.

Mary Hollingsworth is an Indigenous Peoples Law and Policy Fellow at the University of Arizona, Tucson, assisting Professor Anaya in his work as the Special Rapporteur on indigenous peoples. She holds a Juris Doctor Degree from the James E. Rogers College of Law, University of Arizona, Tucson.

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.

The framework for the states' reviews is provided by the Charter of the United Nations; the Universal Declaration of Human Rights; and the Human Rights instruments to which a state is party such as the International Convention for the Elimination of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and so on.

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 inter-

active 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.

Since the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted in September 2007, this now establishes the minimum standard for the recognition of the collective rights of indigenous peoples. The UNDRIP will therefore need to be mainstreamed into the work of the UN Human Rights Council as well, particularly within - but not limited to - the UPR.

Involvement of indigenous peoples in the first UPR session

Indigenous peoples' representatives from the Philippines, Indonesia and India attended the first session of the UPR in April 2008, as their respective countries were scheduled for review. The main objectives of their involvement were to highlight the human rights situation of indigenous peoples and to mainstream the UN Declaration on the Rights of Indigenous Peoples into the framework of the UPR.

Prior to the session, stakeholder information reports on the human rights situation of indigenous peoples in the Philippines and India were prepared by indigenous organizations and advocacy groups and submitted to the Office of the High Commissioner for Human Rights (OHCHR).

To take the case of the Philippines as an example, a brief summary of violations of indigenous peoples' rights, taken from the submissions of the Indigenous Peoples' Rights Watch and others, was included in the consolidated report of the OHCHR. Further, in the OHCHR compilation of UN information, reference was made to the report of the UN Special Rapporteurs on the situation of human rights and fundamental freedoms of indigenous people and on extra-judicial killings. This information was very important as it ensured that reference was made to the continuing violation of the rights of indigenous peoples in the Philippines, in contrast to the National Report submitted by the Philippine government which did not include or make reference to outstanding

cases of human rights violations committed against indigenous peoples, such as political killings of indigenous leaders, dispossession of land rights by mining companies, etc.

During the first session of the UPR, states were very worried about the presence of civil society organisations (CSOs), and therefore restricted the activities of CSOs in the UN building. In spite of the restrictions imposed, the indigenous representatives were able to organize a side event on "Mainstreaming the Rights of Indigenous Peoples in the UPR" and a press conference on the UPR sessions of the Philippines, Indonesia and India. Preparations for the side event were, however, affected by confusion as to whether CSOs could hold events in the UN building or not. The side event was attended mostly by CSOs and advocates, as well as staff members of the Office of the High Commissioner for Human Rights. UN radio and three other international journalists covered the press conference. These two events, together with the distribution of briefing papers, made the presence of indigenous peoples more visible in the first session of the UPR. Indigenous representatives also approached several friendly governments to ask them to raise indigenous issues and recommendations.

What was very notable in the states' presentations during the interactive dialogues was the fact that they avoided addressing the collective rights of indigenous peoples. In the case of Indonesia and India, the states' rhetoric of "we are all indigenous" was again asserted. The Philippines particularly stressed their "list of achievements" in championing the rights of indigenous peoples. The government's presentation never made any reference at all to the series of complaints submitted by indigenous peoples and included in the reports prepared by the OHCHR for the UPR, regarding the violations of their land rights, civil and political rights, among others.

Unfortunately, during the interactive dialogue, few states commented on or questioned the continuing violation of indigenous rights or made any recommendations regarding the protection of the rights of indigenous peoples. This is rather surprising, given the recent adoption of the UN Declaration on the Rights of Indigenous Peoples. While indigenous representatives tried to lobby "friendly states" prior to the UPR sessions of the Philippines, Indonesia and India to get them to put questions and recommendations on indigenous rights to the states un-

der review, they were rather late in this process, as questions and recommendations needed to be submitted to states under review ten days prior to the session.

Likewise, some reviewing states had clearly taken a decision not to be critical of the states under review, especially if they belong to the same global region. This was particularly obvious in the reviews of Asian states, where loyalty within the region seems to be undermining the actual review of human rights situations. While submissions by CSOs and the reports of the OHCHR contain information on the systematic human rights violations of a number of states, it was very common to hear “friendly states” congratulate their colleagues - almost like “patting each other on the back for a job well done on their human rights obligations”. This behavior on the part of states is a major challenge to the credibility and objectivity of the UPR process. It was mainly the European countries or developed countries that raised serious questions on the human rights obligations of the states under review, albeit mainly focusing on civil and political rights, and the rights of women and children, lesbians, gays, bisexuals and transsexuals.

In spite of the rather tame interventions and the unwillingness to be critical, there were a number of strong recommendations made in the first session of the UPR, which the states under review were obliged to respond to. In their replies, a number of states under review made clear commitments to implement most of the recommendations presented during the interactive dialogue. Some of the common recommendations were related to establishing/strengthening National Human Rights Institutions (NHRIs), ratifying conventions, etc. While there was some controversy as to how recommendations were to be included in the report, it was later agreed that all recommendations should be reflected in the report, but with reference to the country that had made the recommendation.

In the case of the Philippines, in response to the interactive dialogue, the government committed itself to establishing a Four-year Human Rights Action Plan with multi-stakeholder participation. The first consultation took place immediately after the UPR session, with the participation of indigenous representatives. In this consultation, the systematic violations of the rights of indigenous peoples were again presented, with a challenge to the government to finally make a

difference in action and not only in words. The multi-stakeholder consultation for the Human Rights Action Plan of the Philippine government was a direct result of the UPR, which made the government more responsive to the CSOs' clamor for accountability. Further, the invitation to involve indigenous leaders in this consultation also demonstrates that the government can no longer ignore indigenous peoples' concerns.

Conclusion

It may be too early as this point to make a judgment on the effectiveness or not of the UPR process in relation to improving the human rights records of states or ensuring their greater accountability. There is, in particular, an opportunity to mainstream indigenous peoples' rights in this process although there remain serious challenges in terms of the willingness of the HRC's member states to include the UNDRIP as part of the UPR framework. Nevertheless, for indigenous peoples facing serious and systematic violations of their rights and without access to redress at national level, the UPR may prove to be a useful tool in generating awareness, attention and support for the human rights issues of indigenous peoples. It also offers an opportunity to demand greater accountability of states in relation to the national implementation of the UNDRIP, by consistently raising this issue at every UPR session. Further, this will provide an added pressure on states to be more responsive to indigenous issues, both at national and international level, especially since the UPR takes place every four years. □

Notes

- 1 General Assembly Resolution 60/251 mandates the Human Rights Council to "undertake a universal periodic review based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".
- 2 A/HRC/RES/5/1

Joan Carling is an indigenous Kankanaey from the Cordillera region of the Philippines. She is currently Secretary General of the Asia Indigenous Peoples Pact (AIPP).

THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

The Convention on Biological Diversity (CBD) is an international agreement established by the United Nations. Its aim is to preserve biological diversity around the world. The CBD has three main objectives: to conserve biodiversity, to enhance its sustainable use and to ensure an equitable sharing of benefits linked to the exploitation of genetic resources.

Article 8(j) of the CBD recognizes the role of indigenous peoples in the conservation and management of biodiversity through the application of indigenous knowledge. The debate on indigenous knowledge and biodiversity is crucial as the CBD has commenced discussions on a proposed International Regime on Access and Benefit-Sharing (IR). Issues on biological/genetic resources and associated indigenous/traditional knowledge have expanded from the deliberations of the Working Group on Article 8(j) and related provisions to discussions within the Working Group on Access and Benefit-Sharing, the Working Group on Protected Areas and within various other thematic and cross-cutting issues.

The International Indigenous Forum on Biodiversity (IIFB) was established in 1993, during COP6, as the indigenous caucus in the CBD negotiations. Since then it has worked as a coordinating mechanism to facilitate indigenous participation and incidence in the work of the Convention through preparatory meetings, capacity building activities and other initiatives.

As in the previous year, discussions regarding application of the Convention on Biological Diversity continued throughout 2008, marked particularly by negotiations on the drafting of an International

Regime for access to genetic resources and the fair and equitable sharing of the benefits arising from their utilization (IR). The importance of global negotiations on climate change and related issues (biofuels, REDD initiative, and other mitigation measures) and the way this links with biodiversity conservation¹ was also voiced in important discussions within the CBD framework. This summary will focus on the results of the Ninth Conference of the Parties to the Convention (COP9) with regard to three important issues – the International Regime on access and benefit sharing, protected areas, and Article 8(j) of the Convention (on indigenous peoples' traditional knowledge).²

Ninth Conference of the Parties (COP9)

As indicated in *The Indigenous World 2008*, the year began with the sixth meeting of the Ad Hoc Open-ended Working Group on access and benefitsharing (WGABS), held in Geneva in January. This heralded a spirit of change in some negotiations that had thus far been blocked. In the months leading up to the COP9, the Geneva results were discussed in informal meetings of regional groups and in conversations with the co-chairs Fernando Casas (Colombia) and Timothy Hodges (Canada). The months prior to COP9 were also an opportunity for both the parties and other interested groups, including indigenous peoples' organisations and representatives, to produce and present written contributions on the IR.

COP9 of the CBD³ was held in Bonn (Germany) from 19 to 30 May 2008. More than 130 indigenous participants from all over the world attended the Conference and the preparatory meetings of the International Indigenous Forum on Biodiversity (IIFB)⁴, the indigenous caucus for the Convention's meetings. A number of issues of importance to indigenous peoples were on the meeting's long agenda and so the IIFB, decided at its preparatory meeting from 16 to 18 May to create thematic groups to monitor the most relevant issues. Of these working groups, those devoted to Article 8(j), protected areas, access and benefit sharing, forests and public education and awareness raising (CEPA) were the most important, although other issues such as island biodiversity were also monitored by indigenous representatives during the

two weeks of the negotiations. Of the issues for in depth review at this COP, agricultural biodiversity, in the context of the intense debates on biofuels, was noteworthy. Indigenous representatives presented several declarations regarding the impact of biofuels on their territories, food sovereignty and health.⁵

International Regime on access and benefit sharing (IR)

As was to be expected, there was great interest in the issue of access and benefit sharing during the two weeks of the COP. The sixth meeting of the WGABS had made substantial progress with regard to the basic aspects of the international regime. Its objective, scope and nature had been discussed, along with an initial list of main components that it should contain. This basic structure was annexed to the Geneva meeting report as a possible basis for future negotiations. It was essential to have a clear starting point given that the deadline for drafting and negotiating the IR is COP10, to be held in Japan in October 2010. Along with this annex, a draft decision was agreed laying out a negotiation process (roadmap) up to finalisation of the regime, with various expert meetings and meetings of the WGABS.

At the first round of consultations in Bonn, the co-chairs indicated their intention to make progress and reach agreements around the following three issues and in this order: firstly, the process (roadmap); secondly, its financing; and, thirdly, the basis for negotiation. These three issues would be reflected in the decision to be adopted by COP9. They also indicated their desire to commence substantive negotiations as soon as this work was complete. The IIFB's working group on access met with the co-chairs to present their initial comments on this proposal and to call for indigenous participation throughout the whole discussion process in Bonn.⁶ This participation took place in an informal consultative group held throughout the COP, following an agreement to accept the Geneva annex as a basis of the negotiations.

The concern of African and megadiverse countries⁷ and of the G77⁸, with regard to the expert groups became clear in the discussions on the roadmap. In their opinion, the experts were above all from the developed world and this was influencing the kind of conclusions that were

subsequently being offered to the parties. They felt that these technical meetings could be used politically as a way of delaying or influencing the negotiations. The position with regard to the expert groups' agenda reflected, as did the whole negotiation process, the opposition existing between the developing and the developed countries⁹. The difficulty in agreeing the priority issues for the discussion of the experts (equitable benefit sharing for some, access for others) created a need for a specific informal group to debate this issue. For its part, the IIFB indicated its support for a group of experts to focus on the issue of traditional knowledge, as proposed in the roadmap, and said that the aim of this group had to be to provide contributions regarding the rights of indigenous peoples in the context of these negotiations. It also indicated that the full and effective participation of indigenous peoples would be necessary in these expert meetings. Both proposals were included in the final COP9 decision.

Discussions on the draft Geneva decision focused mainly on the binding nature (or not) of the future IR. At Geneva, the countries most openly opposed to the IR (namely Canada, New Zealand and Japan) had accepted that at least some of the elements of the IR could be binding. The African and megadiverse countries called for these parties to clearly and unambiguously declare their support for a binding outcome. The lukewarm response, that the outcome of the negotiations could not be prejudged, aroused anger amongst the developing countries. They indicated that they were not prepared to continue conversations on possible expert groups if they did not receive a clear message that the work they were embarking on up to COP10 was aimed at producing a binding regime. After various tense sessions, the decision included the wish to negotiate an IR that will be a combination of both binding and non-binding elements. Decisions will be made as to the nature of these different elements during the course of the negotiations.

The timetable and content of the intersessional meetings of the WGABS prior to COP10, along with its main themes, were agreed during the discussions. The first (WGABS7) will deal with the negotiations for an operative text on objective, scope, compliance, fair and equitable benefit sharing, and access. The second (WGABS8) will deal with operative text on nature, traditional knowledge associated with genetic

resources, capacity building, compliance, fair and equitable benefit sharing, and access. The third (WGABS9) will consolidate the operative text negotiated at the two previous meetings and finalise the regime.

With regard to the substantive negotiations during COP9, these focused on two aspects. On the one hand, the exercise on the IR components that had been undertaken in Geneva was reviewed and, on the other, the scope of the regime was discussed. The little time available meant that the debate ended with scant progress which was recorded in a consolidated text in brackets that was annexed to the decision adopted by COP9 (decision 9/27 in UNEP/CBD/COP/9/29).

Indigenous issues in the debate on access and benefit sharing

The IIFB's thematic group on access for COP9 worked for the three days prior to the start of the official meeting revising UNEP/CBD/COP/9/6, particularly the Geneva draft decision and annex. The IIFB's participation in the informal consultative group was supported by the co-chairs and all the parties. It also participated in the meetings of the small informal group to discuss the terms of reference of the expert groups.

As a general starting point, the IIFB highlighted the importance of the adoption of the UN Declaration on the Rights of Indigenous Peoples and the need for full respect of indigenous peoples' rights over their traditional knowledge, the genetic resources on their territories and their free, prior and informed consent to any process of access. It also indicated the importance of taking the issue of traditional knowledge into account when drafting the international regime. This last issue has been fully accepted, as traditional knowledge associated with genetic resources is one of the elements that will make up the future regime.

The need to consider the role that the WG8J, as an expert body on the issue of indigenous knowledge, should play in relation to the WGABS was also highlighted. In terms of the roadmap, the IIFB expressed the importance of not leaving the discussion on traditional knowledge to the end of the negotiations but considering it from the start, and that its crosscutting nature should be taken into account in the discussions. , The IIFB stated that it was insufficient that tradition-

al knowledge and other aspects linked to indigenous rights be considered only in a possible expert meeting on the issue. It proposed that, under the issue of compliance, the role of indigenous customary law and of the relevant international human rights instruments be included. The full and effective participation of indigenous peoples in all meetings up to COP10 was also requested and the importance of holding regional and national meetings to debate issues relating to the regime was highlighted.

Another important discussion took place in the context of the debate on the components of the international regime. In the section on traditional knowledge, the need for the free, prior and informed consent of indigenous peoples before their knowledge is accessed or used is included. This is not, however, one of the components that has already been agreed. It was impossible to reach an agreement that would have made this element a “brick” (see *The Indigenous World 2007*) of the future regime and so this discussion will have to continue at future meetings. In terms of participation, the IIFB gained full support for its proposal to include experts nominated by indigenous peoples in all groups of experts and it was agreed that indigenous peoples could submit information and operative text to the Secretariat for its consideration in the negotiations.¹⁰

The Earth Negotiations Bulletin summarises the basic content of the decision adopted thus:¹¹ in decision 9/27, the COP, *inter alia*: recognises the potential role of the clearing-house mechanism; recognises the importance of indigenous and local communities’ participation in the elaboration and negotiation of the regime; and takes note of the UN Declaration on the Rights of Indigenous Peoples. The COP, *inter alia*:

- decides that Annex I to the decision will form the basis for the future drafting and negotiation of the regime;
- reiterates its instruction to the WGABS to complete the drafting and negotiation of the regime as soon as possible before COP10;
- decides that the working group on ABS will meet three times before COP10 and that each meeting will be preceded by regional and interregional consultations and last 7 consecutive days if there are funds available;

- instructs the WGABS, once the operative text has been negotiated by WGABS7, to negotiate operative text on the nature within WGABS8, followed by a clear identification of the components that must be addressed through legally binding measures, those that must be addressed through non-binding measures and those that could be a mixture of the two options, and draft the corresponding dispositions;
- invites the parties and others to present opinions and proposals, including operative text, in relation to the main components listed in Annex I;
- decides to establish three groups of technical and legal experts in accordance with the terms of reference appearing in Annex II;
- calls on the Executive Secretary to commission studies and invite experts to illustrate various issues to the WGABS, as listed in the decision;
- vccccccinvites the parties, donors and others to provide financial support to regional workshops for indigenous and local communities, the results of which can be received by the groups of experts on fulfilment and traditional knowledge; and invites the GEF to redouble its efforts to implement its training programme on ABS in order to enable the parties to elaborate, negotiate and implement the international regime.

The decision includes two annexes. Annex I contains the draft text and main components of the international regime that were adopted at the WGABS6 and modified at COP9. Annex II contains the terms of reference for the three expert groups. The meeting of the first of these groups (on concepts, terms, working definitions and sectoral procedures) was held in December 2008 in Namibia.¹²

Protected areas

The discussions on protected areas were also long and tense during COP9. After the problems reported by indigenous representatives at the meeting of the working group on protected areas held in Rome in February 2008,¹³ where they felt their proposals had not been taken

into account, the discussions continue to be complex. The two main issues were the review of the programme of work adopted at COP7 and the urgent mobilisation of financial resources to implement it. Indigenous representatives denounced the negative impacts that protected areas had on their territories and highlighted the need, in accordance with the Declaration on the Rights of Indigenous Peoples, for full respect of their land rights, recognising their biocultural territories and their own systems of governance. The final decision IX/18 on protected areas does not reflect the indigenous demands, and is limited to inviting the parties to improve, diversify and strengthen the different kinds of governance of protected areas, bearing in mind indigenous peoples, and to establish processes for their participation in line with national legislation and applicable international obligations.

Article 8(j): traditional knowledge, innovations and practices

The debate on article 8(j) focused on the report of the WG8J.¹⁴ A recurring issue in the discussion was that of references to free, prior and informed consent. It was for the first time accepted that there should be such reference in relation to various issues, such as climate change mitigation measures, following the insertion of a preambular paragraph that indicates that the decision must be interpreted in accordance with the Convention, in particular Article 8(j). Decision IX/13 on Article 8(j) contains another preambular paragraph on the Declaration on the Rights of Indigenous Peoples (similar to that adopted in the decision on ABS). It states that a meeting of the WG8J will be held before COP10, indicating that the WG8J's possible contributions to the ABS process should be identified. It decides that task 15 of the programme of work should be commenced (guidelines on repatriation of information, including cultural property, in order to facilitate the recovery of traditional knowledge of biological diversity) and that information should be presented with regard to detailing a strategy for the conservation and sustainable use of biodiversity by indigenous peoples. □

Notes

- 1 See <http://www.cbd.int/climate>. The first meeting of the Technical Expert Group on Biodiversity and Climate Change, created by decision IX/16 of COP9 to provide information on the impacts of climate change on biodiversity, defined as “the new great threat to biodiversity”, took place in London from 17 to 21 November 2008. The preliminary report can be found at: <http://www.cbd.int/doc/meetings/cc/ahteg-bdcc-01/other/ahteg-bdcc-01-findings-en.pdf>
- 2 The Indigenous Information Network (iin@iin.co.ke) has produced a full narrative report on COP9 and indigenous participation, which includes the interventions of the IIFB on many other issues that could not be included in this summary for lack of space, such as forests, one of the issues for in-depth revision at this COP, agricultural biodiversity and climate change and biodiversity.
- 3 All the COP9 decisions can be found at: <http://www.cbd.int/decisions>
- 4 More information on the IIFB can be found at: <http://www.iifb.net/>
- 5 A number of the declarations presented by the IIFB can be found at: http://unitf.indigenousportal.com/index.php?option=com_alphacontent&Itemid=460
- 6 In addition to the presence of indigenous organisations, the Permanent Forum on Indigenous Issues was amongst the international bodies present. In its presentation on the subject, its chair emphasised the importance of the adoption of the UN Declaration on the Rights of Indigenous Peoples, which needed to become a framework for the negotiations, and the importance of respecting the rights of indigenous peoples to their traditional knowledge and to the genetic resources on their territories in any instrument that may be developed, including their free, prior and informed consent.
- 7 The megadiverse countries are a group of countries that harbor the majority of the earth's species and are therefore considered extremely biodiverse. The World Conservation Monitoring Centre, an agency of the United Nations Environment Programme, has identified 18 megadiverse countries, most located in the tropics. From Wikipedia: http://en.wikipedia.org/wiki/Megadiverse_countries
- 8 A loose coalition of developing countries.
- 9 Amongst this latter there are those theoretically more open to dialogue, such as the European Union, and the more extreme positions of Canada, New Zealand and Japan. See *The Indigenous World 2008* on this issue.
- 10 At this first COP after the adoption of the Declaration, there was plenty of discussion on mentioning this in the decisions. In the case of access, the following paragraph appeared in the draft decision, proposed at Geneva by the IIFB and supported by various parties:

[Welcoming] [Taking note of] the UN Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007 [whereas some of the rights identified in the Declaration, particularly in Article 31 relating to traditional knowledge and genetic resources, will facilitate and guide the parties in

understanding their commitments arising from the Convention on Biological Diversity].

The African group, megadiverse countries and the EU agreed in principle to remove the brackets, maintaining the expression “welcoming” and the rest of the text. Canada and New Zealand expressed their reservations. Canada proposed the following text:

Taking note of the UN Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007.

The IIFB argued that the original version should be maintained, as Article 31 directly links the Declaration to the issues debated in the regime. A number of parties presented intermediary options but Canada indicated that it would accept nothing but its proposal. Following long discussions, the version supported by Canada and New Zealand was maintained.

- 11 Daily and final updates in Spanish and English at: <http://www.iisd.ca/biodiv/cop9/>
- 12 Report and documentation from this meeting at: <https://www.cbd.int/doc/?meeting=ABSGTLE-01>
- 13 Report and documentation from this meeting at: <http://www.cbd.int/wgpa2/>.
Report on daily developments in the discussions at: <http://www.iisd.ca/biodiv/wgpa2/>
- 14 UNEP/CBD/COP/9/7

Patricia Borraz is a consultant working for Almáciga. This work involves supporting the participation of indigenous organisations and representatives in multilateral negotiations, particularly around issues of environment and sustainable development, through capacity building, communications and information exchange and funding support for their attendance at meetings.

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (ACHPR) was officially inaugurated on 2 November 1987 as a sub-body of the then Organization of African Unity (OAU). The OAU was disbanded in July 2002, and has since been replaced by the African Union (AU). In 2000, the African Commission established its Working Group on Indigenous Populations / Communities in Africa, which was a remarkable step forward in the promotion and protection of the human rights of indigenous peoples in Africa. The Working Group has produced a thorough report on the rights of indigenous peoples in Africa, and this document has been adopted by the ACHPR as its official conceptualization of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2000, been on the agenda of the African Commission and henceforth has been a topic of debate between the ACHPR, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and the Working Group's continued activities – sensitization seminars, country visits, information activities and research – all play a crucial role in ensuring the vital dialogue.

ACHPR sessions: 43rd and 44th sessions

In 2008, the ACHPR held two ordinary sessions. Many indigenous peoples' representatives participated and contributed by making statements on the human rights situation of indigenous peoples in Af-

rica. The ACHPR Working Group on Indigenous Populations / Communities (Working Group) also presented its progress reports.

The participation of indigenous representatives, as well as the intervention of the Working Group's chairperson during the sessions, contributed to raising awareness of indigenous peoples' rights. The issue is not well known in Africa and some misunderstandings and questions still need to be clarified. However, the Working Group summary report on the rights of indigenous peoples in Africa, published in 2005, is still a key document for understanding indigenous peoples' rights in Africa.¹ Thanks to this document, and the work of the Working Group in distributing and explaining it, many African states have now become more sensitive to the issue.

During each session, the ACHPR also examines the periodic reports of African states, in accordance with Article 62 of the Africa Charter on Human and Peoples' Rights. The periodic reports of Tanzania and Sudan were presented at the 43rd session² and the Nigeria report was examined at the 44th session.³ During the different states' examinations, Commissioner Bitaye, chairperson of the Working Group, made sure that the issue of indigenous peoples' rights was raised and clarified.

Community Research and Development Status (CORDS), an indigenous organization in Tanzania, elaborated a shadow report in collaboration with other local NGOs and IWGIA in order to bring indigenous peoples' concerns to the attention of the ACHPR.⁴ The main issues raised in the shadow report for Tanzania were:

- Land and natural resources rights: principally on the impending eviction of the Maasai pastoralists from the Ngorongoro Conservation area, the eviction of the Barbaig pastoralists from Hanang district, and the land alienation of the Hadzabe hunter/gatherer communities;
- Right to movement: forcible evictions of pastoralist populations illustrate the intention of the Tanzanian government to eradicate pastoralism.
- Rights to education and culture: the problem lies mainly in the absence of education policies or programs targeting children in pastoralist communities.

Sensitization seminar in Ethiopia

The ACHPR held a sensitization seminar on the rights of indigenous populations / communities in Africa in Addis Ababa from 13-16 October 2008 with the participation of states and African Union representatives, as well as international organizations such as the World Bank, national human rights institutions and indigenous peoples' representatives from all over the continent.

Such seminars are very important to raise awareness of indigenous peoples' rights issues among the different stakeholders, and to provide information on and obtain support for the work being done by the ACHPR Working Group. Presentations were made to clarify the concept of indigenous peoples, to shed light on the problems encountered by the indigenous communities in Africa, to identify the consequences of discrimination and to illustrate good examples of best practice taken from the African Union member states.

Unfortunately, some states are still reluctant to recognize indigenous populations in their own country and there is not the same level of commitment from one state to another. While some countries such as South Africa, Congo Brazzaville and Ethiopia are positive, others such as Ivory Coast and Uganda remain unenthusiastic about the issue. This also illustrates the need to pursue sensitization in order to bring everyone to the same level of understanding and interest.

One positive outcome of this seminar was the new opportunities for greater cooperation with international organizations such as the World Bank, which has shown a great deal of interest in becoming more involved in the promotion and protection of indigenous peoples' rights in Africa.

Country visits

An important mandate of the Working Group is to undertake country visits to African countries in order to monitor the human rights situation of indigenous populations / communities in that country. These consist of gathering information, meeting with the relevant Ministries,

the main international organizations and NGOs, the national human rights institution and the indigenous communities. Such visits also contribute to increasing dialogue between the government and the indigenous communities. This is extremely helpful in terms of understanding each other's points of view and, in the longer term, finding solutions to the different problems identified.

From 1-5 December 2008, the Working Group undertook a country visit to Rwanda. The mission met with the relevant stakeholders and visited indigenous communities outside Kigali. One of the Working Group members is himself from a Batwa community in Rwanda.

In Rwanda, the term indigenous is not encouraged and the Constitution refers to one country with one national language, the same culture and a long common history. The term indigenous has a negative connotation in Rwanda because it refers to one group in particular, the Batwa, and emphasizes their specific culture and problems, which differ from the dominant groups (Hutus and Tutsis). It is feared that this will bring back ethnic tensions in Rwanda. The Working Group's visit was crucial in this regard, as its aim was to discuss and clarify the concept and consequently try to minimize apprehension towards indigenous peoples' rights.

Reports from country visits to Namibia (in July-August 2005),⁵ Botswana (June 2005)⁶ and Niger (April 2006)⁷ were published in 2008. They have been distributed to the main stakeholders from the countries in question as well as to other relevant recipients (universities, international organizations, donors, United Nations agencies, etc.). They are reference documents on the situation of indigenous peoples' rights in the country and are used by our partners for advocacy work. For example, a partner organization in Niger, AREN, used the report to endorse its demand to the government for better access to land for the Fulani peoples of Niger.

Notes

- 1 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs. 2005.** *Report of the African Commission's Working Group of Experts on Indigenous Populations / Communities: submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa",*

adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session. Denmark. (Also available in French).

According to this report, there are three main misunderstandings of the concept in Africa: the protection of the rights of indigenous peoples would give special rights to some ethnic groups over others; all Africans are indigenous, being on the territory before European colonialism, and indigenous rights will lead to tribalism and ethnic conflicts. This is why the Working Group also developed a definition applicable to Africa in the same report. In that sense, the possible criteria by which to identify indigenous peoples are:

- Self identification;
 - A particular culture and way of life different from the dominant group(s);
 - Access to traditional land and natural resources is primordial for the survival of their cultural and way of life;
 - They suffer from discrimination and are subject to domination and exploitation;
 - They often live in isolated regions.
- 2 **The Republic of Sudan.** *The Third Periodical Report of the Republic of the Sudan under Article 62 of the African Charter on Human and People's Rights, May 2006.* Presented at the ACHPR's 43rd ordinary session, May 2008. The Sudan report can be found on this link: www.achpr.org/english/state_reports/Sudan/Sudan%20_3_Report.pdf
 - The United Republic of Tanzania.** *The second to tenth consolidated periodic reports submitted by the United Republic of Tanzania under the Africa Charter on Human and Peoples' Rights.* Presented at the ACHPR's 43rd ordinary session, May 2008. The Tanzania report can be found on this link: www.achpr.org/english/state_reports/Tanzania/report_Tanzania.pdf
 - 3 **Federal Republic of Nigeria.** *Nigeria's 3rd Periodic Country Report: 2005-2008 on the implementation of the African Charter on Human and Peoples' Rights, September 2008.* Presented at the ACHPR's 44th ordinary session, November 2008. The Nigeria report can be found on this link: www.achpr.org/english/state_reports/Nigeria/3_Periodic%20Rpt.pdf
 - 4 **Community Research and Development Services (CORDS):** *Supplemental / Shadow Report of Tanzania to the African Commission on Human and Peoples' Rights May 2008.* Presented at the ACHPR's 43rd ordinary session, May 2008. The Tanzania shadow report can be found on this link: www.iwgia.org/graphics/Synkron-Library/Documents/InternationalProcesses/ACHR/Shadow%20reports/Tanzania%20Shadow%20report.no6.pdf
 - 5 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2008:** *Report of the African Commission's Working Group on Indigenous Populations / Communities: Mission to the Republic of Namibia, July-August 2005.* Denmark. (Also available in French) The Namibia report can be found on this link: www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/ACHPR%20Namibia%20UK.pdf
 - 6 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2008:** *Report of the African Commission's Working*

Group on Indigenous Populations / Communities: Mission to the Republic of Botswana, June 2005. Denmark. (Also available in French)

The Botswana report can be found on this link: www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/ACHPR%20Botswana%20UK.pdf

- 7 **African Commission on Human and Peoples' Rights & International Work Group for Indigenous Affairs, 2008:** *Report of the African Commission's Working Group on Indigenous Populations / Communities: Mission to the Republic of Niger, February 2006.* Denmark. (Also available in French)

The Niger report can be found on this link: www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/ACHPR%20Niger%20UK.pdf

Geneviève Rose holds a M.A. in Conflict Resolution and International Studies from the University of Bradford, UK. She is currently project coordinator of IWGIA's African Commission Programme.

THE ARCTIC COUNCIL

The Arctic Council is an intergovernmental forum created in 1996. It includes Canada, Denmark (including Greenland and the Faeroe Islands), Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. The Arctic Council is unique in that it includes representatives of indigenous peoples. Six international organizations representing Arctic indigenous peoples have the status of Permanent Participants of the Arctic Council. These organizations are: the Aleut International Association, the Arctic Athabaskan Council, Gwich'in Council International, the Inuit Circumpolar Council, the Russian Association of Indigenous Peoples of the North and the Saami Council.

Norway took over the chair of the Arctic Council following the Ministerial Meeting at Salekhard (Russia) in 2006 and will hand it over to Denmark at the Ministerial Meeting of April 2009 in Tromsø, Norway.

In its chairmanship program, Norway states that the main emphasis of the Arctic Council has thus far been on sustainable development and environmental protection.

Resource Management

Norway continues by emphasising that it will not be possible to maintain settlement patterns and ensure growth and welfare without economic activity. The Council should therefore also initiate broad political debate on all issues of importance to the Arctic and the people living there. This includes economic activity in the energy, fisheries and

mining sectors and other matters of joint interest related to social and economic development.

In order to ensure growth and welfare and maintain settlement patterns, we should also focus our efforts on managing and using both the renewable and non-renewable natural resources of the region in a prudent manner that protects the environment and ensures high safety standards.

This is a new attitude within Arctic cooperation which, since its inauguration in 1996, has focused on environmental protection and sustainable development and has established an extensive knowledge base in these fields.

Norway wanted the Arctic Council to consider its own Integrated Management Plan for the Barents Sea – Lofoten area as a model for an ecosystem approach to managing the resources in the Arctic. However, Norway's Integrated Management Plan for the Barents Sea - Lofoten area received a great deal of criticism nationally from its own indigenous people, the Saami, and from other local people in the north for not being an all-inclusive plan, given that human activities such as fisheries would not be included at all.

The very first Arctic Council Senior Arctic Officials (SAO) meeting in Norway in 2007 was not happy with the Norwegian project proposal for Integrated Oceans Management and its title, outline, scope and implementation had to be rephrased before it could be adopted as the Arctic Council project "Best Practices in Ecosystem-based Oceans Management". This was probably considered a backwards step for the chairmanship's central program initiative.

On marine issues, the Arctic Council had also previously decided, at the ministerial meeting in Reykjavik in 2004, to carry out an Arctic Marine Shipping Assessment (AMSA). The assessment has been delayed for some years but, due to the strong leadership of the US, Canada and Finland, the assessment will be submitted to the Tromsø Ministerial Meeting. This undertaking has been important from an indigenous perspective, in particular for those indigenous peoples residing along the coast and who depend on living marine resources. The AMSA team has designated a separate chapter for indigenous issues and carried out a number of town hall meetings to give the local people a voice in the assessment.

Norway, however, normally considers its three northernmost counties (north of 62 degrees) as its Arctic region at the Arctic Council, but in this very assessment, in December 2008, came to the conclusion that AMSA in Norway should deal only with marine areas above 72 degrees north. Again, as in the Integrated Management Plan for the Barents Sea - Lofoten area, this would seem to be avoiding having to deal with indigenous peoples' issues.

This adds to the reasons why the Saami politicians have raised concerns stating that, if the Norwegian chairmanship sets the standard for subsequent chairs, then the strong position the Arctic Indigenous Peoples have held as Permanent Participants in the Council will be at stake.

Arctic Languages on the agenda

For the first time in the 12-year history of the Arctic Council, a Member state appointed a Permanent Participant of the Council to conduct an initiative mandated by the Ministerial declaration when Canada requested that the Inuit Circumpolar Council conduct the Arctic Indigenous Language Symposium instigated at the initiative of Canada. The vision of the Symposium was to enhance and promote Arctic indigenous languages and all the Arctic knowledge contained therein. Around 80 language experts, stakeholders and interested participants gathered in Tromsø in October 2008 to discuss the issues and challenges and also to consider the future of indigenous languages in the Arctic region.

A message on languages policies around the Arctic that was repeated throughout the symposium was that good intentions are not enough. The symposium asked the Arctic Council to undertake an assessment of Arctic indigenous languages in order to facilitate a comprehensive understanding of the state of Arctic indigenous languages and inform future action aimed at maintaining their diversity and vibrancy.¹

Climate Change

Norway has maintained a strong focus on climate change throughout its chairmanship. Several projects are being conducted by the Arctic Council Working Groups in order to follow up the recommendations from the Arctic Climate Impact Assessment (ACIA), submitted to ministers in 2004. The fourth International Polar Year (IPY) 2007-08 also coincided with the Norwegian chairmanship, resulting in a huge quantity of new research on climate change. Norway has worked on adopting an IPY Legacy project. The intention is to produce a summary report of the IPY results in a new assessment, as a follow-up to the 2004 ACIA report. It is also worth noting that, since the election of a new president in 2008, the US has changed its attitude and is now much more involved in the Arctic climate change debate. □

Note

- 1 Arctic Indigenous Language Symposium website: <http://www.arcticlanguages.com/>

Gunn-Britt Retter is a Saami from Varangerfjord in north-east Norway and chair of the local Saami Association, Unjárgga Sámi Searvi. She is a member of the Saami Parliament in Norway and head of the Arctic and Environmental Unit in the Saami Council.

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.

BECOMING A MEMBER

IWGIA welcomes new members. If you wish to apply for membership and become part of our dedicated network of concerned individuals, please consult our homepage at www.iwgia.org for details and buy a membership through our web shop or download a membership form.

Membership fees for 2009 are:

EUR 50 (EUR 30 for students and senior citizens)
for Europe, North America, Australia, New Zealand and Japan.
EUR 20 for the rest of the world.

For IWGIA, membership provides an essential element of support to our work, both politically and economically.

All members receive IWGIA's journal *Indigenous Affairs*, IWGIA's Annual Report, and the yearbook *The Indigenous World*. In addition, members benefit from a 33% reduction on other IWGIA publications. If you want a support membership only without receiving our publications, the annual fee is EUR 8.

IWGIA PUBLICATIONS IN 2008

Publications can be ordered online at:
www.iwgia.org

In english

Kathrin Wessendorf (ed.), 2008: *The Indigenous World 2008*.
Copenhagen: IWGIA - ISBN 978-87-91563-44-7

Christina Nilsson and Mark Nuttall (eds.): *Climate Change. Indigenous Affairs 1-2 / 2008*. Copenhagen: IWGIA

Mark Nuttall, Diana Vinding and Kathrin Wessendorf (eds.): *IWGIA, 40 years on. Indigenous Affairs 3-4/ 2008*.
Copenhagen: IWGIA - ISSN 1024-3283

Pedro García Hierro and Efraín Jaramillo Jaramillo, 2008: *Colombia: The Case of the Naya. IWGIA Report 2*.
Colombia: IWGIA and Colectivo de trabajo Jenzera
ISBN: 978-95-88262-70-3

Christian Erni (ed.), 2008: *The Concept of Indigenous Peoples in Asia. A resource book*.
Thailand: IWGIA and AIPP - ISBN 978-87-91563-34-8

Mille Gabriel and Jens Dahl (eds.), 2008: *UTIMUT – Past heritage – future partnership*.
Copenhagen: IWGIA and NKA - ISBN: 978-87-91563-45-4

Erica-Irene Daes, 2008: *Indigenous peoples - keepers of our past - custodians of our future*.
Copenhagen: IWGIA - ISBN 978-87-91563-43-0

Danilo Geiger (ed.), 2008: *Frontier Encounters - Indigenous Communities and Settlers in Asia and Latin America.*

Malaysia: IWGIA and NCCR-north-south

ISBN 978-87-91563-15-7

Report of the African Commission's Working Group on Indigenous Populations/Communities: Mission to Botswana. / Rapport du groupe de travail de la commission africaine sur les populations/communautés autochtones: Mission en Botswana.

Denmark: ACHPR and IWGIA - ISBN 978-87-91563-29-4

Report of the African Commission's Working Group on Indigenous Populations/Communities: Mission to Namibia. / Rapport du groupe de travail de la commission africaine sur les populations/communautés autochtones: Mission en Namibia.

Denmark: ACHPR and IWGIA - ISBN 978-87-91563-32-4

Report of the African Commission's Working Group on Indigenous Populations/Communities: Mission to the Republic of Niger / Rapport du groupe de travail de la commission africaine sur les populations/communautés autochtones: Mission en République du Niger.

Denmark: ACHPR and IWGIA - ISBN 978-87-91563-48-5

IWGIA & ORE: *Building Dignity: Bolivia's Constituent Assembly, 2008.* (DVD, 35 minutes – Spanish with English subtitles)

En castellano

Kathrin Wessendorf (ed.), 2008: *El Mundo Indígena 2008.*

Perú: IWGIA - 978-87-91563-46-1

Christina Nilsson and Mark Nuttall (eds.): *Cambio Climático. Asuntos Indígenas 1-2 / 2008.* Copenhagen: IWGIA

Mark Nuttall, Diana Vinding and Kathrin Wessendorf (eds.): IWGIA 40 años después. *Asuntos Indígenas 3-4/ 2008*.
Copenhague: IWGIA - ISSN 1024-3283

Pedro García Hierro and Efraín Jaramillo Jaramillo, 2008: Colombia: El caso del Naya. *Informe IWGIA 2*.
Colombia: Colectivo de trabajo Jenzera e IWGIA.
ISBN: 978-95-88262-59-8

Nancy Yáñez y Raúl Molina, 2008: *La gran minería y los derechos indígenas en el norte de Chile*. Chile: LOM Ediciones / Observatorio de Derechos de los Pueblos Indígenas / IWGIA.
ISBN 978-95-60000-10-1

Alejandro Parellada y María de Lourdes Beldi de Alcántara (eds.), 2008: *Los Aché del Paraguay: Discusión de un Genocidio*.
Argentina: IWGIA y ORE - ISBN 978-87-91563-54-6

Carlos G. Romero Bonifaz, 2008: *La Tierra como Fuente de Poder. Económico, Político y Cultural*.
Bolivia: IWGIA e ISBOL - ISBN 978-99-95404-47-5

Alfredo Tabo Amapo, 2008: *El eco de las voces olvidadas. Una autoetnografía y etnohistoria de los Cavineños de la Amazonia Boliviana*. Editores Mickaël Brohan & Enrique Herrera.
Bolivia: IWGIA - ISBN 978-87-91563-53-9

Alvaro Bello and José Aylwin: *Globalización, Derechos Humanos y Pueblos Indígenas*. Chile: Observatorio de Derechos de los Pueblos indígenas e IWGIA - ISBN 978-95-68775-00-1

IWIGA & ORE, 2008: *Construyendo Dignidad: Asamblea Constituyente en Bolivia*. (DVD, 35 minutos)

Morita Carrasco, 2009: *Tierras duras*.
Argentina: IWGIA - ISBN: 978-87-91563-51-5

SUBSCRIPTION RATES 2009

INDIGENOUS AFFAIRS / *ASUNTOS INDÍGENAS*

Individuals: EUR 20

Institutions: EUR 28

THE INDIGENOUS WORLD / *EL MUNDO INDÍGENA*

Individuals: EUR 24

Institutions: EUR 32

BOOKS / LIBROS

Individuals: EUR 47

Institutions: EUR 63

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD / *ASUNTOS INDÍGENAS & EL MUNDO INDÍGENA*

Individuals: EUR 44

Institutions: EUR 60

INDIGENOUS AFFAIRS, THE INDIGENOUS WORLD & BOOKS / *ASUNTOS INDÍGENAS, EL MUNDO INDÍGENA & LIBROS*

Individuals: EUR 91

Institutions: EUR 122

IWGIA's publications are published on a not-for-profit basis. All subscriptions to our publications form a direct contribution enabling IWGIA to continue its analysis and documentation work on the situation of the world's indigenous peoples.

IWGIA's publications can be purchased through:

Our website: www.iwgia.org

By email: iwgia@iwgia.org

or give us a call: +45 35 27 05 00

