EDITORIAL

A central prerequisite for the self-determination of indigenous peoples is their ability to exercise control over their territories and the management of the natural resources found therein. Natural resources are of vital importance for the survival of indigenous peoples and their cultures, and attempts by states to limit indigenous peoples’ access to their territories and their control over natural resources have in many cases proved to be disastrous. The establishment of game parks in East Africa for tourism has led to the eviction of pastoralists traditionally living in the areas and has resulted in massive poverty. The ongoing eviction of the Bushmen from areas in the Kalahari in Southern Africa, where they have lived for centuries, has caused a sense of destruction of their culture and traditional ways of life. In Andes, extreme poverty, disintegration and despair: the establishment of protected areas in south east Asia has pushed many indigenous peoples out of the forests on which their survival and way of life depends; the massive logging and large scale commercial plantations in South East Asia, the Amazon, Central Africa are forcing indigenous peoples to abandon their traditional lands and move to more marginal areas. Such processes occur all over the world. Economic globalization and structural adjustment programmes contribute profoundly to the process by which local control is diminishing and national and multinational forces are taking over.

This issue of Indigenous Affairs focuses on indigenous peoples and natural resource management - the immense problems which indigenous peoples are facing in this area. It also glimpses of what could be success stories.

In recent years the discourse on environmental protection has gained momentum. The Rio meeting, Rio Declaration and the resulting processes have stimulated an increased concern for the urgency of protecting the environment from human destruction. While this is a positive development, unfortunately it does not mean that the important contribution which indigenous peoples can make to the preservation and management of the environment is being given substantially more consideration.

The stereotyped perception that indigenous peoples and their way of living are destructive to the environment and that therefore they have to be moved out of their territories to pave way for environmental or wildlife conservation is still very much alive. In Asia, many governments still tend to label indigenous swidden farmers as ‘destroyers of the forests’. In Africa, governments still accuse pastoralists of the destruction of the environmentally fragile arid and semi-arid areas where they often live. This has a clear political aspect - indigenous peoples are being made scapegoats for environmental degradation. However, large scale degradation is caused first and foremost by the interests of states and national and multinational companies in making a profit by exploiting natural resources. Of course, there are examples where indigenous peoples are forced to over-exploit the environment. But in most cases it is a consequence of their suppression and marginalisation, which forces them to abandon large parts of their lands and try to survive on the margins of what is left.

The western romanticised ideal of indigenous peoples, as special peoples who live at all times in an unchanged harmonious relationship with nature, also still exists. This concept implies that indigenous peoples should not change or exploit natural resources commercially in any way. This stereotyped idealisation of indigenous communities becomes problematic when it is turned into a denial of the right of indigenous peoples to determine their own development and to develop new strategies in order to cope with a world which is ever changing and which is putting even more pressure on indigenous communities.

There is ample evidence that indigenous peoples’ relationship to the environment and their use of resources is more sustainable than those dominating the world today. However, this is not a given; it is not in the genes of indigenous peoples and it does not remain static, untouched by external development processes.

When supporting indigenous peoples in their fight to be part of and to control natural resource management in their territories, it is important to recognise that through the centuries, indigenous peoples all over the world have developed natural resource management systems which sustain their livelihoods in a unique way, and which at the same time protect the environment in which they live and on which their way of life depends. But it is also important to recognise that no cultures are static, and to appreciate that the dynamic character of indigenous cultures is an opportunity rather than a threat to the process of environmental protection and sustainable management of natural resources.

Encroachment on indigenous peoples’ territories, and the non-recognition of the potential contribution of indigenous peoples to natural resource management, all too often go under the name of development. The article written by Raymond Abia on the expansion of
large commercial plantations in Sarawak, Malaysia clearly demonstrates this. It shows how a national growth-orientated policy focused on ‘development’ of indigenous lands all too easily turns out to work against the interests of the indigenous peoples and directly threatens their territorial rights.

Ironically, encroachment on indigenous peoples’ territories also happens in the name of biodiversity conservation. In Africa, biodiversity conservation efforts have in many cases led to outright human rights violations, dispossession and resource stress. In consultation with international NGOs and aid agencies, African governments have made special species conservation laws and established national parks, game reserves and other types of conservation areas. Residents of areas converted into game parks have been subjected to the imposition of restrictive wildlife laws which prevent them from exercising their traditional subsistence practices. In many cases, residents suspected of being poachers have been seriously mistreated or even killed. Forced resettlement in the name of wildlife conservation and tourism promotion has been advocated by a number of African governments and environmental NGOs - for example with the Bushmen in the Central Kalahari Game Reserve in Botswana, and the Masai in Mkorma in Tanzania.

In Asia too, the relocation of indigenous peoples from their ancestral territories has been employed on a large scale in order to pave the way for the ‘conservation’ of these areas. The article on the politics of conservation in Thailand written by Kirsten Ewers documents how many of the Pwo Karen indigenous people in Western Thailand have been moved out of the forest which they used to inhabit, and have had to resettle in so-called ‘buffer zones’. The article reflects a classic example of how the immense knowledge and potential of indigenous peoples to co-manage protected areas is ignored.

Likewise, in the Philippines the conservationist paradigm dominates national environmental policy. Though the old, strictly punitive protectionism is now being replaced by a seemingly more ‘people orientated’ conservationism, indigenous communities are still losing out. In the article on the cultural costs of forest conservation on Palawan Island, Dario Novellino analyses how integrated conservation-development projects affect the indigenous communities heavily. Though the policy does not prescribe forced relocation, it will in effect promote the disintegration of the unity of indigenous lands. The article documents how developers and conservationists have availed themselves of a new ‘regime of truth’ claiming to possess the true version of how to conserve biodiversity - a discourse which only sees a role for indigenous peoples in natural resource management insular as they behave according to the western constructed and romanticised image of ‘pristine forest dwellers’ living in absolute harmony with nature, regardless of changes in the surrounding world.

Though the non-participatory concept of conservation, or the ‘National Park’ concept, still guides many governments and international bodies, a new awareness about the role which indigenous people can play in sustainable development and conservation is now emerging. This is reflected, for example, in the Rio Declaration:

“Indigenous peoples and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in achievement of sustainable development.”

Leading international environmental organisations now consider joint management as the best way to achieve biodiversity conservation and natural resource management. What is really crucial, however, is whether governments will also try gradually to adopt new ways. In recent years some governments have actually adopted collaborative management approaches in forestry, fishery, wildlife management and protected areas policies. For example, in Caprivi in northern Namibia there have been some efforts to establish community-based natural resource management activities in line with the Government of Namibia’s national environmental policy. As described in the article by Robert Hitchcock and Marshall Murphree, the San (Bushmen) are participating actively in the West Caprivi Community-Based Conservation Program. Thus the indigenous people of the area have a potential influence on quota setting for wildlife hunting - the only place in Africa where this happens, as quota setting is normally an activity carried out solely by wildlife departments. However, the effect of the programme is limited by the lack of land rights for the San and by lack of recognition of their traditional authority, which hampers their ability to negotiate effectively with government agencies. As the article illustrates, it is still very rare for the participation of indigenous peoples in natural resource management to be based on the recognition of their fundamental territorial rights and on the allocation of decision-making power.

The fact that land rights and official recognition of such rights are fundamental for indigenous peoples to have genuine control over their natural resources is clearly illustrated in the article by Maria Luino Acosta on the fight of the indigenous Awas Tingri community in Nicaragua against a transnational logging company. The community has fought strongly against a logging concession granted by the government on their communal lands. After a long battle the community was successful, the concession has been cancelled and the company has announced that it is closing its operations in Nicaragua. This is an important victory which shows the strength of indigenous communities. But it is also a case which illustrates how indigenous peoples can be dispossessed of their territories and natural resources if their land rights are not properly recognised.

It is of great importance that leading international organisations now take a more progressive stand. However, the most vibrant and important force to advance the collaborative approach comes from the indigenous peoples themselves and the efforts they make at the local, regional and international levels to influence governments. The article on the Van Gujars in northern India gives evidence of this. As described by Parmesh Dangwal, in 1992 the Van Gujars were prevented from entering the forests which are their traditional winter habitat by the forest department. This restriction would seriously affect the continuation of their traditional way of life and they refused to accept it. In the following years they elaborated - with the help of an NGO - a community forest management plan based on traditional knowledge, in which the Van Gujar community is fully involved in decision-making and implementation. The management plan is seemingly in accordance with national priorities, and one can hope that the government is sincere in claiming that it intends to bring about changes in the country’s archaic forest conservation and wildlife protection acts.

The international lobbying work in which indigenous peoples are engaged is also crucial and shows that at the same time that globalization is promoting more and more encroachment on indigenous peoples’ territories, the indigenous movement is becoming stronger, and is getting more experienced and professional in advocating the cause of indigenous peoples.
"SACRIFICING PEOPLES FOR THE TREES"

Members of the Pala’wan ethnic groups with kuliling, (the traditional lute)
right: Pala’wan children from the Tsin’t Bata community
Photo: Dario Novellino
The cultural cost of forest conservation on Palawan Island (Philippines)

By Darío Novellino

Introduction

Traditional development discourse has maintained the superiority of western science, and has thus engaged in a rational ordering of the ‘Third World’ while supporting the equation of reason, freedom, emancipation and progress. This discourse has now been replaced by that of environmentalism, which has been perceived as a useful corrective to the usual approaches of development. While development has generally been viewed as an ‘outsider’ discourse, environmentalism claims to be an ‘insider’ discourse, the most vivid expression of people’s desires and aspirations. Hence, western environmentalists often claim that their struggle to save the natural environment shares common interests, values and aspirations with the indigenous communities with which they work.

One does not need to look far to understand some of the principles underlying the basic tenets of the environmentalists’ ‘faith’. Implicit in this ‘doctrine’ is a moral commitment to rescue the natural world from the ecological catastrophe by establishing a better ‘sustainable society’. In this respect, environmentalism can be regarded as a quasi-secular phenomenon or a “religion-based movement for social change” (Spretnak 1985: 65). Yet it is important to recognise that the proponent of this global change is again the west, here represented by environmentalist movements, which elect themselves the
righteous messengers of 'green awareness' and the legitimate leaders of the 'ecological revolution'. By appealing to universal human values, environmentalists have created an idealised version of the relation between man and nature which has no equivalent in the 'ideological orientations' of the indigenous peoples they claim to represent.

Palawan, the study area, is the fifth largest island in the Philippines and has the highest percentage of forest cover in the archipelago - between 38% and 44% of the islands surface. Almost all the productive forest and about 66% of the available commercial timber area is included in existing timber concessions which are not operating at the moment, due to a moratorium on commercial logging.

According to figures quoted in the Strategic Environmental Plan (SEP), settled and shifting agriculture account for 8% (less than 100,000 hectares) and 22% (about 250,000 hectares) respectively of the total land area of the main island.

The population of mainland Palawan was estimated to be 318,000 in 1983, but it has risen at an annual rate of 4.64% due to the increasing arrival of migrants and landless farmers from all parts of the archipelago. Today the population has reached nearly 600,000. The indigenous peoples can be divided into three main ethnic groups: Batak, Tagbanua and Palawan. They all have a heterogeneous mode of food procurement, based mainly on shifting cultivation. Depending on the circumstances, they switch from one activity to another (hunting, domestic and commercial gathering), often pursuing them simultaneously. The Batak are scattered across the central-northern regions of Palawan and their population is reduced to under 400 individuals (Eder 1987).

Zoning indigenous land: from ejection to marginalisation

In recent years, environmentalist discourse in the Philippines has apparently changed its approach. The old, strictly punitive protectionism is now being replaced by an equally dangerous 'people-oriented' conservationism. Indigenous communities, entrapped in large or medium scale biodiversity projects, are no longer evicted from their territories as in the case of the 'St. Paul Park'; instead, they are allowed to stay in selected areas on the condition that they 'live in harmony' with nature. Thus they become 'marginalised' in their own land. By the same token, their culture is re-defined by experts in a way that appears ecologically sound and satisfies policy makers, project planners and funding agencies.

The change from a punitive type of conservationism to a more 'compassionate' one has been characterised by the switch from a relation of violence to a relation of power (which nevertheless does not exclude the use of violence) (Foucault: 1982). Today, many large scale environmental protective measures in Palawan - and in the Philippines in general - include the demarcation of areas either as off-limits to the human population, or reserved for local 'indigenous cultural communities' (ICC), or both (Novellino 1991, 1995, 1997a, 1997b). Local communities are expected to limit or refrain from certain subsistence activities when their territory becomes divided into management zones with different levels of protection (from strictly non-touchable to controlled use).

The idea of adopting very elaborate zoning guidelines, with several categories of protected areas, was first developed by the Commission on Na-
tional Parks and Protected Areas (CNPPA) of the World Conservation Union (IUCN). The Philippines is probably the only country which has incorporated the IUCN/CNPPA concept into environmental legislation. The National Integrated Protected Areas System (NIPAS) and the Republic Act 7611, also known as the SEP (Strategic Environmental Plan) are relatively new laws, enacted in February and June 1992 respectively. Such laws establish the legal basis for the protection and management of the environment in Palawan (SEP) and nationwide (NIPAS). NIPAS and SEP seek to establish what the laws refer to respectively as the Philippines National Integrated Protected Areas System and the Ecologically Critical Areas Network (ECAN).

As established by the NIPAS, total protection is likely to be enforced in areas defined as Strict Nature Reserve: "Possessing some outstanding ecosystem, features and/or species of flora and fauna of national importance"; Natural Park: "relatively large areas not materially altered by human activity where extractive resource uses are not allowed"; National Park: "forest reservation essentially of natural wilderness character which has been withdrawn from settlement, occupancy or any form of exploitation"; Wildlife Sanctuary: "areas which assure the natural conditions to protect nationally significant species, groups of species, biotic communities".

On the other hand, human occupancy and resource utilisation are contemplated in categories such as Protected Landscape/Seascape: "areas of national significance, which are characterised by the harmonious interaction of man and land" Natural Biotic Area: "an area set aside to allow the way of life of societies living in harmony with the environment to adopt the modern technology at their pace".

Taking a provocative stand, it could be argued that the NIPAS objective to reserve areas for the purpose of leaving societies in harmony with the environment ‘free’ to adopt the modern technology in their own terms, is not substantially any better than forcing them to move out. As Foucault puts it, freedom is the precondition to the existence of power. It follows that “power is exercised only over free subjects and only insofar as they are free” (1982: 221). Through land zoning, local communities are no longer displaced outside the boundaries of protected areas, but are allowed to remain on adjoining territories specifically defined and designed for them. Thus they become ‘locatable’ and “being locatable, local peoples are those who can be observed, reached and manipulated as and when required” (Asad 1993: 9).

In addition, my criticism can be applied to the Strategic Environmental Plan (SEP) for Palawan, as well as to projects with foreign finance pursuing identical objectives (e.g. the EU financed Palawan Tropical Forestry Protection Programme).
The SEP law, also known as the Republic Act No.7611, provides a comprehensive framework for sustainable development and contains a package of strategies on how to prevent further environmental degradation. The centrepiece of the strategy is the establishment of the Environmentally Critical Areas Network (ECAN), which places most of the province under controlled development. The areas covered by ECAN include three major components: Terrestrial, Coastal/Marine and Tribal Ancestral Lands.

Core Zones are defined as areas of maximum protection and consist basically of steep slopes, first growth forests, areas above 1000 metres elevation, mountain peaks, and habitats of endemic and rare species. The law establishes that core zones "shall be fully and strictly protected and maintained free of human disruption... exceptions, however, may be granted to traditional uses of tribal communities of these areas, for minimal and soft impact gathering of forest species for ceremonial and medicinal purposes". Interestingly enough, the ECAN core zone coincides with significant portions of the indigenous hunting and gathering ground. For instance, the resin of Agathis trees is usually extracted in commercial quantities around and above 1000 metres above sea level. In addition, several animal games, and especially flying squirrels (Hylopetes nipripes nipripes) are trapped for food around these altitudes.

Buffer Zones represent the most elaborate component of the ECAN and are designed to serve a multiplicity of purposes. According to RA 7611, they fall into three categories known as Restricted Use Areas, Controlled Use Areas, and Traditional Use Areas where "management and control shall be carried out with the other supporting programs of the SEP". The only area within the so-called Terrestrial Component which mentions agricultural practices is the Multiple/Manipulative Use Zone: "areas where the landscape has been modified for different forms of land use such as extensive timber extraction, grazing and pastures, agriculture and infrastructure development". It is crucial to point out that a large number of indigenous communities are occupying marginal upland areas, which fall under the wider definition of buffer zones. Furthermore, the law never mentions indigenous slash and burn practices; hence we may easily come to the conclusion that only imported methods such as terracing and hillside farming will be allowed in Multiple/Manipulative zones. There is no specific indica-
tion of where such zones are located, but it is legitimate to anticipate that these areas are occupied by a vast majority of migrants rather than by ‘traditional’ indigenous communities.

It is important to point out that Sec. 11 of RA 7611 includes Tribal Ancestral Lands among its categories. The law specifies that “these areas, traditionally occupied by cultural minorities, comprise both land and sea areas identified in consultation with tribal communities concerned and the appropriate agencies of government”. It is frustrating to learn that even Tribal Ancestral Lands “shall be treated in the same graded system of control and prohibitions except for stronger emphasis on cultural consideration”. At the same time we are assured that “the SEP... shall devote a special kind of zoning to fulfil the material and cultural needs of the tribes using consultative processes and cultural mapping of the ancestral land”. It is clear that SEP, with a high degree of naivety, proposes the protection of indigenous culture on the one hand, and the implementation of western zoning criteria in tribal lands on the other. So far, the law and its promoters have been unable to provide a convincing argument of how this can be achieved.

The protection of landscapes and the disintegration of the indigenous country

Having outlined the crucial features of the NIPAS and the SEP, I shall now analyse some of the ideas underlying the western concept of land zoning. I would like to argue that both the NIPAS and the SEP regard the environment as a space “located outside ourselves” (Parkin & Croll 1992: 13), and as something which needs protection for itself. Furthermore, land is viewed as a timeless container, a big puzzle which is only waiting to be put together by western ‘experts’. On the other hand, indigenous communities represent one of the patchwork pieces to be placed in the most appropriate spot (a ‘Natural Biotic Area’), provided that they continue to live “in harmony with the environment” (cf. Novellino 1995, 1997a). Overall, the persistent attitude to view indigenous communities in terms that are exclusively ecological rather than social (see Ellen 1979), is having serious implications on the way in which conservation is achieved. What is striking about the NIPAS land classification is that “the harmonious interaction of man and land” is almost viewed as a precondition for residing in “areas of national significance”. One may gain the impression that
local communities are allowed to live within a protected area on the condition that they obtain from the forest what is strictly essential to satisfy basic subsistence needs. Undoubtedly this expectation matches conservationists’ perception of the ideal interaction between man and nature.

It should be stressed that environmental laws such as the NIPAS and the SEP are not concerned with the protection of land but rather of landscapes (Novellino 1995, 1997a). In section 2 of the Republic Act no. 7586 (NIPAS law), we learn that the “policy of the state (is) to secure for the Filipino people of present and future generations” the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas”, and that “the use and enjoyment of these protected areas must be consistent with the principles of biological diversity and sustainable development”. As has been sustained by Ingold, land and landscapes are not the same thing at all. The latter may be constituted by rocks, trees, streams, lakes, caves, and so on, or a combination of these. On the other hand, land is rather “the common denominator of the natural world” (Ingold 1986: 154) which also includes people.

The indigenous groups living on the island do not only hunt and gather but also practise shifting cultivation, which is their major productive activity (Novellino, in press). Access to forest resources and foraging grounds is open to every member of the society. Individuals may claim rights to specific resources, but not to the land where such resources are found. To give an example, an area covered by baktik (Almaciga philippinensis) trees is ‘managed’ by several individuals, each in charge of specific trees. However, not all forest products (rattan canes, animal games, fish, etc.) are subject to individual rights.

Patches of forest with valuable fruit trees (such as dá rq (Nephelium mutabile), buñug (Mangifera caesia), wani (Mangifera odorata), luwád (Durio zibethinus), dugán (Durio graveolens)), bamboo groves, caves where swallows are abundant and other land features derive their significance from the relationship that people have established with such features, either in the historical past or through mythological events. Hence, trees may serve to trace back a relation with those members of previous generations who first planted or utilised them over the years. All these features have a time dimension which creates a stable link between past and present, and they serve to constitute the indigenous country.

Conservation measures based on land zoning, such as those proposed by the NIPAS and SEP, disintegrate the unity of the indigenous country. As stated by Ingold, “to take away a country is to extinguish the sites that enfold the country (so that) it is no longer somewhere but nowhere, and thus utterly devoid of context” (1986: 157). Tribal Ancestral Lands and Natural Biotic Areas which are cut off from the whole, become meaningless to the local indigenous communities. People do not perceive their country as an ‘enclosed’ and ‘atemporal’ island, but rather as a continuum of indivisible features (Ingold: 1986) which are a repository of previous experiences and past events (cf. Rosaldo: 1986).

**Toward a ‘pro-native’ legislation: innovation or illusion?**

What is perhaps surprising is that not only the NIPAS and the SEP but also laws which have been specifically conceived to enhance indigenous land rights might not bring great advantages to the local communities, but rather increase the efficacy of government power and control over them.

The identification and demarcation of ancestral lands in Palawan is in line with the constitutional mandate for the recognition and protection of the rights of indigenous communities. On January 15th, 1993, the Department of Environment and Natural Resources in the Philippines enacted Special Order no. 25 for the creation of a task force responsible for identifying, delineating and recognising ancestral lands and domain claims. A more recent act is the ‘Indigenous Peoples’ Rights Act of 1997 (also known as the Republic Act No. 8371), which recognises, protects and promotes the rights of indigenous cultural communities.

The legislation on ancestral land represents a very fundamental step in favour of the indigenous peoples. On the other hand, most of its definitions dealing with land and the environment imply utilitarian criteria of human action and thus do not represent epistemologically valid concepts for the indigenous societies to whom these notions are applied. This does not mean that the recent government effort to protect indigenous peoples’ land has to be jettisoned. On the contrary, I rather question the very lengthy and complex procedures related to the final recognition of the ancestral domain.

To give an example, article one of the Department Administrative Order no. 02, S. 1993 sets the basic policy and objectives for the identification, delineation and recognition of ancestral land and domain claims. In section two we learn that one of the objectives of this law is “to protect the tenure of the indigenous cultural communities over ancestral lands and domains”. I must confess that I have always found the notion of ‘land tenure’ a little perplexing when applied to indigenous communities. So do the indigenous communities of Palawan when confronted with this and other western definitions. The presuppositions of immediate concern here are those underlying the western notion of man’s mastery over the material environment.

The term tenure does not seem to have any equivalent word in the Pala’wan, Batak or Tagbanua languages. In this respect, I do believe that Ingold touches a very relevant point when he claims that the notion of tenure “implies man’s subjective transcendence of the natural world: one cannot appropriate that within which one’s being is wholly contained” (1986: 135). Certainly, the use of notions which are alien to indigenous epistemology have serious drawbacks. When Pala’wan are confronted with this terminology they are often forced to express their claims using a ‘foreign’ vocabulary. As a result, they have to adjust their own epistemology in the attempt to make their social and physical world intelligible to outsiders (Novellino 1995). It is clear that ‘pro-native’ laws such as Special Order no. 25 do not fully take into account the indigenous categories of space, local-
ity, identity, and so on, nor the conditions in which local communities organise their daily food-seeking activities. The fact that the indigenous communities do not speak about their land claims in terms such as ‘tenure’, ‘survey plans’, ‘sketch maps’ and ‘sworn statements’ does not seem to matter.

The ‘ancestral land legislation’, the D.A.O. n. 2, S 1993, is characterised particularly by the rather complicated procedure that indigenous claimants have to follow in order to apply for the Certificate of Ancestral Land Claim. As is specified in section 5 of the D.A.O. n. 2, people are expected to submit proofs of their land claims. These include “the testimony of elders of the community under oath and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial”, “written accounts of indigenous customs and traditions, political structure, survey plans, anthropological data, genealogical survey, photographic documentation of burial grounds, agricultural improvements, hunting grounds, traditional landmarks, etc.”. Paradoxically, the indigenous peoples are asked to utilise western analytical tools to interpret, document, and explain their own culture. Therefore, if local communities want to enforce their land claims, they need to request the assistance of foreign experts, NGO representatives and government officials. Again, it is the authority of western scientific methods to provide the criteria for what constitute legitimate ancestral rights over land. On the other hand, local criteria of validation of land claims are not fully taken into account.

Furthermore, when outside ‘experts’ act as mediators between indigenous communities and government authorities, there is a high chance that the myth of noble savagery will be rehearsed, together with the whole opposition between nature and culture, and converted into written statements. Not surprisingly, this is evident in the Application for Certificate of Ancestral Domain Claim (CADC) for the Batak territory, prepared by the local NGO Haribon-Palawan, with the assistance of the IUCN. Reading the application we learn that the “Batak tribe is one of the primitive indigenous people of Palawan and were nomadic in culture (no permanent residence). They moved from one place to another to satisfy their biological needs... To this day, their religious faith continues to be based on the spirits in nature, whom they believe to reside within big rocks and trees”. In the environmentalist’s imaginary world, Batak become the archetypal primitives which do not modify their environment in any substantial way. Because of their presumed nomadic character and biologically driven way of life, they are still assigned to the domain of nature. Thus it is only by virtue of the presumed similarities between themselves and other animal species that Batak are given the privilege to claim ancestral rights to their forest land.

Aside from the problems caused by outsiders’ interpretations of indigenous desires and aspirations, there are more practical factors delaying the whole process of government recognition of indigenous land claims in Palawan. So far, efforts to survey and delineate indigenous ancestral land have been slow, due partly to a shortage of government funds and staff allocated to the tasks, and also to the inability of the Department of Environment and Natural Resources (DENR) to carry out its own legislation. Not surprisingly, three years after its submission, the documentation for Batak ancestral land claims is still awaiting approval in the DENR regional office.

While bureaucratic procedures proceed, very slowly, for the identification, delineation and recognition of claims to ancestral lands and domain, Batak territories are being occupied by Filipino migrants. Forest areas with valuable non-timber forest products (NTFPs) such as Agathis resin and rattan canes are being given in concession to outsiders, before ancestral titles are granted. As a result, the potential for future income from commercial gathering by indigenous peoples is highly reduced or virtually lost.

Even in southern Palawan, government recognition of indigenous land rights is far from satisfactory. For instance, in the municipality of Rizal the endorsement of ancestral domain claims has already
encountered the strong opposition of the local authorities. In October 1996, the former Mayor stated that the endorsement of ancestral land claims “for a handful of men is contrary to the ideals envisioned in our Constitutions for equitable access to the natural resources, and violates our Land Reform Law which allows only 5 hectares of land for an individual Filipino”. In a similar vein, Willy Jardinico, secretary general of the Federation of Land Reform Farmers (FLRF) compares those NGOs supporting indigenous land claims to an Octopus “whose tentacles will engulf the vast land area of our beloved municipality” and he claims that “with their success our aspirations for progress will be like an air castle that will melt into dust”.

Interestingly enough, statements of this kind are made by representatives of associations such as the FLRF, which are responsible for the ruthless destruction of hundreds of hectares of tropical forest at the expense of the local indigenous communities. Not surprisingly, people like Teddy Abendan, FLRF chairman, regards the recognition of indigenous land rights as a hindrance to development of the province, and he has recently issued a public warning to indigenous advocates that this could lead to severe clashes with the migrants - a “bloody revolution”.

On the other hand, Offie Bernardino, executive secretary of the Palawan National Network Inc. (PNNI), promises that the struggle for the recognition of indigenous land rights will continue, and that steps will be taken to question local government authority to issue occupancy rights to FLRF migrants in areas that have already been delineated as ancestral domain. While the issue of FLRF is now the object of debate between NGOs and government authorities, indigenous peoples are becoming the hopeless witnesses of the conflicting and unjust implementation of government land laws.

The impact of the ban on shifting cultivation in Palawan.

A number of infamous government policies aside from zoning are being implemented in Palawan. One of the most unpopular is the ban on kaingin (slash-and-burn farming). In the Municipality of Puerto Princesa, the City Government is quite determined to stop forest destruction, which it blames on shifting cultivation. In a letter to Survival International dated 28 March 1996, the City Mayor, Edward Hagedorn admits that “the farmers (including the tribal groups)... were adversely affected by the policy”. On the other hand, he claims that necessary support and assistance are being provided to soften the impact of the ban. We learn that such remedies consist of “cash-for-work program and rice subsidies, and permanent mechanisms such as the carabao (water buffalo) and tractor pools, the provision of seedlings, and introduction of various livelihood opportunities including training and initial capitalisation grants” and the introduction of alternative farming methods. However, according to the affected communities the promised rice supplies had not come through, and hundreds of people faced starvation.

Many of the ‘remedies’ proposed by the Mayor face long-term and deep-seated constraints to effective implementation. In the first place, the transition to permanent cultivation in the uplands is frustrated by the unresponsive soil, commonly deficient in micro-nutrients. In addition, ‘traditional’ indigenous cultivation practices in Palawan are better suited to tropical conditions than many imported agricultural methods. If many communities are currently forced to shorten the fallow period on swidden fields or to plant on very steep slopes, this need not be considered a cultural feature of the local indigenous groups, but rather their ultimate response to the drastic reduction of land and inadequate government policies (Novellino: 1995, 1997a). Furthermore, it is interesting to note that indigenous swiddeners in Palawan usually use secondary and tertiary forest which is grown during the fallow period rather than primary forest. In fact, the latter would need a higher energy expenditure to be chopped down. Traditional planting techniques are also ecologically sound, since the dibble stick does not disturb the fragile forest soil below a depth of a few centimetres (Novellino in press).

Despite these facts the ban on slash-and-burn agriculture has been implemented, with disastrous consequences both for the environment and for the survival of the local indigenous communities. The ban was recently partially lifted in favour of ‘regulated burning’, but until now, indigenous peoples have found it very difficult to maintain their traditional swidden practices.

Firstly, the environmental measures imposed by the City Government are altering the whole indigenous agricultural system irremediably. Presently, due to the prohibition of felling trees, several native communities have resorted to cleaning areas consisting mainly of shrubby bushes and weeds. Such areas have not yet completed the fallow period and are likely to degrade into barren grasslands, especially when re-utilised for agriculture.

Secondly, the ban is also affecting the genetic diversity of cultivated plants. Local varieties may become rare or even extinct if people are no longer allowed to cultivate them.

Finally, the prohibition is placing an insupportable burden on the surrounding forest. This is because the victims of the ban are already suffering from dietary deficiencies and, in order to survive, they are increasing their use of available forest resources such as resin of Almaciga trees (Agathis philippinensis), rattan (semi-woody climbers of Calamus, Daemonorops and Korthalsia species) and honey. In some areas of the forest mature rattan canes have already disappeared and, according to some indigenous gatherers, what is left will be exhausted within two or three years.

Concluding remarks. It is no secret that conservation has become big business and that a large part of the international funds available are spent in vain, for projects which jeopardise the survival of indigenous peoples. This does not mean that every effort to protect the ecosystem has to be jettisoned or placed permanently on a political agenda. Hence, I issue no call to desert conservationists’ concern for the protection of the natural environment. Rather, I question the lack of seriousness displayed by both conservationists and developers when dealing with cultural issues. With the use of biology, zoology, botany and detailed accounts of the physical world, developers and con-
ervationists have availed themselves of a new 'regime of truth'. On this basis, they have encouraged and activated a specialised and technological form of control over the 'environment'. In the process, indigenous land has been sliced up into 'eco-niches', 'climatic zones', 'protected areas' and other 'temporal' and culturally 'aseptic' categories.

As this paper has attempted to argue, despite their benevolent ecological connotations, environmental measures such as zoning and the ban on shifting cultivation can aggravate the living conditions of local indigenous communities to an unprecedented level. Furthermore, it is suggested that the old punitive discourse of development and conservationism has not been dethroned but replaced by the more compassionate language of environmentalism. The latter has merged cultural issues with biological ones, thus placing the former outside the social process.

Forest protective measures, such as those described in this paper, all aim at modifying indigenous practices. They are based on the assumption that the natural balance can only be re-established by applying specialised technological western knowledge. Hence, indigenous peoples are placed in a position that not only makes it impossible for them to reproduce their local knowledge, but paradoxically, forces them to infringe it.

It may appear that one of the tendencies underlying development discourse continues to be that of conceiving man's adaptive success in terms of material wealth and advanced technology rather than measuring it in terms of long-term survival (see Sahlin 1960). In Palawan, as a result, imported agricultural techniques and western criteria of land management have been regarded as the auspicious standards to which indigenous groups should conform. Thus the joint venture of development and conservationism has become a most sophisticated strategy to avoid listening to people's concrete needs and aspirations.

While imported land management schemes are imposed on 'tribal' land, indigenous peoples' understanding of the forest continues to challenge ecocentric western views which treat the 'environment' as a sui generis entity with its own rights. For instance, to the indigenous peoples of Palawan, the forest has no value of its own without reference to man, to the ancestors, and to the 'Masters of animal games' which are regarded by the people as the non-human entities in charge of animal reproduction and stability. For instance, the attitude of the hunter is not that of somebody seeking mastery over nature, but is characterised by the necessity to stay in constant 'consultation' with the 'gamekeepers', the ancestors and other entities. In contrast to the approach of many western scholars, the local indigenous conception of the forest is based on the idea that natural and cultural domains are not dichotomous entities, but part of a complex whole. Hence people do not work for or against the 'environment' but together with it, while dealing constantly with deities and ancestors. The Palawan, in fact, regard hunting, fishing and other food-seeking activities as intimately linked to other aspects of social life, and not as merely economic and 'discrete' activities.

Moving towards the conclusion of this article, a number of questions can be raised: to what extent can western criteria of biodiversity conservation be enhanced without sacrificing indigenous land management practices? In what manner can a policy interpretation of land zoning balance people's own interpretation of land utilisation? How can diverse interests in forest conservation be reconciled?

All these questions will not be answered unless indigenous people begin to be understood under a more truthful light, rather than being portrayed either as 'societies living in harmony with the environment' or as 'ruthless exploiters of natural resources'. On the other hand, the idea of granting land occupation privileges to an 'imagined community' living in balance with nature, virtually exclude all the others. It is well recognised that many indigenous groups have been forced to adopt less sustainable practices of land utilisation as a response to the dramatic ecological and social changes taking place in their territory. Hence, in Palawan 'a harmonious interaction of man and land' is now difficult to conceive, either as a theoretical or a practical possibility. To conclude, the search for the authentic indigenous conservationist is symptomatic of a hysterical awareness especially among western ecologists that the 'noble savage' living in harmony with nature does not exist in the real world and therefore it must be created. So, using an expression of Lohman, indigenous peoples continue to be "recruited as subcontractors to build our own utopias" (1993: 204). This construed and romanticised image of 'pristine forest dwellers' invented in the west and constantly reproduced by the media has now become 'agentive' (Hobart 1993) and influential just as the real one, thus determining the ways in which indigenous communities should be 'managed', 'assisted' and possibly 'improved'.

Notes
1. These percentages have been computed by E. Walker from estimates of forest cover loss quoted in Serna (1950) and Kummer (1992). See Walker, E., Towards Sustainable Production and Marketing of Non-Timber Forest Products in Palawan, The Philippines (Haaraen: Tropical Social Forestry Consultancies (TSFC), 1993).
2. For more information on population increase and the percentages on cultivated land in Palawan, see Hunting Technical Services Limited, Planning, Management and Development System Inc. and Sir M. Mac Donald and Partners Limited, Palawan, A Strategic Environmental Plan, 1985.
3. The St. Paul Subterranean National Park (SPSNP) was one of the protected areas under the Debt for Nature Swap program of WWF and now it is fully managed by the City Government of Puerto Princesa.
4. I am here drawing on the work of Foucault. He differentiates 'relations of power' from 'relations of violence'. The former 'does not act directly and immediately on others. Instead it acts upon their actions'. The latter 'acts upon a body or upon things, it forces, it bends, it breaks on the wheel, it destroys, or it closes the door to all possibilities'. It follows that 'freedom must exist for power to be exerted' while 'slavery is not a power relationship, when man is in chains' (1982: 220-221).
6. According to Forest Act no. 1148 of 1904, and Revised Forestry Code (PD no. 705 of 1975), shifting cultivation with the slash and burn method also known in the Philippines as 'bansin', is unlawful. For a more detailed discussion on these issues, see Laws and Development Legal As-

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I am afraid that similar commentments to set aside large areas for the common good of mankind are nothing but ‘a monstrous lie perpetuated to the benefit of one part of humanity’ (Fabian 1983: 144) or of a part of society, and most often of the dominant one.

* The phonetic transcription of the indigenous terms is from the Pala’wan language.


More precisely, Hobart defines as ‘agentive’ those descriptions which ‘depict state of affairs requiring action or intervention of some kind, usually by the party doing the depicting’ (1993: 2).

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The research was accomplished while the author was a Visiting Research Associate of the Institute of Philippine Culture, Ateneo de Manila University.

Dario Novellino is an Italian anthropologist and strong advocate for indigenous rights. Currently he is affiliated to the Museum of Anthropology of Federico II University in Naples, Italy and the Botanical Garden of the same University. He also works with United Nations organisations such as IFAD (International Fund for Agricultural Development) and FAO (Food and Agriculture Organisation). Since 1986 he has spent several years with the Pala’wan and Batak communities of the Philippines and has visited different ethnic groups in South East Asia in order to document cultural changes in relation to forest destruction. In Palawan he has promoted various initiatives for the recognition of indigenous ancestral domain claims. For more information contact Dario Novellino, Via Castello 41, Maranola di Formia 04020 (Latina), Italy. Tel/fax: 0039-771-734156, E-mail: novellino@dimensione.com

ADIEU L' AMAZONIE
MÉMOIRES D'UN ETHNOLOGUE ENGAGÉ
by René Fuerst

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153 pages - illustrated with 48 photos
In Sarawak, the Dayak communities are blessed with a richness of ancestral land and resources which they acquired by virtue of their customs or ‘adat’, that have passed from generation to generation. The customary land of the Dayaks is critical, since plantation problems are now extremely extensive all over the State. The Sarawak state government has earmarked a million hectares of land for conversion into large scale commercial plantations for oil palm.

Background
The East Malaysian state of Sarawak lies in the north-west of the island of Borneo, with a land area of 124,449 sq. km, or 38% of the total land mass in Malaysia. Sarawak has a population of about 1.9 million people (from 1997 estimates). It is also home to the oldest tropical rainforests of the earth and is amongst the most biologically diverse and ecologically significant ecosystems in the world.

Historically, in the early part of the 19th century Sarawak was governed by the Sultanate of Brunei. Then in 1841 James Brooke was proclaimed the first White Rajah and Governor of Sarawak. The Brooke family ruled Sarawak for a century. After the Japanese occupation in 1946, Sarawak was handed over to Britain and became a British Crown colony.

In 1963, Sarawak together with Sabah and Singapore joined with other Federated Malay States in the formation of the Federation of Malaysia. However, in 1965, Singapore withdrew from the federation. Today, Malaysia is a federation of 13 states.

The indigenous peoples of Sarawak are known as Dayak, a collective term for the vastly diverse native ethnic groups inhabiting the island of Borneo. In this context, ‘Native Peoples’ in Sarawak include the Iban, Kenyah, Kayan, Penan, Bidayuh, Kelabit, Lun Bawang and other ethnic minorities.

In Sarawak, 80% of the population is rural. The majority are the Dayaks, who
live in longhouses in the remote, highland areas of the state. The peoples are traditional subsistence cultivators, hunters and gatherers. They are dependent on the forest for their basic necessities as well as for their economic well-being. Wild meat and fish from the rivers are the major sources of protein. The forest is also a major supplier of fuel wood, plant and animal food, spices, medicine, and timber as well as ceremonial, ritual and technological materials.

Native land rights
For generations, the Dayak communities of Sarawak have traditionally acquired rights and access to land under their system of customary land tenure known as ‘adat’. Adat is an all-encompassing term which includes legal, moral and religious components inextricably linked to the native way of life.

In the Land Code 1957 Cap. 81 of Sarawak and the Land Legislation proceedings, native customary land rights are recognised. According to the adat or custom of the Dayak communities, the members of the community possessed rights for the use of all cultivated plots and surrounding forests as well as the water running through the area. The adat or traditional land system, therefore, ensured the rights to access to the abundant land and forests to each individual and family and, at the same time, provided for cleared but unused land to be the property of the whole community.

Under Section 2(a) of the Land Code, Native Customary Land (NCL) is defined as “land in which native customary rights (NCR) whether communal or otherwise have lawfully been created prior to the 1st day of January 1958 and still subsist as such”. Since the Dayak s have lived on their lands for generations, their rights are therefore recognised in law. The customary land rights of the Dayak communities are asserted over the following:

- the ‘temuda’ which is land cultivated with crops and land formerly cultivated but left fallow in the rotational / shifting agriculture cycle to enable the forest to regenerate; and
- the surrounding area of primary forest where various forest products are harvested by the community as a whole, and on which the community depends for its survival.

These two constitute the ‘menoa’ which is demarcated by the ‘sempadan’ or territorial boundary. An acreage of primary forest within the ‘menoa’ of the various communities, regarded as property of the whole community, is essential for supply of drinking water, fishing, hunting and collection of forest produce.

Before 1st January 1958, under Section 5(2) of the Code, customary rights to tenure could be created by any of the following methods:

a) the felling of virgin jungle and the occupation of the land thereby cleared;
b) the planting of land with fruit trees;
c) the occupation or cultivation of land;
d) the use of land for a burial ground or shrine;
e) the use of land of any class for rights of way; or
f) any other lawful method.

The Sarawak land law recognises native customary land rights. However, these are consistently violated by the State government by the issuance to private commercial enterprises of logging concessions, timber licences and land leases for plantations. Under colonial rule, and then following the formation of the Federation of Malaysia, the Sarawak land system experienced great change. During the last few years a drastic amendment was made to the Land Code. A series of laws, amendments, and regulations related to land and forest were enacted by the Sarawak government that systematically and progressively eroded customary rights and access to land and resources by Dayak communities.

Post-logging: a development of plunder
Over the past three decades, the pristine rainforest environments on which Dayaks depend have increasingly been affected by a multitude of industrial development programmes including logging, hydro-electric projects, mining and tourist resorts. These projects usually take place on native customary land and are implemented by private companies in co-operation with and supported by the Sarawak government. The logging of Sarawak’s forest has been especially excessive and destructive, and threatens the survival of hundreds of thousands of Dayaks, depriving them of their rights to their land and resources. Toward the late 1980s, the Dayaks mounted strong protests against logging by blockading logging roads, and crippled the timber industries for several months.

Presently, logging is concentrating more and more in the hilly region and water catchment areas. The area of forest left is limited, and even that was not able to regenerate fully. No attempts are made to manage these areas on a sustained yield basis. There is also no effort undertaken to rehabilitate overlogged forest. Timber resources have gradually become depleted.

Realising such a situation, the State government has recently put emphasis on large-scale monoculture plantations targeting the native customary land of the Dayak communities. In the same way as occurred in the commercial logging industry, it is also common for politicians to award permits, land leases or grants for plantation development to themselves, their families, cronies and supporters, state agencies and private companies. Therefore, the land development programme worth millions of dollars would be concentrated in the hands of a few people.

Plantation activities involve massive clearing of forest, bulldozing and excavating of land, thus causing total extinction of biodiversity. A number of major timber companies that had exploited the forest resources in Sarawak indiscriminately have been granted land leases and permits to open up large areas of land under oil palm plantations.

Since the 1970s, the Sarawak government has set up specific land agencies to undertake large scale commercial land development schemes in the state. The most dominant State Agencies are: Land Custody and Development Authority (LCDA), Sarawak Land Development Board (SLDB) and Sarawak Land Consolidation and Rehabilitation Authority (SALCRA). These agencies have been established to
implement plantation estates on native customary lands.

Since their inception, the plantation schemes (rubber, cocoa, oil palm) initiated and developed by these agencies had faced a total failure.

A ‘New concept’ of development

In 1994, the Sarawak State Government introduced the so-called Revolutionary approach to Native Customary Land (NCL) Development known as ‘Konsep Baru’ or ‘New Concept’. About 1.5 million hectares of land held under native customary rights have been earmarked. The new concept of Native Customary Rights (NCR) land development is being formulated on the premise that vast tracts of such land can be turned into ‘Land Banks’ with new forms of land ownership, to enable it to be developed on a large scale commercial basis.

As required by the concept, the native customary land of the Dayak longhouse communities in target areas will be delineated into one large block as a Development Area. The Sarawak Land and Survey Department will study the land status and prepare boundary descriptions for the target Development Area, upon which it will undertake a perimeter survey. This is violating and deleting the territorial boundaries of the Dayak communities. The ownership to ‘temuda’ and/or the extent and size (acreage) of land belonging to each individual person or family in the community is ignored completely, as no individual lot survey is done.

After the completion of the perimeter survey, the land banks would be established. The NCL land banks should have an area of 10,000 hectares and above for the plantation to be attractive and viable enough for investment by the private investors. The Superintendent of Land and Survey would issue one land title registered under the name of the Joint Venture Company for a period of 60 years.

The NCL development programme is spearheaded by the Sarawak Ministry of Rural and Land Development, in co-operation with public sector agencies and private sector investors. To date the government has appointed two agencies, namely the Sarawak Land Development Board (SLDB) and the Land Custody and Development Authority (LCDA) as Managing Agents. The Managing Agent will act as Trustee for the native customary landowners. The government participates directly through these Managing Agents by consolidating the native customary land or NCR plots into major land banks which will then be sub-leased to, developed or managed by the private sector investors (local or foreign companies).

Under this New Concept, plantation development will be private sector-led through the establishment of a Joint Venture Company (JVC). The native landowners who submit to plantation development are to surrender all their ownership, rights and interests in their respective NCR plots and native customary land to a government agency (LCDA and SLDB) through the creation of Native Customary Land Banks. The government agency will be the Managing Agent for the natives, and act in a position of Trustee to the natives. The Managing Agent will form a Joint-Venture Company (JVC) with a private sector company. In the JVC, the Private Investors will hold 60% equity, the Managing Agent (as Trustee on behalf of NCR Land owners) will get a 30% equity share and another 10% equity will be allotted directly to the Managing Agent.

During the term of 60 years (two planting cycles) while the land is in the name of the Joint Venture Company, the native customary land owners will not be beneficiaries or have right of caveat or
legal interests in the land. All their shares in the JVC will be registered in the name of the Managing Agent.

Even though the natives are recognised as important partners and shareholders in the JVC, they do not partake directly in the management of the company. The only promise is that the natives could participate in the plantation to be developed by the company as labourers or daily-paid workers for RM250-RM300 (US$65-US$80) per month.

Under the 7th Malaysia Plan (1996-2000), the Sarawak state government targets a total 355,000 hectares to be planted with oil palm within both state lands and native customary land. By the year 2020, Sarawak aims to have 1 million hectares of land converted to large-scale plantations. In Miri-Bintulu region alone, 650,000 hectares had been identified for oil palm plantations.

The government is aggressively promoting the land development programme under the 'New Concept' NCL Land Banks by setting targets to develop 30,000 to 40,000 hectares annually. In different parts of Sarawak, the ministers, politicians and government officials are undertaking campaigns and dialogues with the Dayak communities. They claim that the development of native customary land on a large scale commercial basis is the first step to bring development and progress to the rural poor communities and is thus seen by the government as the only way to bring about poverty alleviation among the Dayak communities. The government has repeatedly warned the Dayaks that if they oppose the plantation development within their NCL area, they will lose everything because the land will be acquired and developed anyway.

By the year 2010, up to 400,000 hectares of NCR land will be opened up for commercial plantations. Every other day the local media carries news of new plantation schemes and the ventures of plantation companies. Recently, the Rural and Land Development Ministry announced that the Ministry has approved 260,000 hectares for implementation under the new concept of native customary land development for oil palm plantations.

Dayak fears
The Dayaks fear that they will soon lose their ancestral land into the hands of tycoons and plantation companies. As noted, upon the expiry of the said 60 year period, there is no assurance that the land will be given back to the Dayak landowners, as it will be up to the jurisdiction of the Superintendent of Land and Survey whether to issue a grant over their land. Even if the Superintendent issues the grant, it will be a renewable lease, requiring compliance with certain terms and conditions as is deemed fit. This is a violation of the Dayak 'adat', as their land will no longer be subject to observance of customary laws.

An Iban Chief, TR. Riggie Ak Belulok, led his longhouse community to stop a plantation company from operating within their customary land area. He said that the New Concept of NCR Land Development formulated by the government is only a new tactic of land-grabbing from the Dayaks. Over the years, the government has used various strategies to influence the Dayak communities to lay aside their customary land for plantation development schemes, by setting up various State Land Agencies. As TR. Riggie pointed out:

"if we allow our land to be converted into large scale plantations, we will lose rights over our land and our children will be landless. We don't want to be stateless on our homeland."

After a term of 60 years in the event that the plantation company does not make any profit, the term can be extended, subject to the provisions of the relevant written law at the material time. In Sarawak, land is under the control of the state government. Therefore, it is up to the State government to develop the land without interference from the Federal government. As a result the state government seems systematically to amend the laws and regulations related to land rights of the Dayak communities. Although some provisions of the Sarawak Land Code recognise native customary rights over land, other provisions authorise various land authorities to extinguish those rights and convert the land to other uses. A Statute (e.g. LCDA Ordinance) can even be used to declare native customary land as a development area. The government may eliminate customary lands merely by ‘gazetting’ areas, and then publish the notice in the newspaper. Since the native landowners do not have access to any newspapers in the rural area, they are often not even aware that they have lost their customary rights.

Native customary land is critical, and the prime factor contributing to loss of land rights for indigenous peoples in Sarawak is commercial agricultural policies. Also, the provisions regarding compensation to natives for extinguished rights are vague.

In 1996, the State Legislative Assembly amended Sarawak's land law to give the Chief Minister powers to extinguish native customary rights - not only in the national interest, but also in favour of private enterprises. The constitutionality and legality of this amendment has been disputed and it appears to be a clear example of racial discrimination, whereby the property rights of natives are considered inferior to the property rights of non-native citizens. For example the lands belonging to the Chinese can only be acquired for public purposes, whereby the rates of compensation are many times higher than those paid when native customary rights over native customary land are extinguished.

The State government has been silent on questions related to transparency and accountability of the government, its agencies or corporate investors in the implementation of the land development programme. Despite the fact that Dayak landowners will own a 30% equity share in the JVC, such shares will not be in their names, but will be registered in the name of the Managing Agent (Trustee). The Managing Agent could also arrange for the sale of such shares, if the natives want to do so. In the JVC, customary landowners are divested of power and do not have rights to participate in the management of the company. Whether the JVC makes any profit, and how much has been reaped from their customary land, will not be known by the natives. So, during and/or after the term of 60 years, the benefits, privileges and the division of dividend to the natives are vague.
Further, the Dayaks have been fully aware of the manipulative propaganda of the politics of development championed by the Sarawak Government; it is extractive, oppressive and biased against Dayak communities. During the ‘logging boom’ of the last three decades, the government claimed that logging is an appropriate form of development which will eradicate poverty and raise living standards of the rural Dayak communities - who, however, were putting up steep resistance against ferocious logging. While the forests were overexploited, most of the Dayaks are still poor, living in a vulnerable environment.

This time around, in the name of development, the State government blames the Dayak point blank that they are still living in abject poverty despite being rich in terms of ancestral land. Once again, the State Government proclaims that pioneering a new programme in land development will eradicate poverty in the rural areas, bring faster development to the rural population and at the same time diversify the economic base of Sarawak.

However, it can be noted from the way the land development programme is being formulated, implemented and established, that from the beginning, the aspirations and interests of the Dayaks have not been answered, and their rights have been systematically abridged and extinguished. The proportions of the profit from the JVC to the native landowners are vague and doubtful.

Also, the same state agencies which are commissioned to implement the new concept of NCL development are known by the natives not to have a good track record in commercial plantation. In the 1970s to 80s the plantation estates developed by these agencies ended up as failures. Thus, the ‘Politics of Development’ of the Sarawak Government will bring the Dayak communities not a rose garden, but a future which is vulnerable and impoverished.

**Dayak resistance to plantations**

Tension is running high in many parts of Sarawak, where the state government has earmarked more than 1.5 million hectares of NCL land for conversion to oil palm plantations. In the word of Native Chief TR. Rayong of Sungai Bong “land is life, it’s a valuable gift from our ancestors for us to continue to live, without it we will die”. TR. Rayong was expelled as the chief of his longhouse by the State government, for his strong opposition to the plantation scheme within their native customary land area. As a result of his rejection of the ill-intended oil palm plantation, he has been attacked as ‘anti-development’ and ‘stubborn-headed’ and has to face severe criminal charges.

In 1997, a series of protests were mounted by the Dayaks as their customary land areas were illegally encroached upon by plantation companies, which immediately commenced land clearance and excavation using heavy tractors. These activities caused massive destruction to the land, gardens and properties of the natives. Seeing such illegal activities, the natives lodged reports with the nearest police station; however in most cases they were not entertained and their reports were ignored. A number of Dayak communities have also waged resistance against plantation development to the government through various channels and measures. They have met with the relevant authorities, petitioned the state government and filed legal suits.

In spite of many complaints to the relevant authorities, the police and the State government, nothing was done about the problems faced by the natives. Enough was enough - they could not stand still and watch the further destruction to their land without exercising their rights. They staged non-violent protests, and as a last resort, used human barricades to blockade the activities of the plantation developers. When the natives’ protests disrupted the operations of plantation companies, the police were called at once. As a result of these protests many Dayaks have faced campaigns of intimidation, wrongful arrest, illegal imprisonment and police brutality.

On December 19th 1997, a violent conflict broke out between the Police Field Force and unarmed indigenous Dayak Ibans from Rumah Bangga longhouse, located at Sungai Sebukut, Bakong in Baram. During the incident one Iban man, Enyang Ak Gendang, suffered a fatal gunshot wound to the head. Two other Iban men suffered non-fatal gunshot wounds and numerous other men, women and children were beaten with police batons. This incident “which centres around a growing conflict between native customary land holders and oil palm plantation developers” is not the first to involve excessive use of force and violence by the Police Field Force. It is, however, the first instance to result in a civilian’s death.

**Protests and conflicts**

Throughout the year, the Dayaks were the victims of the ‘New Concept’ wherever they were arrested for protecting their customary land.

Underlying the conflict between Dayaks and large-scale development projects is the issue of Native Customary Rights (NCR) to land. Under the Sarawak Land Code of 1957, Dayaks are guaranteed rights to customary lands. However, these rights have been left ambiguous and have been overlooked, due to a lack of adequate maps and proper documentation. Furthermore, there is disagreement between the Dayaks and the Sarawak Government about the extent to which NCR apply to old growth forests as opposed to areas used for shifting cultivation. Under Sarawak law, Dayak communities can petition to have forests and other uncultivated land traditionally used for collecting set aside as communal forests. However, since the 1970s, the Government has adopted an explicit and unwritten policy of denying these applications.

On the other hand, in order to establish oil palm plantations, the government grants a provisional lease to state-owned statutory agencies (such as the Land Custody and Development Authority and the Sarawak Land Development Board) and private corporations for a period of 60 years or so. The conditions stated in the lease are, inter alia, that “the holder of this provisional lease SHALL NOT be entitled to a lease of an area equal to the area (of the provisional lease) but only to such an area as survey shows to be available”. That is, a survey must first be done by the lessee over the leased area to determine whether other people have rights over the same area of land; and if so, such an area will be excluded from the lease. The State Agency then forms
a Joint Venture with a private plantation developer and together they become proprietors of the land. In many cases this process occurs on native customary land without the prior knowledge or consent of the native communities. In other cases, the provisional lease areas are transferred by the state agency to private companies who develop them into oil palm plantations.

Over the past year, the Police Field Force has stepped up a campaign of intimidation and arrest in Dayak Iban communities where resistance to plantation development has been highest. In many cases, often in areas which have already been encroached by oil palm plantations, many people have been victims of intimidation, arrest and abuse of power. Dayaks have been violently arrested and jailed without warrant or formal charges.

**Incidents of harassment and violent arrest**

1. **Rumah Reggie, Bukit Limau and Rh. Ngayong, Baram Region, Sarawak:**
   On 17 April, 1997 the police arrested nine Iban men from Rumah Reggie longhouses. According to the arrested Iban,
   
   "The police did not inform us the reason(s) for our arrest, except to say that we were required to attend a meeting with the [Nation Mark Sdn. Bhd.] company that was clearing our customary land. However, instead of taking us to the meeting we were brought to the Miri central police station".

   Ibans from Rumah Reggie, Bukit Limau and Rh. Ngayong have been voicing opposition to the plantation for several years. On September 26, 1996 the Police Field Force came to the Reggie Longhouse. They went to the room (household) of the Tuai Rumah (Headman) shouted and insulted his daughter and kicked the furniture around. They then headed for the room of Insom Ak Ubau, the Deputy Tuai Rumah and demanded to see his Identity Card. When he asked them the reason behind their request, the head of the police party, Inspector Chan Kwang Yu, responded by grabbing and handcuffing him; he then punched and kicked him and pushed him to the floor. The police left without making an arrest.

   Eight months later, on April 16, 1997, several Iban witnesses watched a bulldozer (owned and operated by the Nation Mark plantation company) flatten the Headman's farm hut as three armed members of the Police Field Force stood guard. The act violated an undertaking given to the court by the lawyer for the company that the company would not enter or clear the land under dispute until the claim of native customary rights had been determined by the court.

   The nine arrested Iban were held in prison for 10 days after they were ordered by the Miri Magistrate's court, upon applications by the police, that they could be released if they signed a six month 'bond to keep the peace'. They refused, claiming:
   
   "We do not agree with the Order because we never committed any criminal offence. By signing the bond to keep the peace as ordered, we are also accepting the Sarawak government and the oil palm plantation companies' baseless allegation that we do not have any right over our native customary land."

   After 10 days, out of respect for the court, they eventually signed the bond when their lawyer filed an appeal against the order by the magistrate's court.

   On 5th August 1997, the Miri High Court quashed the magistrate's court's decision that the Ibans had acted illegally by protesting against the oil palm plantation being developed on their native customary land. In its ruling, the High Court stated that the police had arrested the Ibans without just cause, and that the bond to keep the peace had been ordered without a proper inquiry by the Magistrate.

2. **Iban Community of Sungai Bong, Baram Region, Sarawak:**
   On the afternoon of 25th June 1997, forty-two Dayak Ibans including 9 women were arrested by three platoons of the Malaysian Police and Police Field Force (PFF) within their native customary land area in Sungai Bong, Teru, Tinjar in Baram District of Miri Division, Sarawak. The 42 Ibans were from five longhouse communities which share a common territorial boundary: Rumah Rayong, Rumah Jawing, Rumah Pong, Rumah Janda and Rumah Jambo.

   Like the Iban of Rumah Reggie, the Ibans of Sungai Bong have resisted oil palm development on their customary land for several years. Between 1992 and 1994, the Ibans wrote several letters to the Land and Custody and Development Authority (the Management Agency of the land lease) and the Department of Land and Survey inquiring about the status of their land with respect to a proposed oil palm plantation. They received no reply.

   In mid 1994, Kumpulan Sama Sdn. Bhd., subcontractor for Boustead Estate Sdn. Bhd. (a West Malaysian plantation company) began preparing areas for plantation development within the native customary land of the Ibans. Led by their Chief TR. Rayong, the residents from Sungai Bong filed a lawsuit in the Borneo High Court of Kuching on 23rd June 1995, on the basis of their Native Customary Rights over their native customary land which was affected by the plantation.

   In April 1996, Ogawa Sdn. Bhd. was issued with a licence to extract and sell...
timber on the contested land, and they began felling in July 1996. On 23rd July the community was granted an injunction against Ogawa Sdn. Bhd.'s activities. However, logging by the company persisted. At this point Ibans began blockading logging roads as a form of non-violent protest. In response, Ogawa Sdn. Bhd. hired armed thugs to dismantle the protests and intimidate the natives. On 8th August, 1996, the residents lodged a police report complaining about the continued land clearance and harassment. The police did not respond.

Unknown to the Ibans, their customary land had been targeted as a plantation development area. This they found out when they saw outsiders (later known to be the agents of plantation) encroaching onto their area. Without notice, which is required by the Sarawak Land Code Cap.81, the surveyors from the Land and Survey Department entered the NCL area of the Iban community to conduct ground surveys for plantation allocation. On 24th October 1996, community members confiscated survey equipment owned by the Land and Survey Department, and the next day they brought it to the Marudi Police Station. At that time they lodged another police report that produced no response. For the next six months, despite constant protests from the Iban community of Sungai Bong, plantation survey work continued under Police Field Force (PFF) protection.

On 24th June 1997, a group of 44 longhouse residents went to meet with a survey team that had just built a new work camp. The residents explained to the survey team leader, Mr. Joseph Sigau, and Police Field Force leader, Inspector Norazam, that they opposed the oil palm scheme on their customary land. They advised the surveyors to stop proceeding with their activities. However, the PFF Inspector told the Ibans to wait until the boss from Miri arrived the next day for negotiations.

The next day, two additional platoons of Police Field Force including a Police Tracking Dog Unit arrived and proceeded to arrest 42 of the Iban men and women using excessive force. When the villagers put up resistance they were punched, kicked and butted with rifle stocks. One man, Alau Ak Nira was punctured in the chest by an M16 barrel. Several others suffered severe cuts and bruises. The group was loaded into police trucks and brought to the Miri Central Police Station for remand.

On 26th June they were brought before the Miri Magistrate's Court. Like the Iban from Rumah Reggie, they were ordered to sign a six month bond to keep the peace before they could be released. Most of the Ibans from Sungai Bong refused to sign the bond in protest, and they remained in prison for up to 18 days.

While in prison three Ibans, Tait Ak Barau, Alau Ak Ngira and Bugul Ak Ugap, were refused necessary medical treatment to wounds inflicted by the police.

On 5th August 1997, the Miri High Court quashed the lower court's decision that the Ibans from Sungai Bong had acted illegally by protesting against the oil palm plantation being developed on their native customary land. In the ruling, the court stated that the police had arrested the Ibans without just cause, and that the bond to keep the peace had been ordered without a proper inquiry by the Magistrate.

3. Shooting at Rumah Bangga, Baram Region, Sarawak:

On 19 December, 1997, violence broke out between the Malaysian Police Field Force and unarmed Iban villagers from Rumah Bangga longhouse, located at Sungai Sebukut, Lutong, Bakong, Baram. During the incident one Iban man, Enyang Ak Gendang, suffered a fatal gunshot wound to the head. Two other Iban men suffered non-fatal gunshot wounds and numerous other men, women and children were beaten with police batons. The incident occurred outside the Bangga longhouse where about 300 Iban had gathered for a spirit-cleansing ceremony.

On 28th September 1988, the Sarawak Land and Survey Department issued a provisional lease to an oil palm plantation company named Empresa Sdn. Bhd. (a Peninsular Malaysia based company) without the knowledge of the Dayak Ibans. The area overlapped the NCR land area of Rumah Bangga longhouse.

In November 1997, unknown to Rumah Bangga, Segararak Sdn. Bhd. and Prana Sdn. Bhd. (contractors to Empresa Sdn. Bhd.) began clearing the area. According to residents, the activities resulted in extensive damage to their land and crops.

As soon as they came to know of the activities of the companies, the Iban lodged a police report at Beluru Police Station, in Bakong, Baram District, Sarawak. They wrote letters to the Sarawak Land and Survey Department as well as to other government departments requesting that the lease be withdrawn or revoked or that a survey be done so that their land could be excluded from the lease. However, no action was taken by the police or other government authorities, and the companies continued their activities.

Having unsuccessfully exhausted available channels of recourse, the Iban erected a blockade / barricade. When this was destroyed, they decided to impound three bulldozers that belonged to the companies. Purportedly, their intention was to stop the clearing activities on their land and to initiate a dialogue with the companies. The bulldozers were brought to the longhouse and lodged safely.

One truck load of police showed up on 18th December, but the community refused to return the bulldozers without a guarantee that the company would suspend its clearing activities. On 19th December, Police and Police Field Force showed up in greater force with some men in plain clothes and others in uniforms, but no identifying epaulettes. They carried side arms, M16 rifles and batons.

The unarmed Iban residents, who had hung a banner stating, 'Our land is our life', came out to talk to the police. After a brief exchange of words, the police and PFF attempted to arrest the 63 year old Headman TR.Bangga Ak Andop. Without a court order, warrant or summons. A struggle ensued and the order was given by an unknown PFF officer to charge and open fire. Enyang Ak Gendang was the first person to be shot. Apparently, he was standing behind the crowd on higher ground at the time when the police tried to arrest the headman. He was shot just as the commotion of the arrest began and the order to fire was given. Enyang col-
lapsed to the ground with a fatal bullet wound to the head.

Two other men, Indit ak Uma and Siba ak Sentu, were shot in the abdomen. Untok ak Utom was grabbed and brought to the police truck, where he was struck twice on the head with a police baton and suffered a severe head wound. Enyang Ak Gendang was rushed to Miri General Hospital on a police truck, while Untok ak Utom and the other two shooting victims were brought to the hospital by their family members. Many other Iban men and women, including the headman, sustained injuries from police blows but were not hospitalised.

The police arrested five Ibans including: Reily ak Sylvester Nyelong (13), Sylvester Nyelong ak Mudat (36), Johan ak Jau (19), Jau Minggang (50) and Tingom ak Rangking (60). They were brought to the Miri Central Police Station and detained. Untok ak Utom, who was still under treatment, was arrested in hospital and transferred directly to police custody. Two of the detainees were released on 23rd December and the rest were released on 29th December. No charges were brought.

On 24th December, Enyang Ak Gendang died in hospital, where a post-mortem revealed a bullet lodged inside his head. He was married with three children, aged between seven and seventeen years. Indit ak Uma, who was shot in the stomach, chest and wrist, was released on 29th December and was immediately admitted to hospital for treatment to his stomach wound, which had become infected while he was in detention.

**Government reaction**

Shortly after the shooting, more than 100 PFF personnel and a police helicopter were deployed to the Bakong area. People trying to get to the longhouse were denied access. By 22nd December, the police had arrested an additional 22 men from the longhouses of Rumah Bangga, Rumah Sidu, Rumah Panau and Rumah Penggualang. They were all brought to Mmiri Central Police Station and held for questioning and interrogation. There were no charges framed against them.

On 29th December 1997, Rumah Bangga filed a suit to halt the activities of the oil palm plantation companies, Empresa Sdn. Bhd, Prana Sdn. Bhd, and Segarakan Sdn Bhd, within their native customary land. They named the Land Custody and Development Authority (LCDA), the Sarawak State Government and the Empresa Sdn Bhd, oil palm corporation as joint-defendants in the case. They are challenging the legality of the provision lease issued by the Land and Surveys Department.

The case was heard on 23rd January 1998 at the Borneo High Court in Miri. More than 100 Ibans gathered outside to show moral support and the court building was guarded by about 20 policemen. Police Special Branch and Criminal Investigation Department (all in plain clothes) were also seen mingling around the crowd. The case was adjourned.

Immediately following the court case, Headman TR. Bangga was arbitrarily arrested by the police. He was held for ten days and charged under Section 148 (Possessing weapons or missiles at riot) and Section 395 (Punishment of gang-robery) of the Penal Code. He was released on police bail and the police requested him to present himself at the Mmiri Central Police Station on 2nd March 1998.

Several indigenous leaders have called for an immediate and impartial investigation. However, thus far no official investigation has been announced nor conducted. In short, no known action has been taken to bring justice to those responsible for the death of Enyang Ak Gendang. Rumours have been circulating that several police officers involved in the shooting incident have been transferred out of Sarawak to the west Malaysian mainland. This however, remains unclear.

**Dayak concerns**

Among indigenous leaders, there is concern that the amount of force used by Police Field Force officers at Rumah Bangga longhouse exceeds the legitimate purpose and mandate of the authorities. There is further concern that this type of force is being employed on a systematic basis to intimidate indigenous land holders who are unwilling to accept oil palm plantation development. In many cases, the areas selected for development lie on Native Customary Rights lands (NCR) and the native inhabitants feel that losing customary land rights will dramatically affect traditional means of existence and livelihoods, as well as culture.

Since the mid-1980s many indigenous groups in Sarawak have actively resisted industrial logging, mining and plantation operations on customary lands. They have protested about the overt collusion between politicians, police and big business.

Over the years, Dayaks have repeatedly called for their land rights to be clarified and secured. However, the State has preferred to ignore these claims and pass all areas inhabited by natives as unencumbered, or minimally encumbered, state lands. Instead, laws and regulations were changed and amended by the State government, in a continuous erosion of the rights of the Dayaks to native customary land.

Dayak communities have clearly voiced their opposition to the current plantation development programme by urging the State government to exclude their native customary land from plantation development. As they foresee greater challenges ahead, there is increasing legitimate concern among Sarawak's indigenous groups that similar patterns of violence, intimidation, abuse of power and police brutality will continue to suppress the struggles of the indigenous Dayak communities to protect and defend their customary land rights, livelihoods, cultural heritage and historical significance.

**Raymond Abin** is a long time indigenous activist in Sarawak. He is the Director of the Borneo Resources Institute Malaysia Sarawak (BRIMAS), which is an Indigenous Peoples’ Organisation based in Sarawak.
VAN GUJJARS AT APEX OF NATIONAL PARK MANAGEMENT

From being the de facto owners of their forest habitat, to being holders of rights and then concessions, and finally declared as trespassers, the Van Gujjars (‘van’ = forest) are confused and angry with the forest department for bringing misery into their lives. The Van Gujjars are a pastoralist indigenous forest dwelling community living in Uttar Pradesh in northern India and depending for their sustenance and economy solely on the buffalo herds that they rear. They are Muslims practising a form of Sufism which enables them to incorporate various aspects of Hindu culture. They subsist on a purely vegetarian diet which comprises mainly of milk and milk products. The need to provide fodder for their buffalo herds has made them traditional nomads, living in the forests of the Himalayan foothills during the winter months, where their buffalo feed on lopped tree fodder, and in the alpine pastures at heights of up to 14,000 feet above sea-level during the summer, where the buffalo feed on the rich succulent grass of the meadows. The buffalo are not the ordinary water-buffalo but the hardy indigenous breed of the Neeli-Ravi, and are the only buffalo in India that can traverse long distances from altitudes of 2,000 feet to 14,000 feet above sea-level.

There are official records in the gazetteers of the erstwhile British government that prove that the indigenous Van Gujjars have been living in the forests and the mountain pastures for over three centuries. However, interpretations of history mark their advent into the area many centuries earlier. Up to the middle of the present century their subsistence economy, and the only interaction they had with non forest-dwelling communities was during their periods of transhumance. It is only recently that they have developed a market-oriented economy, selling milk in the markets of the peripheral urban townships, which has brought them into interaction with the outside world.

The Van Gujjars have their own conflict-resolving mechanisms in the form of traditional ‘panchayats’ (councils). Even today none of them takes an independent decision unless he/she has consulted the ‘panchayat’. Sanctions within the community are dictated by the very strong desire to preserve their environment; their self interest in subsisting on the natural resources available; respect within their own community (which is closely linked to the condition of the buffalo and the forests around their dwellings), and secular punishments for disobeying religious sanctions and social customs, including desecration of their natural environment, for which punishments may include public humiliation, ousting from the community or even death. This has ensured the harmonious relationship that they have developed over the centuries with the forests and wildlife, which have become an intrinsic part of their lives and very natures.

Sustainable practices
During the summer, each group of Van Gujjars moves up to the same alpine pasture as their grandfathers and great-grandfathers did. During the winter, they return to the same forest dwellings in the foothills year in and year out. Each family knows its own jurisdictions (firmly enforced by community sanctions) in inti-
Community Forest Management in Protected Areas

The timely lopping of a fodder tree just before its leaf-fall ensures that the tree gets the full benefits of its leaf cover and that it is also used by the Van Gujjar buffalo. Such optimal use of fodder tree leaves ensures complete regeneration of the trees during the summer monsoons, while the community is in its summer habitat.

Herbivorous animals feed with the buffalo on the lopped fodder leaves under the trees during the night. Not only do they forage here but they also sense the security provided by the buffalo when carnivores are on the hunt. Many a time these herbivorous animals enter the precincts of the Van Gujjar’s ‘dera’ (hutment) to seek shelter from the big cats.

From owners to trespassers
Up to the beginning of the British regime in India, the Van Gujjars lived in the forests as de facto owners of their habitat. The forests were privately owned by the independent state rulers and the Van Gujjars happily co-existed with them. With the need of the British for timber to build the network of rail tracks and other requirements, the Forest Department was constituted and the Van Gujjars were allowed their traditional rights. In the beginning of the present century these rights were converted to concessions, and now with the overzealousness of the Indian Forest Department to convert forests into protected areas, the Van Gujjars are deemed to be trespassers. It is this latest
Van Gujjars returned from their highland pastures in October 1992 they were stopped from entering the forests and were told to move to a very marshy and unsuitable place which had been arbitrarily selected by the forest department. They refused to do so as they were not willing to leave their homes of many centuries to move to what they repeatedly told the authorities was certain death for them and their buffalo. During this impasse, which lasted several days, the Van Gujjars lost 160 of their livestock, which was forced through hunger to feed on poisonous weeds growing in the periphery of the forests.

It was at this time that the organisation Rural Litigation and Entitlement Kendra (RLEK) interacted with the community and helped to organise them. In a large meeting attended by thousands of Van Gujjars they declared that they would resort to direct action and stop all rail and road traffic to Dehra Dun and Hardwar. The government immediately issued orders to the forest department to permit the community to re-enter the forests.

**Van Gujjars as soft targets**

It is very clear that the forest department has targeted the Van Gujjars because they see them as soft targets, being a minority amongst a minority by virtue of being a Muslim community as well as a nomadic pastoralist one. At that time they did not even have their right to franchise and were not considered to be citizens of India (it was only in 1994 that with RLEK insistence the Election Commission of India conceded their right to vote). There are 26 revenue villages within the area of the proposed park with 2,506 families occupying 1,356.95 hectares of land for agricultural use. A peripheral population of 165,930 non Van Gujjar villagers accesses the forests of the proposed park for fuel and fodder. The army occupies an area of 346 hectares. An area of 465.853 hectares is occupied by other government agencies. 17 kilometres of the state electricity board's power lines run through the area, as do railway lines and national highways. None of these people or agencies have ever been told by the proposed park authority to fall in line with the Forest Conservation and Wildlife Protection Acts which are used against the Van Gujjars.
Van Gujjars opened in Indus Bank, (Photo: Pernille Gooch)

Van Gujjars perspective - genesis of the Community Forest Management Plan (CFM-PA)

During the onset of winter 1992 when the Van Gujjars returned from their summer sojourn in the Himalayan highland pastures, they were physically prevented by the forest department from entering the forests of the Shiwaliks which are their winter habitat. In the process of self-organisation that followed, with the assistance of RLEK, the Van Gujjars repeatedly questioned the forest department’s intention to throw them out of the forests as a measure to protect and conserve the forests. They maintained that their knowledge of silviculture was far greater than any of these officers, who had only learned about it in classrooms while they themselves had learned it through generations of eco-friendly living in the forests. In fact, if they were given the responsibility to manage and conserve these forests they would be able to do far better than the forest department could even dream of. For this, they said, they did not even want any payment, as it was in their own interests that the forest and wildlife should flourish.

RLEK responded to these aspirations and was able to organise a team of anthropologists, environmentalists and legal experts from India and abroad. The team undertook a comprehensive review which examined the international and national policy context, the ecological context and problems, and the local peoples and their problems with respect to the proposed Rajaji National Park. An extensive literature review identified that similar conflicts were frequent across India and other southern countries and had their roots in national and international policies for protected areas as well as in local conditions. The literature review identified key qualities of indigenous peoples and areas which were indicative of success.

Fortified with such information the team undertook extensive interviews with the Van Gujjar community and carried out field visits in the Rajaji area to observe a wide range of forest conditions, and all aspects of the Van Gujjars daily activities and culture. Here they elicited responses from the members as to their perception of the roles they could play in the management and protection of the forests. Mapping of the areas accessed by the community for natural resources - mainly fodder for their livestock and firewood - was done by the community themselves and ideas to increase the resource base were suggested by them.

The field visits, and prolonged discussions, prepared the groundwork for larger meetings with the Van Gujjars where ideas were debated and suggestions given more concrete form. Similar field visits and meetings were held with members of nearby villages who had traditionally accessed the forest for minor forest products - mainly bhabar grass used for rope making - and for grazing their cattle. The Van Gujjars and the other villagers discussed amongst themselves the interaction that would be necessary between them for Community Management of Forests. The RLEK team acted only as facilitators in these discussions.

This close interaction between the RLEK team and the stakeholders ensured that the management plan developed along the lines of their traditional lifestyle and socio-cultural mores, and nothing foreign was introduced. This was only possible by developing the plan from the grassroots upwards, as against the top-down approaches that invariably fail.

The draft Community Forest Management Plan was then analysed and discussed paragraph by paragraph in a three day workshop by forty-two experts from the fields of environment, anthropology, law, forests, social activism, social sciences, advisory boards to the government, and most importantly the Van Gujjars and villagers who directly accessed the forests. Six hundred Van Gujjars had attended the inaugural session of the workshop and elected their representatives who would participate in the three day workshop. The final draft incorporated all the suggestions of the workshop and only then was the plan entitled ‘Community Forest Management in Protected Areas plan - a Van Gujjar Proposal for the Rajaji Area’ published in the form of a book. The book was then sent to Mr. Justice P.N. Bhagwati, former Chief Justice of India and currently the Vice-Chairman of the UN Human Rights Commission who wrote a foreword to it. He writes:

"I believe this is the first time that, in the preparation of a plan affecting the people, effective participation of the people themselves has been secured. Unfortunately, in our country, governments as well as non-governmental organisations adopt a paternalistic attitude, and come out with plans which they regard as beneficial to the disadvantaged and vulnerable sections of the community, without consulting the affected people or ensuring their participation in making of the plans.”

The book was then released by the then Union Minister of Environment and Forests, Professor Salaffuddin Soz.

The Community Forest Management Plan

The Community Forest Management Plan (CFM-PA) proposes ten principles to be implemented in relation to the characteristics and need of local communities and ecosystems. These are ecosystem protection; participatory, democratic structures; effective conflict resolution; traditional rights and use of resources; discreet jurisdictions and explicit agreements; open communication; management responsibility and benefit sharing of usage; gender equity; community responsibility; and effective monitoring and advocacy.

The Van Gujjars are ideally suited to this experimental alternative system of forest management as they are a homogeneous tribal group with strong social and ecological values and a close-knit society. They have clearly defined areas of forest use both as families and as a community, plus a traditional and effective decision-
making structure to enforce regulations. They are specifically motivated and request that they be given the opportunity to manage the forests.

Within this context the plan also gives leading responsibilities to local villagers, in relation to the resources and areas where they are the primary users, particularly in the border areas. These people also exhibit positive characteristics for community management. They are subsistence people with a high level of dependence on specific minor forest product resources. Further, there is little overlap with the Van Gujars, there is clarity in traditional uses, and there is respect for each other’s rights where there is some overlap.

The essence of the plan is that the Van Gujars will take on lead management responsibilities for the conservation and management of the forests where they live. For this, five strategies have been developed:

a) Committees of Van Gujars would be formed at ascending levels, from the smallest cluster of ‘deras’ to the umbrella ‘regional committee’. The different levels are the ‘khol committee’ comprising of one representative from each ‘dera’ within a ‘khol’; the ‘range panchayat’ comprising of representatives of each ‘khol’ within the range (thus, enforcement and conflict resolution would build on the traditional panchayat system of respect for the decisions of the council of elders); the ‘sanctuary committee’ comprising of representatives of the ranges in each of the three sanctuaries (Rajaji, Motichur and Chilla) along with the resident forest officer and representatives of other agencies; the ‘regional committee’ comprising of one Van Gujar from each of the sanctuary committees, along with the Conservator of Forests, a member of the Wildlife Institute, the district Superintendents of Police, an NGO representative, three eminent persons and a lawyer. Thus, the management would range from the day-to-day level of the ‘khol’ committee to the overall level, ensuring that all elements of the community management structure perform within the existing legislature.

b) A minor forest product committee would be formed which would comprise of representatives of the villages that also access the non timber products of the forests. Van Gujars would also be on the committee but only in a participatory way and would not be involved in voting or decision making.

c) A protection structure would involve three Van Gujar forest guards each in every ‘khol’, backed up by the forest department guards. They would not be armed with weapons but with wireless sets for easy communication, so that they could report violations immediately to the forest authorities and receive backup.

d) A support structure would involve the forest department and the local administration to ensure that there is no harassment of the Van Gujars in their annual migrations.

e) In order to provide the Van Gujar community with a modicum of finance for their development needs, lopping and grazing taxes would no longer be paid to the forest department but to the ‘range panchayat’.

Key objectives and components
The CFM-PA sets forth proposals which aim to provide:

- A practical model of community forest management in protected areas in which local people are the lead managers and the forest department plays the role of supporter and monitor.
- A specific, practical set of structures through which to implement CFM-PA in the Rajaji area, which assures environmental protection whilst respecting the rights and traditions of local people.
A means for furthering sound policy development and reform for protected areas at a national level.

The objective of the initiative is to protect the ecosystem and wildlife of the Shivalik range of mountains and the traditional rights of the Van Gujjars and local villagers. They would have the choice to live permanently in and around the protected area in an environmentally and economically sustainable manner.

RLEK has obtained two wireless frequencies from the Ministry of Telecommunications, and purchased one hundred wireless sets for the exclusive use of the Van Gujjar community. This will allow them to report cases of environmental disasters, epidemics, medical emergencies, illegal tree-felling, wild game poaching, forest fires and so on.

Joint forest management versus community forest management

In proposing to the government a system of Joint Forest Management, the forest bureaucracy has admitted the failure of the current anti-people approach to protected area management. However, there are very notable differences in the joint approach and the community approach. The CFM-PA plan has looked into this and shows the two approaches at a glance:

### Joint Forest Management

1. Based on existing colonial system
2. Requires no structural change in power relationships, i.e. between Forest Department and local people
3. Less stakes for people participating and therefore less responsibility.
4. Attitudinal Change - partially successful only when innovative forest officials are involved
5. Cannot be replicated as such in Protected Areas where forest department - local people's relationship is soured
6. Problems in implementation once joint forest management gets institutionalised
7. Lots of money involved for infrastructure, management and monitoring - dependence on large international donors

### Community Forest Management

- Based on traditional system of management
- Power rests with people
- Full stakes involved and so a greater sense of responsibility
- Structural Change - people take initiative
- Applicable to all kinds of forests
- No problems in implementation as each plan is case-specific and made by the people
- It is cost effective with no dependency on large international donors

**Prospects for implementation**

When the CFM-PA plan was released in the form of a book by the then Minister for Environment and Forests, Professor Saifulddin Soz, it received wide coverage in the national media. Subsequently the matter was raised in starred questions' in the Rajya Sabha (upper house of parliament).

On the 19th July, 1996, in response to starred question number 145, the Minister of State for Environment and Forests stated that:

> "With the recent emphasis on involvement of local communities in protection and maintenance of forests in consonance with the National Forest Policy of 1988, the Central Government are in the process of making suitable changes in the existing forest laws, including Indian Forest Act, 1927 and wildlife (protection) Act, 1972".

> "The government is making suitable changes in forest laws to allow involvement of local communities in protection and maintenance of forests".

On the 1st August, 1997 in response to starred question no. 146, the Minister for Environment and Forests stated that:

> "The revision of the current forest policy is under consideration to ensure greater involvement of local communities in guarding and managing the forests."

Also, the Forest Policy of 1988 states that:

> "it shall be the primary task of all agencies responsible for forest management including forest development corporations, to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around forests."

The policy also states that:

> "life of tribals and other poor living within and near forests revolves around forests and therefore their rights and concessions should be fully protected."

**Situation in other Protected Areas**

On July 17th, 1998, hundreds of ousted dwellers of the proposed Nanda Devi Park (in the Garwal Himalayas) marched into the forest to reclaim their rights to graze their livestock in the high altitude pasturcands. These people had been forced out of the area they had traditionally accessed in pursuit of their pastoralism with promises of rehabilitation schemes. After suffering unemployment, penury, starvation and death for 16 years these traditional graziers had decided not to suffer hardships any longer, and to re-enter their forest homes by breaking the forest laws. This case blatantly exposes the violation by the forest authorities of the Forest Policy of 1988. A similar ferment is brewing amongst the people of another proposed park, the Govind Vihar National Park, who have started sending out feelers to the communities living in and around the Rajaji and Nanda Devi areas.

Over the past two decades, India has seen many instances of people-park conflicts, from bird and tiger sanctuaries in the north to the Gir lion preserve in the west. Irante villagers and indigenous populations have raided parks repeatedly and clashed with forest guards and local administration over matters such as land and grazing rights.
Linkages to national priorities, action plans, and programmes

The CFM-PA plan is in full accordance with national priorities, as indicated by the National Forest Policy of 1988 and the recently proposed Conservation of Biological Diversity Act. In addition, the UNDP-funded National Environment Action Plan and the currently ongoing National Forestry Action Plans place emphasis on biodiversity conservation. In fulfilment of its commitment to the Convention on Biological Diversity, India is preparing a National Biodiversity Action Plan in which indigenous knowledge and community-based conservation are expected to have high priority. India is also signatory to the Rio Declaration on Environment and Development (1992) where in the principles include:

"Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development".

(Principle 22)

Government has shown over the years that it is aware of the fact that the colonial system of forest management through the forest department has failed. It has shown signs of a process of changing this scheme of things and has assured the Parliament that it is in the process of bringing about changes in the country's archaic forest conservation and wildlife protection acts that have created a situation of conflict between people and forests. The latest development along these lines is the statement of the incumbent Union Minister for Forests and Environment, Mr. Suresh Prabhu, that the government was considering making two kinds of protected areas, one to be managed by the forest department, and the other as community reserves to be managed by the tribes like the Vishnus in Rajasthan and some tribes in the North West of India. The forest bureaucracy is seen to be trying to block this type of approach, because it visualises a loss of its power and pelf. However, the political will is very clear and it only needs legislation to bring about this reality.

Conclusion

The situation of conflict between the forest bureaucracy and the Van Gujjars is now at white heat. The foresters, who are the virtual landlords of almost one third of the country's land, have started using desperate repressive measures to undermine the determination of the Van Gujjars. They are backed up with huge funds from the larger foreign donor agencies like the World Bank and the IMF, and although they assure them that there will be no involuntary dislocation of indigenous communities, the forest department has not hesitated in unleashing a virtual reign of terror upon these indigenous people to force them to opt for 'voluntary dislocation'. It is only because of the determination and the organisational strength of the Van Gujjars, who have the strongest claim on these forests, that they have still remained within the forest and are advocating their demand for management of the forests. The path the Van Gujjars are treading is in consonance with government, international and human rights commitments towards indigenous peoples and they need any and all kinds of support, including financial, to wage this last battle in their war for survival.

Note

1 A type of question where you can add extra follow up questions to the main question.

Parmesh Dangwal has been interacting with the Van Gujjars since his childhood by virtue of being the son of a senior forest officer. He understands the perspectives of the foresters and the forest dwelling people intimately. He has been closely associated with RLEK for the past six years. He is a known writer in India.
The Politics of Conservation:
Pwo Karen Forest People of Thailand

Tropical forests, and in particular tropical rain forests and their biodiversity, have formed a topic which has created its own discourse. Since the Brundtland Report in 1987 and the UN Conference on Environment and Development (UNCED) in Rio in 1992, the discourse has been global, and ranges from scientific investigations of the prevalence and loss of biodiversity to appeals for saving particular animals, plants, and plots of rain forest, and to growing concerns for those who are forest people by birthright, but who in the eyes of planners constitute disturbing elements.

The international Convention on Biological Diversity assumes that nation states have the capacity and the internal legitimacy to manage forests (among other areas) harbouring such biodiversity with due concern for and collaboration with indigenous forest peoples. Discourse by national governments may, however, implicitly entail the disenfranchisement of local communities. In specific cases it will often be seen that many different rationales are invoked, and that while international discourse is concerned with conservation, national discourse belongs to a political arena which may have profound implications at the local level.

There are different rationales about an agenda which at a certain level is shared: the conservation of the forest. The agenda represents biodiversity preservation, carbon sequestration, aesthetic values, exist-
ence values, rights of wild animals, national heritage, but to the Karen it also represents the value of the living, spiritual forest which is the lord of land and waters. To NGOs, the forests of Huai Kha Khaeng and Thung Yai represent a stepping stone to issues related to forest conservation in general - rights of local people versus rights of the government, private individuals and commercial interests; GATT and north-south inequalities, as well as human rights issues.

The case study 1 will discuss below deals with attempts in recent years to formulate conservation measures for the large forest tracts (around 8,000 square km) in western Thailand. The area constitutes one of few remaining regions in South East Asia with a high level of endemic biodiversity. Pwo Karen forest people have lived in what is now the Protected Area (PA) of the Huai Kha Khaeng and Thung Yai Naresuan forests for two to three centuries, deriving sustenance from small swidden plots, a use of land which seems to have given rise to the cherished biodiversity. The small disturbances created by sporadic clearance of forest patches by the Karen allowed grazers and browsers to find food. Thus, the shifting cultivation of the Pwo Karen never caused forest degradation, but favoured the larger wild herbivores by creating periodic open spaces in the forest.

The Pwo Karen have inhabited the forests on both sides of the border for centuries. They consider themselves a forest people, and served the Thai kings in past centuries as spies against the Burmese and British.

In 1991 the forest of Huai Kha Khaeng (HKK) - Thung Yai Naresuan (TYN) was declared a World Heritage Site by UNESCO on the basis of its outstanding biodiversity. Quite large tracts of forests had been relatively undisturbed by outside influences in the present century, and in previous centuries the only outside disturbances were caused by occasional Siamese or Burmese armies crossing the border during the Siamese-Burmese wars, from the 14th century onwards. Until twenty years ago, one could not drive to the border of the forest except by dirt road, but today tarmac is found everywhere along the outer periphery.

The areas were declared wildlife sanctuaries in the 1970s, but were not put under management, as such. By the second half of the 1970s the forests became home to the students who fled the Thai military government and joined the forbidden Communist Party of Thailand which was then rural- and forest-based. Only after 1981 under general amnesty did the students come out. Many of them had lived in Karen villages in the forests.

After its declaration as a high biodiversity World Heritage Site, the international community caught sight of the area, and since then has taken the initiative to set up projects with both the government and NGOs for biodiversity conservation. These initiatives differ in scope and attitude. The international biodiversity lobby may often see people, including forest dwellers, as enemies of forest conservation and want people out, while the people want to remain in the forest, which they consider their home. Therefore, the forest and its biological diversity means different things to different people and agencies - its meaning is subsumed under separate agendas.

In Thailand prior to the 1980s there was almost nothing about the environment in the newspapers or on television, except foreign nature films. During the
Ever since the forests were declared wildlife sanctuaries in the 1970s, and in particular when they became a World Heritage Site, the Pwo Karen have heard that they could not stay in the forest - it was forbidden. In 1989 an event took place where the Third Thai Army one day suddenly descended on a Hmong village on the plateau in the northern part of the TYN wildlife sanctuary and told everyone to leave. The Hmong were relatively recent immigrants who came from the north at the end of the 1960s. Their land use system is very different from the Pwo Karen - more exploitative - and also they cultivate opium poppies at high altitudes. A western zoologist happened to be in the village the day the army came and has described the event as an extremely suppressive incident. The Hmong were resettled in a resettlement area in Tak province on land where it would be difficult for them to make a living and where water was sparse.

Buffer zones

The HKK-TYN now has a buffer zone defined as the area where communities border on the PA. While in the TYN the Pwo Karen still live inside the PA; in HKK the Pwo Karen came out at the end of the 1970s. They now live in what is called the buffer zone. But while there were old Karen villages there before, today they are not alone in the buffer zone. There are not only Pwo Karen, but many Thai people who have arrived from north-east Thailand within the last two decades in search of land. They came in the wake of the Thai Plywood Company, which prior to the logging ban, held concessions to cut down the forests in the areas which today constitute the eastern buffer zone.

Clear-felled land was brought under commercial cultivation of pineapple, sugarcane and cassava by the north-easterners. The Thai fields are now large and permanent. The Karen who now find themselves in the buffer zone used to practise subsistence shifting cultivation, but today they must undertake a rotating form of fallow agriculture. Until recently the Karen did not apply chemical inputs to their agricultural land. They used a fallow agriculture with field rotation to regain fertility, and they did not need large areas as they cultivated no commercial crops but only subsistence crops. This land use has bounced back on them since the Thai authorities, in particular the Royal Forest Department, tend to see idle land as unused land, and therefore appropriated the land (which carried no title) to plant teak. This has caused the Karen's land to dwindle.

The Karen's attitude to the land is one of concern, and to the forest one of veneration. Few of the northeastern Thai farmers hold such feelings; they are rather opportunistic and may sell the land (despite their lack of title) and move on to new areas of encroachment, as is the style of spontaneous settlement in South East Asia. The clearfelling of forest by the Thai Plywood company and the failure to re-forest attracted many people from north-east Thailand to settle and claim land in the area after 1972. The Thai now make up more than 70% of the population in the buffer zone and its vicinity. Aerial photos of the HKK from the 1960s show the forests as intact. Only after the Thai Plywood Company came in from the east did the forest start to disappear.

The future

In the present situation the prospects for the future differ among those living in the buffer zone, who are to receive 'development services packages' if they behave and the Pwo Karen who live inside the forests. They have always lived there, and many, in particular women, don't speak or read Thai, but can understand. They have their own lifestyle. They cultivate subsistence crops, live in bamboo houses, fish, set traps, and carry out annual ceremonies to thank the forest for its benevolence. These people meet only the forest rangers and the Border Patrol Police, because their villages are far away.

At intervals, last time almost four years ago, the government decides to evict people. But today many eyes are focused on what happens in Thailand's forest and the number of scandals over the last few years has overshadowed the negative (and positive) attention earlier accruing to the Pwo Karen in TYN. Foresters of the Royal Forest Department in connivance with corrupt local politicians have caused
the clandestine felling of big timber trees over large areas inside the Salwaeen National Park in the northwest of Thailand. Since Thailand favours trade with its neighbours it has allowed entrepreneurs to take licences for importing timber from Burma to compensate for the logging ban inside the country. The Salwaeen National Park conveniently borders on Burma, so logs are taken into Burma, stamped there, and brought back into Thailand ‘legally’.

The presence of indigenous peoples or forest peoples inside a forest designated as an internationally recognised protected area seems to lead to a number of hasty conclusions on the part of government. Some critics argue strongly against a narrow conservationist view, wherein the biodiversity conservation agenda is seen to represent a hidden articulation of an international and national agenda to extend State control of resources, at the expense of the forest dwellers.

No one has yet asked aloud how can we actually know the impact of man on forest biodiversity. Is it good or bad, and under what conditions is it good, under which conditions bad? From a number of perspectives such as human rights, indigenous knowledge and protection against outsiders, it would be very wise to let the Karen stay undisturbed in the forest. This may also mean that they should retain the lifestyle of their forefathers, cover long distances to hospitals when ill, have few means of marketing any cultivated or collected produce for cash, and enter into a covenant with the royal forest department on what is permitted and not.

No one has yet defined in a clear manner how the biodiversity of HKK-TYN is constituted. What are the indicators and how are they linked with human presence and activity? It was briefly mentioned that the very low population density of Karen in the forests over the centuries created small openings in the forest when a swidden field was prepared. The fields under regrowth have always been frequented by large herbivores, which do not favour the dense forest. The large herbivores - and the carnivores - are the main attraction of the place in the eyes of the Thai public. So ‘biodiversity’ (animals) as it appears to the Thai public may be a result, among other things, of earlier Karen presence and land use.

In a specific situation such as that of the HKK-TYN forests, there is a need to understand the biological conditions for biodiversity preservation and sustainable use of the forest, as well as the social and institutional forms which are appropriate to such use. We are dealing with complex ecosystems and it is generally recognised among biologists that while

“some natural systems are relatively stable and maintaining them at stasis will tend to preserve species biodiversity, others systems require disturbance. Many biological communities are not structured by intraspecies competition alone, and require nonequilibrium conditions to maintain biological diversity.”

As the Pwo Karen become increasingly aware of the state of the environment and their own role, they take action using the symbols of the state. Just south of the TYN Protected Area a number of Pwo Karen communities joined hands to prevent the conversion of their forest to an open zoo in the hands of a land speculator. Together with monks they ‘ordained’ - in the way the monk is ordained - the same forest as their community forest. By using Buddhist rituals and by inviting local government officials to participate, the Pwo Karen swore to protect the forest. This happened a couple of years ago and today in the same area another Pwo Karen community which is located in what may be termed the buffer zone of TYN has started its fight against pollution from a mine in the forest. The stream near the village is heavily polluted by effluents from the mine carrying 0.5 mg of lead per litre, which is the highest in Thailand. The community and neighbouring communities gathered in the monastery to discuss the situation and accept help from the monks, and they told reporters from Bangkok Post that

“When the road came to our areas, we watched fences spring up in our common woods and large patches be cleared for cash crops by outsiders.”

Current political and strategic work must be geared towards opening the eyes of the government so that they learn from elsewhere in the world, where systems of joint management of protected areas are emerging. Despite the presence of some corrupt forestry officials, the Pwo Karen need the state as a guarantor of their rights against other vested interests. The forests and the fame of the magic word Hua Kha Khaeng will easily attract land speculators, who will open up resorts and advertise trips to view the remaining exotic natives. Presumably the presence of the army in the area since the days of the communists has curbed illegal settlement by outsiders and only a few resorts have found their way to the buffer zone. But at present the government is not inclined to see the Pwo Karen as partners in the protection of the forest, and the government is ignorant of the immense knowledge potential resting with the older generation of Pwo Karen to whom every tree, flower, vine, root and leaf is known. The task ahead will need political clout.

Notes
1. Around the turn of the century a British adviser to the Siamese government wrote of the Pwo Karen: “No people we have met are more truly children of the forest. Their sole ambition is to be let alone” (Smyth 1895)

Kirsten Ewers is an anthropologist who lived with the Pwo Karen forest people for two years in the 1970s. Later she became engaged in international development work with a focus on policy issues and local level institutional development, for example with community forestry and protected area management. Today Kirsten Ewers is head of the department of natural resource management in Ramboll, Denmark. Address: Teknikerbyen 31, 2830 Virum, Denmark, phone: 45 45 98 85 49, fax: 45 45 98 85 10, e-mail: kea@ramboll.dk
NICARAGUA

by Maria Luisa Acosta

The State and Indigenous Lands in the Autonomous Regions: The Case of the Mayagna Community of Awas Tingni
The Mayagna indigenous community of Awas Tingni began their battle for legal definition of their communal lands and control of their natural resources more than two years ago, with an injunction presented to the Supreme Court of Justice on 11th September, 1995, and a petition to the Inter-American Commission on Human Rights of the Organisation of American States (OAS) on 2nd October, 1996, which is still in process. Both actions were unprecedented in the history of Nicaragua, and although the legal battle continues, they have brought about some important achievements. Firstly, the Nicaraguan State cannot now avoid seeking solutions to the problem of the demarcation of indigenous property. Secondly, there is a consciousness in civil society, demonstrated by the support of NGOs and in some national state sectors, that indigenous communities have ancestral, historical rights over their lands and that national and international law grants them the legal means to raise the problem of indigenous land tenure. Thirdly, the use of democratic channels within the State has been developed as a way to seek solutions to conflicts raised by Community members in their role as Nicaraguan citizens. This is in contrast to the use of arms in the ‘80s, when the government and indigenous communities were faced with the same problem.

In March, 1996 the Community of Awas Tingni was threatened with dispossession of its communal lands when the government granted a logging concession to the company Sol del Caribe S.A. (SOLCARSA), a subsidiary of the Korean transnational KUMYUNG. The concession was for a period of 30 years, with an automatic extension for another 60 years.

The Community has no actual title to their lands; however, they support their demand through the constitutional norms, which recognize the ancestral, historical usufruct of indigenous communities over lands which they occupied traditionally. Therefore in March 1996, before the government granted the concession, the Community presented a request for the recognition of their territory to several Central Government entities, as well as to the Regional Council of the Autonomous Region of the North Atlantic (RAAN). The request consisted of: an ethnographic study, a map of the area they claimed, a population census and a request for State recognition of the area. However, the State did not respond.

The problem facing the Mayagna community of Awas Tingni is a consequence of the fact that the State has neither carried out demarcations nor taken any other relevant measure, to assure the property rights of indigenous communities to their ancestral lands. In spite of constitutional recognition of the land rights of indigenous communities in 1987, there is no law or administrative provision in Nicaragua to regulate this right or grant official recognition of the ancestral lands of individual communities.

Appeal to the Supreme Court of Justice of Nicaragua
Faced with the challenge of finding a solution in the national legal institutions, the Mayagna Community of Awas Tingni, the Maskita Community of Kakamuklaya and two members of the Regional Autonomous Council of RAAN presented a total of four injunctions to the Supreme Court of Justice of Nicaragua asking the State to cancel the concession granted to SOLCARSA.

The first injunction
On 11th September, 1995 (before the government granted the concession, but when everyhting was ready to be signed) the Mayagna Community of Awas Tingni presented an injunction against the Minister for the Environment and Natural Resources (MARENA), the Director of SFN-MARENA and the Director of ADFOREST-MARENA. The injunction was presented by the community’s ‘sindicò’ both in the sindico’s own name and in the name of the Community.

The injunction was based on the argument that the accused public officials facilitated the granting of permits to the company SOLCARSA, allowing them to enter the communal land of Awas Tingni to carry out exploration activities in the forests and begin an inventory, and other work, in order to initiate timber exploitation. The result of the process stimulated by the defendants was the signing of a contract between MARENA and SOLCARSA for a 30-year concession, renewable for another 60 years.

The Community’s claim to the land is based on article 36 of the Statute of Autonomy which establishes that “Communal property is constituted by the lands, waters and forests which traditionally belonged to the communities of the Atlantic Coast”; and on the community’s continual dominion since time immemorial over the lands which MARENA intends to grant unilaterally in concession to the transnational company (thus making the assumption that they are state property).
The Community of Awas Tingni has no actual title to their lands; but their demand is supported in articles 5, 89, 91 and 180 of the Nicaraguan Political Constitution, which confirm rights to communal lands. Recognition of property rights in the Constitution is based upon the ancestral, historical occupation and usufruct of lands traditionally occupied by the indigenous communities of the Atlantic Coast.

In the injunction, the community of Awas Tingni requested the Court of Appeal of Matagalpa to order the officials of MARENA:

* To refrain from granting the concession to SOLCARSA;
* To order the agents of SOLCARSA to vacate the communal lands of Awas Tingni, where they were currently advancing work to begin timber exploitation;
* If the Company remains interested in harvesting wood from the Community’s lands, to begin a process of dialogue and negotiation with the Community of Awas Tingni.

Nonetheless, the Court did not accept the injunction, declaring it inadmissible by invoking articles 51 and 26 of the Law on injunction (‘Ley de Amparo’). The court invoked these articles in the sense that the injunction cannot proceed when the aggrieved party ‘has agreed to the act which he is bringing to court’, either overtly or tacitly. The Ley de Amparo presumes that consent is granted when the appellant fails to make an appeal within a period of 30 days from the time when he becomes aware of the facts.

The Community responded by denying the supposed consent alleged by the Court; they claim to have opposed MARENA’s actions by all legal means available to them. The Community and its members were not part of the process of granting the concession requested by SOLCARSA from MARENA; they were neither consulted, nor participants, on either side, in the granting of the permits which resulted in the presence of representatives of SOLCARSA on their lands. The community is taking legal proceedings against precisely this omission on the part of MARENA to consult them and make them part of the whole process, which will decide the future of their own lands. It was MARENA which carried out these actions unilaterally, ignoring the constitutional rights of the Community, Awas Tingni alleges.

Prior to presenting the injunction, when the company entered their lands the Community first delivered a letter to the Minister of MARENA to protest against these illicit activities, ‘demanding’ that he stop the process for the concession in their communal lands, and seeking to open a dialogue with the government. The Minister never replied, and therefore the Community took out the injunction.

The injunction was presented before the concession was granted. If granted it would cause the Community and its members definitive, irreversible and irreparable harm. According to a communication of the Minister of MARENA himself, at the moment when the injunction was presented, the concession was ready for his signature. Thus, the Community and its members were facing imminent danger that their territorial rights would be usurped through the granting of the concession.

However, the Civil Court of Appeal of Matagalpa offered no solution to the aggrieved parties ‘for an act which had not yet occurred but whose occurrence was imminent’, arguing that it was very late for the community to make an appeal.

Once the injunction was thrown out by the Appeal Court of Matagalpa, the Community went directly to the Supreme Court of Justice of Nicaragua and filed the injunction on 22nd September, 1995.

The Supreme Court considered the injunction at 8-30 am on 27th February, 1997 - 18 months later - at the request of the Ministry of Foreign Affairs and the Presidency of the Republic, and confirmed the decision of the Appeal Court of Matagalpa by throwing out the Community’s requests completely.

The second injunction

On 13th March, 1996 the Minister of MARENA signed the concession to SOLCARSA. On 25th March, Alfonso Smith Warman, RAAN Deputy to the National Assembly and legally a member of the Regional Autonomous Council of RAAN, and Councillor Humberto Thomson Sang of the Regional Autonomous Council of RAAN, took legal proceedings against the Minister for this action. The appellants based the case on a supposed guarantee given by the Council, arguing that the granting of the Concession had never been discussed nor evaluated by the full Council.

The appellants alleged that the concession was signed without obtaining proper approval from the Regional Autonomous Council of RAAN, violating the second paragraph of article 181 of the Political Constitution of Nicaragua, which establishes the obligation of the State to obtain such approval for concessions granted in the Autonomous Regions of the Atlantic Coast on Nicaragua.

The Minister of MARENA claimed that he had received the approval of the Regional Autonomous Council of RAAN, and offered as proof Administrative Provision No. 2-95 of 28th June, 1995, signed by the members of the Executive Committee of the Regional Autonomous Council of RAAN and by the Regional Coordinator of RAAN.

However, the legal provisions cited as the basis for the latter Administrative Provision did not confer legal power to approve a forest concession on the Executive Committee of the Regional Council alone. To the contrary, Resolution 12, the supposed legal basis for the Administrative Provision, declares the Autonomous Region of the North Atlantic to be in a state of ECOLOGICAL EMERGENCY, and in its third and fourth parts considering this it states explicitly:

“That currently some Central Government authorities have been granting licenses and concessions for harvesting, exploration and exploitation of natural resources with no planning nor control, thus putting the whole Ecological System in danger. Thatsuch acts violate the rights of the Atlantic Coast communities and the powers of the Regional Government for the administration of resources in the territory over which it has jurisdiction as the legal upholder of the public right”.

Further, article 3 (a) of the same Resolution reaffirms that
"The processing of all forest concessions should begin with negotiations with the authorities of the Autonomous Region, and should be subject to approval by the Regional Council."

which reaffirms the mandate of the second paragraph of article 181 of the Constitution.

Thus, the above-mentioned Administrative Provision, which the officials of MARENA are trying to use as approval on behalf of the Regional Autonomous Council, was issued by members of the Executive Committee of the Autonomous Regional Council and the Regional Co-ordinator, officials who lack authority to grant the approval required by the second paragraph of article 181 of the Constitution.

In the injunction the appellants called for the annulment and suspension of the act in question, as established by the Ley de Amparo, by the following measures:

* To decree the suspension of the implementation of the signed concession;
* To decree the annulment of the concession on the basis that the officials against whom the injunction was directed had not fulfilled the requirements established by the Political Constitution of Nicaragua before signing it.

The Ruling
At 8.30 am on 27th February, 1997, eleven months after its presentation and at the same hour and on the same day that the Court passed Ruling No. 11 on the first injunction presented by Awas Tingni, the Constitutional Court of the Nicaraguan Supreme Court of Justice issued Ruling 12 on the injunction presented by the Councillors. In contrast to the injunction by the indigenous community of Awas Tingni, which was rejected, the court accepted the injunction by the two Councillors, finding it well-founded, and declared the concession null and void.

The government's reaction
Although the Supreme Court granted the annulment of the concession to the appellants of the injunction, MARENA failed to take the necessary actions to annul the concession as ordered, and instead interpreted the ruling in a very singular fashion. MARENA decided to call together the Regional Council of RAAN to 'ratify' the Concession, even though it had just been annulled by the Supreme Court of Justice.

The officials carried out the supposed ratification in October 1997, in a desperate attempt to consolidate the concession, which had been declared null eight months earlier. Their action was unjustified, not only according to general legal principals, by which it was totally inconsistent to try to consolidate an administrative act in retrospect, when it had already been declared absolutely null because of the process of its formation; but also according to explicit provisions of the 'Ley de Amparo'.

From the above, the only possible conclusion is that the actions and omissions of the Minister of MARENA in relation to this case, following Ruling 12 of 27th February 1997 by the Constitutional Court of the Supreme Court of Justice, constitute an open contempt of the highest court in Nicaragua.

The third injunction
Once the concession had been 'ratified' by the Regional Autonomous Council of RAAN, on 7th November 1997 the community of Awas Tingni presented a case against the Executive Committee of the Council for the periods 1994 - 1996 and 1996 - 1998, against the 26 members of the Council who ratified the Concession; the Minister for the Environment and Natural Resources (MARENA); the Director General of the National Forestry Service; the Director of the National Forestry Administration, the Governor of RAAN, and the President of the Regional Council of RAAN.

According to the injunction, the officials of the Regional Council of RAAN and MARENA have refused to respond to demands by the Community of Awas Tingni for the official recognition of their communal lands. The Community identified their communal lands according to their traditional land tenure, and repeatedly expressed its opposition to the granting of the concession to SOLCARSA.

The Community of Awas Tingni claims that the actions and omissions of the
public officials constitute violations of the following rights and guarantees arising from the Political Constitution of Nicaragua: the right to petition (Art. 52); the right to legal equality (Art. 27), the guarantee that public officials will act with probity (Art. 131) and the guarantee of state protection for communal indigenous lands (Arts. 5, 89, and 180).

Awasi Tingni presented their request to the Regional Council on 12th March 1996, since when the Executive Committee of the Council has taken no measures to consider the request. The Executive Committee has failed to put the matter on the agenda for the Council’s session, and therefore the Regional Council has neither taken nor communicated any specific decision concerning the Community’s demand. The Executive Committee has promoted no other proposal or alternative solution which deals specifically with the territorial rights of Awasi Tingni.

The relevant officials of MARENA, including the Minister, the Director of SFN and the Director of ADFOREST, have given no answer to the points raised by the Community. The Community’s initiatives through its attorney in March, 1997 ended in a complete rejection of dialogue by MARENA.

The position of the Minister and other officials of MARENA has been to consolidate the SOLCARSA concession without resolving the issue of land tenure. At the same time, neither MARENA nor the Regional Council have presented or identified any proof denying the existence of the communal lands of Awasi Tingni within the concession. Neither have they established that all the lands granted in concession belong to the State.

With finance from SOLCARSA, the President of the Council induced the Executive Committee of the Regional Council to call the Council into session. In sessions on 7th and 8th October, 1997, the members of the Executive Committee and other members of the Regional Council formed a majority and voted in favour of ratification of the SOLCARSA concession.

The appellants allege that the members of the Community of Awasi Tingni have suffered discrimination because of their economic position, as a result of their treatment by the officials of MARENA and the Regional Council. Whilst the public officials all proceeded with the concession requested by SOLCARSA speedily and even over-diligently, they have not processed the request from Awasi Tingni. SOLCARSA has the economic means to obtain technical assistance and to get very near to the public officials who processed all their submissions for the concession at the highest levels, both regionally and nationally. In contrast, the same officials have given no opportunity for the petitions and plans of the Community of Awasi Tingni to be studied by the relevant bodies. The treatment of the two parties by the officials on the same issue is unequal and discriminatory against the Community of Awasi Tingni.

In spite of the opposition generated in Nicaragua amongst NGOs, environmental groups and public opinion against the granting of the SOLCARSA concession, especially after the declaration by the Supreme Court in February, 1997 of the unconstitutionality of the concession, the process for the officials of MARENA to grant the concession has not been held back. On the other hand, processing and consideration of the Community’s submissions for the definition of their communal lands has not even been started.

In the injunction, the Community demands that the Supreme Court of Justice should:

* Declare the SOLCARSA concession null, because it was granted and ratified by a process which ignored the constitutional rights and guarantees of the Community of Awasi Tingni.
* Order the members of the Executive Committee of the Regional Council to process the submission presented to them by the Community of Awasi Tingni in March 1996.
* Order the officials of MARENA not to promote the granting of a concession for natural resource exploitation in the area conceded to SOLCARSA while land tenure within the area is still undefined, or without having reached an agreement with Awasi Tingni and any other Community with a well-founded claim to communal lands within the area.

This injunction is currently before the Supreme Court of Justice, which should study it in depth and make a decision the matter.

The fourth injunction

On Monday 12th January 1998 the Sindicato of the Indigenous Community of Kakamuklaya (Bambana), Municipality of Rosita, RAAN, submitted an injunction against the Ministry of the Environment and Natural Resources (MARENA), the Director of the State Forestry Administration (ADFOREST) of MARENA, the Director General of the National Forestry Service of MARENA, the President of the Regional Autonomous Council of RAAN and the Co-ordinator of the Regional Government of RAAN.

The Community alleged that the public officials are in the process of granting a 30-year concession for timber exploitation, with an automatic extension for a further 60 years, to the Korean company Sol del Caribe S.A. ("SOLCARSA") within the lands of the indigenous community of Kakamuklaya.

The concession covers an area of 62,000 hectares, of which some 10,000 hectares are within the communal lands of Kakamuklaya. A similar injunction was presented by the indigenous Mayagna (Sumo) Community of Awasi Tingni on 7th November of the previous year, because the rest of the Concession is within Awasi Tingni’s land.

The Indigenous Community of Kakamuklaya began to pursue official recognition of its communal territories in 1990. It received permits from the Minister of the Nicaraguan Institute for Agrarian Reform (INRA) recognising its communal land on 11th May 1992 and 5th August 1993; the Regional Delegate gave evidence recognising that the communal lands of Kakamuklaya comprise the area between the following boundaries (natural features and points of reference):

North: National lands and the ‘Tialca’ hill
South: Cano El Rosario and the national lands
East: Lands of Amir-Siuna-Rawawas
West: River Uniwas and Iniwas Sirpi.

The official area of the communal lands is still uncertain, because the INRA evi-
dence gives a figure of 8,625 manzanas, but the borders given by the above reference points enclose a much larger area.

In Ruling No. 12, passed at 8-30 am on 27th February, 1997, the Supreme Court of Justice of Nicaragua declared the SOLCARSA concession unconstitutional, because it had not been discussed before the full Regional Council of RAAN, as stipulated in article 181 of the Political Constitution of Nicaragua; thus the approval by the Executive Committee alone was invalid.

In spite of this, on 29th May, 1997 the Minister of MARENA sent a letter to the President of the Regional Council of RAAN requesting the approval of the Concession by the full Council, even though the court had already declared it unconstitutional. In addition, at the end of the letter the Minister sent a hand-written note indicating that finance for the Council session would be sought locally, from MARENA or from the company SOLCARSA itself.

The injunction states that the conduct of MARENA's officials and the members of the Regional Autonomous Council of RAAN violated constitutional standards set down in articles 106, 107, 130, 5, 89 and 180.

According to articles 106 and 107 the process of agrarian allocation initiated by INRA in favour of the community of Kakamuklaya should have been sufficient for MARENA to abstain from granting concessions on this land, and should have started a process of land definition before granting the concession to SOLCARSA.

INRA is a ministry of the State, as is MARENA, and each of them has its own area of responsibility, but in this case MARENA sought to ignore INRA's area and to violate the rights of the Community based on the spirit and the letter of the constitutional standards which had established the agrarian reform. Even if this indigenous community had not initiated the process of territorial recognition under the Agrarian Reform Law, MARENA would be violating the indigenous territorial rights of Kakamuklaya to these lands, in attempting to grant the concession on lands occupied traditionally by an indigenous community.

The appellants called on the Supreme Court of Justice to:

* Declare null the part of the concession to SOLCARSA which affects or invades the communal lands of Kakamuklaya;
* Prevent the MARENA officials from initiating or continuing with the process of granting the concession, until the land tenure situation with its area is legally defined.

Currently, this case is awaiting decision from the Supreme Court of Justice.

Other appeal cases
In parallel to legal efforts, on several occasions the Community of Awas Tingni contacted government officials in Managua with proposals and suggestions for dialogue, in order to reach an agreement with the government. The Community held a meeting and made specific proposals to the Minister of Natural Resources and the Environment, the Director of the Nicaraguan Institute for Agrarian Reform (INRA), the Vice-Minister of External Relations, the Minister of Social Action, the Regional Autonomous Council of the North Atlantic and the President of the Republic himself. None
of these efforts brought any concrete responses to the problems facing Awas Tingni as a result of the concession granted by the government to SOLCARSA.

In spite of the many efforts of Awas Tingni, the Nicaraguan Government has been unable to provide a mediator with whom the community could establish a dialogue and explore solutions. Not a single agency of the Nicaraguan government has provided an understanding of state policy on the problem of indigenous property on the Atlantic Coast of Nicaragua.

The National Commission for the Demarcation of Indigenous Lands

President Violeta Chamorro created the National Commission for the Demarcation of Indigenous Lands on the Atlantic Coast of Nicaragua in November, 1996, through a presidential decree. The Commission met twice in 1996 to study indigenous land issues. It was ratified and enlarged by the current President of the Republic, Dr Arnoldo Aleman, who was chair, and delegated his chair to the Minister of MARENA. The Commission was made up of members of MARENA, INRA, the Nicaraguan Institute for Territorial Studies (INETER), the Ministry of the Interior (MINGOB), the Council and Governments of RAAN and RAAS, and indigenous leaders of both the Autonomous Regions and the BOSAWAS Reserve. However, the State presented no official policy on the issues during the Commission's two meetings in 1997; neither did it present alternatives or solutions. Thus the commission found no solution to the lack of delimitation of indigenous lands, and the problem of Awas Tingni was never considered. Currently the Commission has had no meetings for more than ten months.

Solidarity amongst NGOs and the media

National and international environmental and human rights NGOs have made public announcements in the national and international media; they have visited the National Assembly and the Minister of MARENA himself; they have travelled several times to the area of the concession and the installations of SOLCARSA in Bethania and Rosita in RAAN, they have talked with the indigenous inhabitants, SOLCARSA employees and the municipal and regional authorities.

The case has received broad media coverage and was covered during several weeks by the leading national dailies and environmental magazines, as well as by foreign newspapers such as the Miami Herald and the Washington Post (in mid-1996). It was on regional and national radio constantly.

On 10th November, 1997, organisations such as Rainforest Alliance and Nicaragua Network Education Fund organised "the international day against the company SOLCARSA" and carried out protests outside the Nicaraguan Embassy and Consulates in Washington, New York, San Francisco, Europe, Canada and Latin America.

The national and international NGOs led a campaign by internet and fax, in which environmentalists and defenders of human rights and indigenous rights wrote their criticisms and protests about SOLCARSA’s activities to the Nicaraguan Government, especially after the concession was declared null by the Nicaraguan Supreme Court of Justice in February, 1997.

At the end of November, 1997, NGOs such as Centro Humboldt, Young Environmentalists (JA), the Indigenous Movement of Nicaragua (MIN), the Student Association of the Atlantic Coast (AESC), the Center for Autonomous Human Rights of the Caribbean Coast (CEDEHCCA), the Pro-Alliance Denominational Council of Evangelical Churches (CEPAD), the Centre for Conservation and Sustainable Development (CONADES, Puerto Cabezas), Permanent Action for Peace, FUNDECI, Nicamambal and others, demanded the intervention of the Treasurer General of the Republic, and an investigation of the whole administrative process by which the concession had been granted to SOLCARSA, including the duties the government had gained from them.

In early December, 1997, the Organisation of Indigenous Sindicatos of the Nicaraguan Caribbean (ASICAN) requested the Environmental Attorney General’s office to intervene in the SOLCARSA case, and carry out an on-the-ground investigation into the procedures and techniques used in timber exploitation by the company in the RAAN area. In January, 1998, the Environmental Management Auditing office of the Treasurer General of the Republic and the Environmental Attorney General’s office visited the area of Rosita, where SOLCARSA is exploiting timber, including a plywood plantation; they interviewed SOLCARSA officials, employees at the plant, the municipal authorities, indigenous leaders and the general population, and their investigations are still under way. Their report has yet to be finalised.

Final implementation of ruling No. 12

Although the Supreme Court declared the concession unconstitutional on 27th February, 1997 MARENA did not cancel the concession, and the Minister asked the President of the Council to 'ratify' the guarantee used by MARENA in order to approve the concession, although it had already been nullified. In session on 7th and 8th October, 1997, 26 members of the Regional Council of RAAN voted to ratify the Concession.

On 20th January, 1998, Humberto Thomson requested the Supreme Court to implement Ruling No. 12, and on 3rd February, 1998 the Court issued an order bringing the issue to the attention of the President of the Republic, so that he would order the Minister of the Environment and Natural Resources to comply with the Ruling in accordance with article 50 of the Ley de Amparo. The relevant section of the order states:

"In clear violation of the above-mentioned ruling, the Minister of MARENA not only ignored the said ruling, but he also addressed the President of the Regional Autonomous Council of RAAN in a letter of 29th May 1997 of the concession to the company Sol del Caribe S.A. (SOLCARSA)."

Finally, on 16th February the Minister of MARENA sent a letter to the Director of SOLCARSA cancelling the conces-
sion, and on 31st March, 1998 SOLCAR-SA announced that it was closing its operations in Nicaragua.1

Reflections on the case
The Nicaraguan Supreme Court never came to recognise the legal land title of the community of Awas Tingni against MARENA; the Court decided the case in favour of the plaintiffs because the State did not comply with the procedure established in the Constitution for the granting of a concession, and the matter of land tenure remained unresolved.

The case of the Mayagna indigenous community of Awas Tingni illustrates only one of the ways in which indigenous communities are being harassed in their struggle to keep their traditional lands.

The creation of municipalities in the Autonomous Regions worries the communities, especially when the municipalities begin to claim legal title to lands which until now had belonged to the communities. The state recognizes the legal existence of the coastal municipalities; on the other hand, the indigenous communities lack a mechanism for official recognition as legal entities, although the Constitution recognizes them as such.

In general, there is lack of a state policy for the protection of indigenous property, lack of a law or legal procedure to demarcate indigenous lands, and lack of official recognition of such lands. The agricultural frontier advances into the forests on indigenous lands. The state opens up for foreign investments in natural resources on indigenous lands in the Autonomous Regions - an opening which has happened without the necessary certainty on the legal title to those lands and without due processes and administrative controls, such as limits on the discretion exercised by public officials in deciding to whom they will grant concessions. Neither there is application of a competitive, open process such as public auction, accompanied by an exhaustive study of the economic and technical capacity of those who wish to invest in our country.

The alliance between regional and central governments in the granting of concessions and permits for exploitation of natural resources - mines, forests and fisheries - to the detriment of the ancestral, historical rights of indigenous communities over their communal lands and the natural resources found there, are the main factors which determine the threats to the rights of indigenous communities to their communal lands, and ultimately to their very survival as peoples.

The Community of Awas Tingni, other indigenous communities, civil society (through environmental and human rights NGOs), and the coverage given to this case by the communications media, have all played a fundamental role in the struggle against the concession on indigenous lands, but while the Nicaraguan State fails to assume responsibility and start the process of demarcation of indigenous lands in Nicaragua, there will be no legal certainty by which the communities can assert their constitutional rights to their lands.

The demarcation of indigenous lands is a theme which successive Nicaraguan governments have failed to tackle since the Harrison Altamirano treaty of 1905, by which some lands were granted to indigenous communities. Since then, no government has dealt with the matter.

The PLC, the party of the government at the national level led by the President of the Republic, and winner in the regional elections in the Atlantic Coast in March 1998, promised at the close of the electoral campaign to carry out demarcation of indigenous lands. The indigenous communities are currently waiting for the President to fulfil his electoral promise.

Notes
1 The Mayagna Community of Awas Tingni is made up of members of the mayagna (sumo) ethnic group and their communal lands include part of the Rio Wawa in an area within the municipalities of Waspun and Puerto Cabezas, in the Autonomous Region of the North Atlantic.
2 "Recuerdo de amparo"
3 The Sindicatos are the traditional leaders of Indigenous Communities on the Atlantic Coast of Nicaragua. Although the Constitution and the Statute for Autonomy recognise the existence of indigenous peoples and their right to elect their own authorities, there is no law or ruling about the way in which such authorities can prove their official status. Therefore the sindicatos should present a demand both on a personal basis and in the name of the Community so that it cannot be rejected by the court. If it were presented only in the name of the Community, there would be a procedural problem in proving the legal representation of the Community by the Sindicato and the legal existence of the community itself in civil law.
4 Article 5: The State recognises the existence of indigenous peoples, who enjoy the rights, obligations and guarantees set down in the Constitution, and in particular those to maintain and develop their identity and culture, as well as those to maintain their communal lands and the enjoyment, use and possession of the same, in agreement with the law.
5 Article 89: The State recognizes communal forms of land ownership of the Communities of the Atlantic Coast, and also recognizes the enjoyment, use and possession of the water and forests within communal lands.
6 Article 91: The State has the obligation to pass laws aiming to promote actions assuring that no Nicaraguan should be the object of discrimination for reasons of tongue, culture and origin.
7 Article 180: The Communities of the Atlantic Coast have the right to live and develop according to forms of social organisation corresponding to their historical and cultural traditions.
8 Although the legal terms which establish the 'Ley de Amparo', in article 47, state that the Supreme Court of Justice 'should pass a definitive ruling within 45 days of reception of the proceedings'. There are 120 injunctions under consideration and about 500 yet to be studied in the Constitutional Court of the Supreme Court of Justice; the earliest were presented in 1988. (Diario LaTrimuna, 30th December 1997 interview by Elosia Barra with Dr Julio Ramon Garcia Vilchez, President of the Constitutional Court of the Nicaraguan Supreme Court of Justice; and interview by the author with Dr Ruben Montenegro, Secretary to the Constitutional Court of the Supreme Court of Justice, dated 22nd January 1998.)
9 The relevant part of Article 181 of the Political Constitution of Nicaragua established that:...
10 The concessions and contracts for rational exploitation of natural resources granted by the State in the Autonomous Regions of the Atlantic Coast should depend on the approval of the corresponding Regional Autonomous Council.
11 According to article 15 of the Statute for Autonomy of the Autonomous Regions of the Atlantic Coast of Nicaragua, the administrative bodies of the Autonomous Regions of the Atlantic Coast are:
Regional Council
Regional Co-ordinator
Municipal and Community Authorities
Others corresponding to the administrative subdivision in municipalities.
12 The Community of Kakamuklaya is located between the Municipalities of Rosita and Pinzapolka, on the banks of the river KUKALAYA, 36 km towards the Northeast along the Rosita - Puerto Cabezas road. The inhabitants came from the Community of Bambana, and the majority are Miskita.
13 A copy of the letter was handed to the Supreme Court of Justice as an annex to the injunction.
14 Nuevo Diario 12/10/97.
15 The only members who voted against ratification were those belonging to the indigenous
party YATAMA and two councillors of the Sandinista National Liberation Front (FSLN), the rest of the members of FSLN and all the members of the Liberal Constitutionalists Party (PLC), the central government party which holds the majority on the Regional Council thanks to an alliance between PLC and FSLN, voted to "ratify" the guarantee of the Concession.

However, an environmental audit is underway, carried out by the General Treasurer's Office, concerning 16,000 trees which the company had felled on the land of indigenous communities near the company's plant, and which had been left on the mountain since months ago.

References
1987 Nicaraguan Political Constitution, including
Ley No. 192 (1st February 1995) or the Law of Partial Reform of the Political Constitution of the Republic of Nicaragua (Ley de Reforma Parcial a la Constitución Política de la República de Nicaragua).
Ley No. 28 or the Statute for Autonomy in the Regions of the Atlantic Coast of Nicaragua, published in La Gaceta, Diario Oficial No. 238, 30th October 1987.

Recourse de Amparo presented on 17th September, 1995 by the Mayagna Community of Awas Tingni against Ing. Milton Caldera Cardenal, Minister of the Environment and Natural Resources (MARENA), Ing. Roberto Araguasitain, Director of SFN-MARENA, and Ing. Alejandro Lainez, Director of ADFOREST-MARENA.


Recourse de Amparo presented on 27th March 1996 by Deputy Alfonso Smith Warman and Humberto Thompson Sam in their role of Councillors on the Regional Autonomous Council of the North Atlantic against Ing. Caladio Gutierrez, Minister of the Environment and Natural Resources (MARENA), and Ing. Alejandro Lainez, Director ADFOREST-MARENA.

Request for Official Recognition and Demarcation of the Ancestral Lands of the Community presented by the Sindico of the Mayagua Community of Awas Tingni to the Regional Autonomous Council of the Autonomous Region of the North Atlantic on 12th March, 1996.

Memorandum of Understanding presented by the Mayagna Community of Awas Tingni to the Government of Nicaragua on 19th March, 1996.

Ruling No. 11 of 8:30 am on 27th February, 1997, passed by the Constitutional Court of the Supreme Court of Justice in response to the injunction presented by the Community of Awas Tingni against the Minister of MARENA and others.

Ruling No. 12 of 8:30 am on 27th February, 1997, passed by the Constitutional Court of the Supreme Court of Justice in response to the injunction presented by Alfonso Smith and Humberto Thomas against the Minister of MARENA and others.

Injunction presented on 7th November 1997 by the Community of Awas Tingni against Sr. Roberto Stadthagen, Minister of the Environment and Natural Resources (MARENA), Ing. Roberto Araguasitain, Director General of the National Forestry Service, Ing. Jorge Brooks, Director ADFOREST-MARENA, Ing. Stedman Fagotto, Coordinator of the Regional Government, Elfrain Osejo, President of the Regional Council, and 26 members of the Regional Autonomous Council of the North Atlantic.


Court order of 8:30 am on 3rd February, 1998 passed by the Constitutional Court of the Supreme Court of Justice for the implementation of Ruling No. 12. passed by the same court in the injunction presented by Alfonso Smith and Humberto Thomas against the Minister of MARENA and others.


This article is a paper presented during the International Workshop 'The Challenge of Diversity: Indigenous Peoples and Reform of the State in Latin America' (Amsterdam, 29th and 30th October 1998), organised by the Latin American Documentation and Studies Centre (CEDLA) and the Department of Sociology and Anthropology of Law (Amsterdam University). The publication of the complete results of the workshop is planned for 1999 under the same title as the Workshop, and the Spanish version as 'El Reto de la Diversidad: Pueblos Indigenas y Reforma del Estado en America Latina' (editors Willem Assies, Gemma van der Haar and Andre Hoekema).

Dr. Maria Luisa Acosta is consultant lawyer, legal attorney for the Community of Awas Tingni, working in coordination with the Indian Law Resources Centre.
The noble and humane words of the Universal Declaration of Human Rights, which we celebrate today, shine brightly and with great hope for those who are suffering a long night of injustice. For so many people, including many Indigenous Peoples, the words of the Declaration are filled with promises, and we wish they were actually true.

ALL ARE EQUAL BEFORE THE LAW AND ARE ENTITLED WITHOUT ANY DISCRIMINATION TO EQUAL PROTECTION BEFORE THE LAW. I wish it were true that all countries would surrender their laws that treat Indigenous Peoples unequally and deprive us of our rights.

EVERYONE HAS THE RIGHT TO LIFE... I wish it were true for those Indigenous Peoples in Africa and elsewhere who are driven from their lands and who can no longer adequately sustain themselves.

EVERYONE HAS THE RIGHT TO OWN PROPERTY... I wish it were true that the Australian Aboriginal Peoples and all Indigenous Peoples could enjoy the right to claim, unharmed, native title to our lands.

NO ONE SHALL BE ARBITRARILY DEPRIVED OF HIS PROPERTY. I wish it were true for the Maasai, the Miskites, the Innu Indian Peoples and others whose lands are not yet recognized or respected.

EVERYONE HAS THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION. How I wish this were true for Indigenous Peoples whose sacred sites are despoiled and desecrated.

NO ONE SHALL BE SUBJECTED TO TORTURE OR TO CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT. I wish it were true that Indigenous Peoples did not suffer so much and so often die in custody throughout the world.

EVERYONE HAS THE RIGHT TO A SOCIAL AND INTERNATIONAL ORDER... I wish it were true for so many Indigenous Peoples who suffer the barbarity and lawlessness of others. I wish for an international order in which we indigenous peoples have a full and equal role.

We can still make the promises of the Universal Declaration come true. One great step toward fulfilling these promises will be for the countries of the world to adopt the Declaration on the Rights of Indigenous Peoples.

Fifty years after states adopted the Universal Declaration of Human Rights, we ask ourselves what people they were thinking of when they wrote those words. For according to our understanding, as Indigenous Peoples, human rights cannot be simply individual rights, nor even just rights of human beings, but rather must be rights of all life, of nature, the forests, rivers, plants and animals.

So, when we speak of our rights as Indigenous Peoples, we are speaking of rights of collectivities constituted of plants, animals and human life. Respecting human rights means avoiding the annihilation of diversity. Nature itself shows us the need for diversity for life.

We salute the women and men who wrote and adopted the Universal Declaration in 1948. Perhaps they were thinking about the true meaning of human rights. But over the years, those that seek political and economic power have tarnished the ideals that inspired the Universal Declaration.

Such is the case in the Amazon, for example, with the destruction of nature and mineral resources. From Alaska to Patagonia, from the Atlantic to the Pacific, in fact through the world, transnational companies are killing life itself, not just Indigenous Peoples.

If we can achieve balanced, just and equal relations among peoples, we can prevent conflicts, discard and confrontations such as those that have taken place in Central and South America, Africa, Asia, the Pacific and in other parts of the world where Indigenous Peoples live. To respect human rights is to achieve peace.

Indigenous Peoples Caucus
Commission on Human Rights
Open Ended Intersessional
Working Group
on the UN draft Declaration
on the Rights of Indigenous Peoples

Delivered by: Ms. Naomi Kipari -
Maasai, Kenya

Ms. Naomi Kipuri in the middle.
Photo: Lola Garcia-Alix
River San (Bushmen) involved in fishing, a common activity in the West Caprivi. Photo: Robert Hitchcock
THE KXOE OF WEST CAPRIVI, NAMIBIA: CONFLICTS OVER LAND, RESOURCE RIGHTS, AND DEVELOPMENT

By ROBERT K. HITCHCOCK and MARSHALL W. MURPHREE

The West Caprivi Region of Namibia has been the scene of recent conflicts among local communities over rights to land and resources. Some of the conflicts are a result of actions taken by the governments of South Africa and South West Africa (now the Republic of Namibia) over the past 50 years, including the declaration of West Caprivi as a game reserve in 1963 and the removal of local people from the area (Brown and Jones, 1994). Historically, West Caprivi has been relatively unstable, in part because of the military presence there from the early 1970s through the late 1980s. Several major South African Defence Force (SADF) military installations existed in West Caprivi, including Omega, Chetto (formerly Omega 2), Bwabwata, and Buffalo on the Okavango River (Gordon, 1992; Uys, 1993).

West Caprivi forms the western portion of the Caprivi Region, one of Namibia’s 13 regions defined by the Delimitation Commission in 1992. The West Caprivi region, which is 5,715 square kilometres in extent, contained approximately 6,600 people in the mid-1990s (Kasita and Nujoma, 1995:8). The ethnic composition is relatively homogeneous, with two San (Bushman) groups (Kxoe and Vasekele) and one Bantu-speaking group, the Mbukushu, living there. The estimated population of Kxoe in West Caprivi is 4-6,000 (Thoma, 1996:5; Brenzinger, 1997:16) while the population of Vasekele (also known as !Xu) is 300-400. Most of the Vasekele, who originally came from Angola and number approximately 6,000 in Namibia, are found in Western Bushmanland (now called Otjozondjupa) and what used to be Ovamboland (primarily in Omusati and Oshana Regions).

Many of the Mbukushu left the area in the 1940s because of an expansion of tsetse fly (Glossina morsitans). Some of them were subsequently moved westwards by the South West African administration, after the game reserve was declared in the 1960s. Since independence in 1990, the government of Namibia has allowed Mbukushu and other groups to return to West Caprivi, and some have settled close to the Okavango River. Some members of these groups were allocated rights to houses and plots of land in what used to be the large South African Defence Force (SADF) camp of Omega. The situation has resulted in tensions between the immigrants and former SADF soldiers who had continued to stay there after the war.

In 1996, the situation was exacerbated when the government of Namibia decided to establish a prison farm on a plot of land that was the site of a Kxoe tourism camp that had been set up in 1995. The conflict between the Kxoe and the government of Namibia over the prison farm has reached the Namibian High Court, with the Legal Assistance Centre (LAC) representing the Kxoe. It remains to be seen what decision the High Court will make. The purpose of this paper is to review the background to the land conflicts in West Caprivi, as they have relevance to other situations in Africa in which the land and development projects of former foragers have been challenged by the state.

West Caprivi conservation and development efforts
Since Independence in 1990, West Caprivi had seen efforts to provide assistance to former soldiers of the South African Defence Force, the initiation of
Table 1 Group Names and Locations of San (Bushmen) Groups in West Caprivi, Namibia and the Okavango and Northern Kalahari Regions of Botswana

<table>
<thead>
<tr>
<th>Group Name(s)</th>
<th>Location(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Namibia</td>
<td>Rundu (Okavango), West Caprivi</td>
</tr>
<tr>
<td>Kxoe (Khwe, Barakwena)</td>
<td>Okavango, West Caprivi and former Western Bushmanland (now Otjozondjupa)</td>
</tr>
<tr>
<td>!Xu (!Kh, Vasekele)</td>
<td>Okavango River area of northern Botswana</td>
</tr>
<tr>
<td>Botswana</td>
<td>Northern Botswana</td>
</tr>
<tr>
<td>/Anikwe (Tannehke)</td>
<td>Okavango River and Delta area</td>
</tr>
<tr>
<td>Hukwe (Xu-khwe)</td>
<td>Okavango River, Namassere River</td>
</tr>
<tr>
<td>Bugakwe (Bukakwe)</td>
<td>Northern Okavango Delta area</td>
</tr>
<tr>
<td>Kwengo</td>
<td>Mababe Depression</td>
</tr>
<tr>
<td>Handakhwe</td>
<td>Bushman Pits, Odiake, northern</td>
</tr>
<tr>
<td>Ts'exa (Tsexa, Ts'ixa)</td>
<td>Ntweke Pan region</td>
</tr>
<tr>
<td>Shuakwe (Mavakwe)</td>
<td>Southern Okavango Delta, Lake Ngami</td>
</tr>
<tr>
<td>/Kanikwe (Kanikwe)</td>
<td></td>
</tr>
</tbody>
</table>

Note: Data obtained from fieldwork and from John Bock, Axel Thoma, and H.J. Heinz (personal communications)

People are dependent on food relief provided through the Council of Churches of Namibia (CCN) and delivered by the Evangelical Lutheran Church in Namibia (ELCIN). Some individuals, primarily men, have been able to get short-term jobs working on the tarring of the road from Bagani across West Caprivi and working for tourist lodges in the area. Women have generally been less fortunate except for their involvement in the craft industry, which has provided them with access to a limited amount of cash.

The introduction of what became known as the West Caprivi Community-based Conservation Programme in the Caprivi Region was hailed by local people and non-governmental organisations alike as having significant potential to enable people to expand their incomes and to strengthen local institutions (Hitchcock and Murphy, 1995). The program is managed jointly by the Ministry of Environment and Tourism (MET) of Namibia and a non-governmental organisation, Integrated Rural Development and Nature Conservation (IRDNC), with financial and technical support from the ‘Living in a Finite Environment’ (LIFE) Project, a joint Government of Namibia - U.S. Agency for International Development (USAID) project (see USAID, 1992). The goals of the project are (1) to build up the region’s natural resource base, (2) to strengthen the capacity of local communities to manage and conserve natural resources, and (3) to facilitate the return of social and economic benefits.
from natural resources to local communities.

The primary means of achieving these objectives have been (1) the establishment of community game guard (CGG) and community resource monitor (CRM) systems in West Caprivi, (2) the setting up and training of an inter-community steering committee (the West Caprivi Steering Committee, WCSC), and (3) the promotion of economic enterprises such as craft manufacture and sale through the Bagani Committee for Craft Marketing, which established a crafts centre at Bagani in West Caprivi.

The staff members of the West Caprivi Community-Based Conservation Program have worked hard to institutionalise the community game guard system in West Caprivi. The game guards have been relatively successful in terms of carrying out patrols in the region and reporting on poaching in the area. The game guards also take part in the monitoring of the wildlife, collecting data on numbers and distributions. The data collection strategy is in the process of being refined, and hopefully the results will be useful in gaining additional scientific insights into West Caprivi wildlife populations (for a description of the wildlife tracking by San, see Stander et al 1997). The data may also be used to estimate local hunting quotas that would be recognised by the Ministry of Environment and Tourism. This would mean that Namibia would be the only country in Africa to allow local communities to have a direct in-

put in quota-setting, an activity normally carried out solely by government wildlife departments.

In 1997, there were 24 Community Game Guards in West Caprivi, 21 of them Kxoe (Barakwena, Mbarakwena), the predominant San group in the region, and 3 Vasekele (?Kung) San. People from the latter group lived traditionally in southeastern Angola, but in the 1970s they were resettled in West Caprivi by the South African Defence Force (Uys, 1993; Brown and Jones, 1994; Hitchcock and Murphree, 1995). The Community Game Guards have helped to enhance environmental awareness in communities in West Caprivi through some of their discussions with local people. They have also played roles in Problem Animal Control (PAC), sometimes sleeping in the fields with local residents to guard the crops, and in confiscating illegal arms. In addition, they have served an important liaison role between the government of Namibia, including the Ministry of Environment and Tourism, and local communities.

An important and beneficial innovation by Integrated Rural Development and Nature Conservation in West Caprivi has been the introduction of community resource monitors. These community-based individuals, all of whom are women, carry out a number of tasks, including (1) assisting local people in the identification and use of various wild plant (veld) products, (2) monitoring the availability of economically important plants and other resources, (3) disseminating information on which plants are in short supply and suggesting alternatives for them, (4) providing information to communities on conservation and resource management issues, (5) assisting local people in craft production and marketing, and (6) serving as nodes in information networks at the grassroots level. These individuals also serve as communication links between local communities, IRDNC and other agencies in the region. As Garth Owen-Smith (personal communication) put it, community resource monitors are ‘promoters, not prohibitors’. They provide information to local people on resources that can be used for generating income and solving problems (e.g. medicinal herbs for dealing with illness and injuries). They have also been instrumental in working with local people on sometimes contentious issues such as the use of fire in ecosystem management.
The 18 community resource monitors (CRMs) in West Caprivi work half-time at N$200 a month. They co-ordinate their efforts with the Community Game Guards, something that is especially important because of the issue of whether local people are allowed to collect firewood and food and medicinal plant resources in areas where poaching is occurring. The Ministry of Environment and Tourism was reluctant to allow women and children into such areas, for fear that they might be harmed by anti-poaching operations. Local people, on the other hand, wanted to be able to continue to collect wild plant resources and to be guaranteed their safety if they did so. The situation required co-ordination with the regional wildlife office in Katima Mulilo to ensure that a unified set of messages was delivered to local people by field-level project personnel.

Thanks in part to improved monitoring in the region, there are indications that wildlife numbers are increasing in West Caprivi - particularly elephant. While this is partly seasonal, the central area could support a more stable and abundant wildlife population through the judicious introduction of permanent game water points, something that is being investigated by the Ministry of Environment and Tourism. The West Caprivi region contains approximately 130 mammal species, a significant percentage of which (44%) are considered endangered, threatened, or vulnerable (Brown and Jones, 1994: 34-35). As one of the few areas in Namibia with exploitable populations of elephant and buffalo, its potential to generate revenue through safari hunting and tourism is high.

One concern of the government of Namibia is the potential impact of a game and livestock-proof veterinary cordon fence, to be constructed south of the West Caprivi Game Reserve by the government of Botswana. The fence was envisioned by the Botswana government as a means of preventing the movement of both wild and domestic animals out of the Caprivi into Botswana, where there was an outbreak of Contagious Bovine Pleuropneumonia (CBPP) in 1996. Botswana reacted to the outbreak quickly, commencing a cattle eradication campaign that eventually saw the destruction of over 300,000 cattle in the North West District (Ngamiland).

Namibian officials, non-governmental organisations working in West Caprivi, and local people are worried that the fence will cut off movements of animals into and out of the West Caprivi Game Reserve, which is generally regarded as supporting the country's richest and most diverse wildlife population. Namibia and Botswana were in the process of discussing the cordon fence in mid-1998, and it was unclear whether Botswana would re-align the fence or remove it altogether. The Ad Hoc Committee on Fences (ACOF) of the government of Botswana recommended to the Botswana Cabinet that the first 30 kilometres of the fence along the Namibian border west of the Kwando be removed in order to allow for wildlife movements back and forth across the border.

Challenges to land rights of K xo

One of the constraints in the West Caprivi community-based natural resource management programme has been the limited number of economic enterprises initiated in the region. The two main potential sources of income thus far are (1) sales of crafts to tourists, and (2) the Bagani Community Campsite. Sales of crafts made from local natural resources are an important source of income in the Caprivi Region, especially for women (Terry, Lee, and LeRoux, 1994). Ecotourism also has the potential to generate significant amounts of income to local communities (Barnes, 1995).

The Bagani Campsite, which is known as N//ga, has been the subject of intense conflict between the local K xo community and the government of Namibia. In 1996, the Namibian government decided to turn the land where the campsite was located into a prison farm to be overseen by the Ministry of Prisons and Correctional Services (Nicoll, 1997:11; Inambao and Sutherland, 1997:1, 4; Arnold and Gaases, 1998). This was done in spite of the fact that the K xo had followed all appropriate procedures in applying for Permission to Occupy (PTO) and had sought what is known as conservancy status for the campsite area.

There has been intense lobbying on the part of the K xo to maintain their rights to the land, which they did not want to vacate in favour of the Devant Prison and Rehabilitation Centre. They have requested assistance from the Working Group of Indigenous Minorities in Southern Africa (WIMSA). The K xo also sought legal advice from the Legal Assistance Centre (LAC). Chief Kippi George raised the K xo land rights issue at the 15th session of the United Nations Working Group on Indigenous Populations in Geneva, Switzerland, in July, 1997. The K xo have also met with a number of non-governmental organisations (e.g. Integrated Rural Development and Nature Conservation, IRDNC, and the Namibia Community-Based Tourism Organisation, NACOBA) to seek their support, which they have been more than willing to provide. On December 23, 1997, the Legal Assistance Centre, acting on behalf of the K xo, filed a formal High Court action against the government of Namibia to get the government to reverse its decision, but as of July, 1998, no final decision had been made by the Namibian authorities on the future of the campsite.

The fundamental difficulty lies in the indeterminate status of land and the indeterminate status of authority structures (both government and traditional) in West Caprivi. Formally, all of West Caprivi has the status of a Game Reserve (with the exception of the Kwando Triangle), which is divided into core wildlife areas and an 'multiple use' area with human settlement and limited agricultural activity (Brown and Jones, 1994). The area falls under the jurisdiction of the Ministry of Environment and Tourism, but the de facto situation is that other government ministries or agencies (e.g. Prisons, Agriculture, Lands and Resettlement) have taken the initiative to start projects or to re-arrange settlement in the area. Local institutions have lacked the capacity to negotiate effectively with government agencies, and as a result they have been unable to prevent plans from being made elsewhere without seeking input and advice from the current residents of the area.
The same lack of jurisdictional clarity applies to traditional authority. The Kxoe and the Vasekele are united under one chieftainship, but the chieftainship has not yet been recognised by the government of Namibia. Currently, Chief Kip George and the Kxoe and Vasekele fall under the authority of Chief Mbambo of the Mbutshu. Efforts have been made to get the government of Namibia to recognise San authorities, and a meeting was held between the Minister of Local Government and San traditional authorities along with the Working Group of Indigenous Minorities in Southern Africa in late June, 1998 to discuss the issue. At present, the San and the Mbutshu continue to contest both land rights and political rights, while the government has yet to come to a final decision on the status of the Kxoe.

Tensions have also arisen as a result of decisions about the handling of claims to arable and residential plots in the area. A number of residents of Omega informed us in 1995 that they were being requested to move out of the former, base. What this meant for them was that they would have to leave their homes, which they had paid for themselves. Some of the Barakwena and Vasekele had already gone to Bagani, others had moved west to Chetto, Mashambu, and Dodge City; still others had returned to their former territories in the West Caprivi (e.g. to Xhamxho and /am/om), and a few had moved south into Botswana.

Allocations of four hectare plots were made by the Ministry of Lands, Resettlement, and Rehabilitation to people in several West Caprivi sites, including Bagani and Chetto. While the land was officially demarcated, there was still a question about whether the plots had actually been registered in the names of the people who were allocated them. Land for grazing was not provided, causing consternation among local people, some of whom had acquired livestock or were in the process of doing so. To complicate matters further, there have been mixed messages from the government of Namibia and the regional authorities as to whether people will be allowed to keep sizable numbers of livestock in the game reserve.

Clearly, the land tenure situation is both complicated and in need of clarification. Perhaps the most critical problem facing the people of West Caprivi is what could be described as a 'jurisdictional open access' situation. Outsiders are moving into West Caprivi, and there are few, if any, efforts being made to control the immigration. The administrative status of West Caprivi is somewhat confusing, since the presence of the Ministry of Lands, Resettlement, and Rehabilitation is substantial, especially in the Omega area, and the Ministry of Agriculture, Water, and Rural Development also has projects in Omega and Bagani. The confusion has been exacerbated by the decision of the government of Namibia to expand the prison farm and the failure thus far to recognise San traditional authorities. Unless there is a resolution to such issues, community-based natural resource management has a dim future in West Caprivi, and the socio-economic and political rights of San peoples in Namibia will continue to be problematic.

References

Robert K. Hitchcock is Associate Professor and Chair of the Department of Anthropology at the University of Nebraska-Lincoln, Lincoln, NE 68588 - 0368 USA

Marshall W. Murphree is a Professor and the former Director of the Centre of Applied Social Sciences (CASS), University of Zimbabwe, Harare, Zimbabwe.
THE POLITICIZATION OF THE CONCEPT OF "INDIGENOUSNESS" IN THE PACIFIC:
THE CASE OF FIJI

by Steven Ratuva
The indigenous question

The term ‘indigenous’ has conventionally been used to denote an anthropological category - a dying sector of humanity which needs to be salvaged from the throes of extinction, either by ensuring the survival of its ‘noble’ primordial culture, or if that is no longer possible, by preserving the socio-cultural and physical remains in museums. Within this context, the life and struggle of indigenous peoples is usually represented in terms of a dichotomy - on the one hand there is the colonial oppressor, and on the other the oppressed indigenous community. This representation is fundamentally patronising and oversimplifies the much more complex and dynamic process of the indigenous struggle and the construction of an indigenous identity. It does not consider the internal socio-political dynamics of indigenous societies themselves.

However, this article argues that the concept of ‘indigenousness’ is more than simply an anthropological category. It is also a more complex, dynamic, political and ideological construct, which is used as a justification and legitimisation of certain forms of socio-political and economic domination by the indigenous bourgeoisie and elites; and as an instrument of racism against ‘non-indigenous’ social categories. Within indigenous societies themselves, contradictions involving issues of class, politics, gender, economy and ethnicity are significant features. As in many Pacific societies, practices of corruption, nepotism, ageism, racism, sexism and exploitation of commoners by the chiefs have been justified as consistent with ‘indigenous values’. Thus, the process of liberation of indigenous peoples must involve a reclamation of their lost humanity from both internal and external oppressors.

In the Pacific, colonialism has left its mark, and the contemporary political situations and conditions of the indigenous peoples are linked to their colonial history. Colonial and neo-colonial situations in the Pacific can be roughly categorised into four types, as follows.

The first category involves territories under direct external control. Most of these are existing French colonies such as Kanaky (New Caledonia); French Occupied Polynesia (Tahiti, Gambier Islands, Marquesas, Tuamoto and Austral Islands), and Wallis and Futuna. These territories are claimed by France as part of the French Republic. Other examples are West Papua and East Timor (both under the brutal control of Indonesia); Rapanui (Easter Island), which is part of Chile; Pitcairn Island, a British colony, and Norfolk Island, an Australian territory.

The second category involves territories with semi-colonial, dependent or free association status. For example, Tokelau is still under New Zealand rule, yet is governed from Western Samoa, a former dependency of New Zealand. Similarly, the Cook Islands and Niue are self-governing in free association with New Zealand. The American unincorporated territories (the constitutions of which are not recognised by the US) are American Samoa, Midway, Johnston and Wake Atolls. The latter three are under direct US administration. Northern Marianas is a US Commonwealth, while the Marshall Islands and the Federated States of Micronesia are semi-autonomous in free association with the US.

The third category involves those indigenous peoples which have been per-
manciently incorporated into an imperialistic culture. These are societies like Aotearoa (New Zealand), Hawaii and Australia, where there has been genocide, cultural subjugation and displacement of indigenous peoples. The struggle of such colonised indigenous peoples is fundamentally the struggle against external domination.

However, the fourth category consists of societies which are already politically independent, and where indigenous peoples are demographically and politically dominant. These are Fiji, Tonga, Western Samoa, Papua New Guinea, Vanuatu, Solomon Islands, Kiribati and Tuvalu.

While the political crises which have arisen in some of these societies may in some cases have been influenced by former colonial policies, and by interventions by contemporary political and economic forces, they are basically conflicts between different groups and classes within the indigenous society. In Bourgainville, the Bourgainville Revolutionary Army (BRA) has for several years been fighting for independence from Papua New Guinea. In Western Samoa and Tonga, the government's attempt to suppress the local press has been justified as being part of an attempt to 'preserve tradition'. It is alleged that public attacks on chiefs, no matter how corrupt they are, are 'untraditional' and 'un-Pacific'. In Fiji, the ideology of indigenousness is used both to preserve the authority and privileges of the chiefs and also as a tool for racism against Indo-Fijians and other ethnic categories. Throughout the Pacific, chiefdom culture thrives on nepotism and patriarchal dominance and is romanticised by historically constructed forms of organic ideologies. These help to reproduce corrupt practices and subordination of women and commoners. The traditional duty of women is always to remain subservient to men, and the traditional place for commoners is always at the bottom of the traditional hierarchy; during national 'democratic' elections, it is their traditional duty to elect their chiefs into parliament. Opposition to these forms of disempowerment are considered to be attacks on the indigenous ethos.

The neo-traditional ideology which legitimises and preserves the Pacific ruling class is reinforced by fundamentalist Christian teachings that chiefs are God's natural representatives on Earth, and therefore their authority must not be questioned. Christianity has become deeply incorporated into Pacific cultures, to the extent that certain Christian practices and values have become integral to the neo-traditional ethos. For example, in Fiji and Tonga, refusal to observe a ban on certain Sunday activities is considered not only 'un-Christian' but also 'un-Fijian' and 'un-Tongan' respectively. In Fiji, as stated above, indigenous ideology has been used to serve two purposes - firstly to legitimise the authority of the chiefs, and secondly as an instrument of political nationalism, to marginalise or even oppress certain 'non-indigenous' ethnic categories. The military coups in 1987, and the subsequent violence, the burning of temples, the torture and other forms of human rights abuses suffered by Indo-Fijians, coup opponents (including ethnic-Fijians) and other minority ethnic groups, were all done in the name of 'protecting indigenous Fijian rights'.

In Tonga, which is the only kingdom in the Pacific and one of the very few left in the world, the king wields absolute and unrestricted political power - over the constitution, over the government, over parliament and over the entire population. This constitutionally approved form of dictatorship sustains the privileges of the traditional nobles and suppresses the political rights of the commoners through pseudo-legalism, coercion and indigenous cultural appeal. Monarchical rule and suppression of the commoners' pro-democracy struggle is legitimised by a powerful primordial ideology based on appeal to the preservation of the indigenous Tongan ethos and traditions. Part of the colonial and neo-colonial social impact in the Pacific has been the construction and reproduction of new forms of indigenous culture. This is the result of a complex interplay between colonial and pre-colonial modes of production. Certain forms of colonial and pre-colonial practices have been modified, juxtaposed, romanticised and reconstructed, and then represented as authentically indigenous. In many ways, this has led to the current crisis in many Pacific societies - on the one hand are those who are trying to perpetuate a culture of dominance, and justify it as genuinely indigenous, and on the other are those who are trying to dispel the mysticism and disempowerment thus created.

The rest of this article examines the construction and politicization of indigenousness in Fiji, and the attempts to arrive at a national solution to ethnic conflict.

Fiji: The politics of indigenousness

The Fijian archipelago consists of more than 300 islands located between latitudes 15 and 22 degrees south, and longitudes 177 degrees west and 175 degrees east. It has a land area of 18,272 square kilometres and an Exclusive Economic Zone (EEZ) totalling 1,260,000 square kilometres. The Fijian economy is the most diverse in the Pacific with tourism, sugar, agriculture, forestry, fisheries and recently manufacturing as the main sources of income.

The population of Fiji is 772,655, of which 51.1% are ethnic Fijians, 43.6% Indo-Fijians and 5.3% belong to the General Electors or 'Others' category (European, Part-European, Chinese and Pacific Islanders). Table 1 shows the changes in population patterns from 1986, one year before the coups, to 1996, nine years after the coups.

<table>
<thead>
<tr>
<th>Ethnic Category</th>
<th>End 1986</th>
<th>Percentage</th>
<th>End 1996</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fijian</td>
<td>331,867</td>
<td>46.1</td>
<td>394,999</td>
<td>51.1</td>
</tr>
<tr>
<td>Indian</td>
<td>350,568</td>
<td>48.7</td>
<td>336,579</td>
<td>43.6</td>
</tr>
<tr>
<td>Others</td>
<td>37,439</td>
<td>5.2</td>
<td>41,077</td>
<td>5.3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>719,964</td>
<td>100.0</td>
<td>772,665</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Fiji became a British colony in 1874, and attained independence 96 years later, in 1970. The political system established at independence was based on the Westminster bicameral structure, with an independent judiciary and a multi-party system of rule. The first political party in power after independence was the Alliance Party, controlled by traditional chiefs. After winning two elections in succession (1975 and 1982), the Alliance Party eventually lost to the newly created, multi-racial, left-wing Fiji Labour Party (which formed a coalition with the predominantly Indo-Fijian National Federation Party) in April 1987. The new government was seen by extremist nationalists as being 'Indian' and the ethnic Fijians who were part of it, including the new Prime Minister, Dr Timoci Bavadra, as 'traitors' to the indigenous Fijian people. Two military coups then took place, one in May and the other in September, 1987, to stop any change to the status quo. The military coups were justified as representing the 'aspirations' of the indigenous Fijians against what was seen as a 'threat' by 'foreigners'.

The indigenous ideology in Fiji is a socio-historical construct that needs to be understood in the context of the colonial political economy, because, as I will argue, it was essentially a colonial creation that served British colonial interests, and later the interests of the post-colonial indigenous Fijian elites.

**Defining indigenousness**

Ethnicity as a political and ideological construct, and ethnic division as a socio-political process, have been continually reproduced by the colonial and post-colonial states to legitimise various forms of socio-political and economic power. One relevant policy was the 'paramountcy of indigenous Fijian interests'. But essentially, this meant only the reinforcement of the interests of the indigenous class of chiefs, and the creation and sustenance of a racially divided society.

Conventional discourse on ethnicity in Fiji identifies 'Fijians' as the tautai, or 'indigenous' social category. The 'non-indigenous' ethnic categories are 'Indo-Fijians' and 'Others' (consisting of part-Europeans, Europeans, Chinese and Pacific Islanders). These ethnic distinctions are officially prescribed in the 1970 and 1990 constitutions and in government official registries and documentation. Formalisation of one's membership of the indigenous Fijian social category is through registration in the Vula ni Kawa Bula, a registry of the ethnic Fijian social units and land ownership, introduced by the British to codify and standardise an indigenous socio-political structure. The post-coup 1990 Constitution ambiguously defined an indigenous Fijian (and thus his or her rights of registration in the Vula ni Kawa Bula) as someone whose father is an indigenous Fijian, or who has been accepted by his or her mother's mataqali (extended family unit). This definition ruled out many with mixed blood, especially those with a non-Fijian matrilineal parentage, and was so ambiguous and contentious that it led to legal and political controversy. The definition was condemned as being sexist, racist and favourable only to the chiefs, who in one or two instances were not required to abide by the formal restrictions.

**The political economy of ethnicity: indigenous vs non-indigenous peoples**

Under British colonial rule, indigenous Fijians were kept relatively isolated from the other ethnic groups - especially the Indo-Fijians, who were brought to Fiji by the British to work on the sugar plantations. The Fijians were locked into rural village life, under a separate, paternalistic system of rule, whilst Indo-Fijians remained the providers of cheap labour to the colonial economy. The ensuing ethnic conflict was a result of their interaction within a contested social space - the colonial economy, which was an integrated juxtaposition of European capital, Indian labour and Fijian land. These three variables were not isolated, but intrinsically bound together by the reproductive dynamics of colonial capital accumulation.

When Fiji became a British colony in 1874, the capitalist economy had already been established in the form of farms which were set up sporadically by the early planters and settlers. One of the biggest problems which confronted the colonial government was how to maintain a viable and self-sustaining economy, as required by the Colonial Office in London. The answer lay in the procurement of capital and labour. The two were considered essentially inseparable, as it was through labour that capital was produced.

Fijians could not be recruited to work in the cane fields for a number of interrelated reasons. One of these was that the Fijian population was on the decline, due both to diseases introduced by Europeans and to the use of European-introduced firearms in warfare; therefore the population could not sustain the demands of collective hard labour. The rate of decline read like a novel about genocide in the Holocaust. In 1800 the Fijian population was 250,000; by 1861 it was 200,000; in 1874 at the time of secession it was 140,500; by 1881 it had gone down to 114,748, and by the turn of the century in 1901 it was 94,397. It reached its lowest level in 1919 at 83,000. From then on it began to increase, and by 1975 it had reached 242,000 - almost the same level as in 1800.

Another reason for not using Fijian labour arose from restrictions imposed by the colonial government's Native Policy. In 1876 Fiji's first Governor, Sir Arthur Gordon, put into place a series of legislative measures, collectively called the Native Policy, to control and pacify the indigenous Fijians. Amongst the stipulations of the Native Policy were the incorporation of 'native' chiefs into the hierarchy of the colonial administration of native affairs; the prohibition of further land alienation, and vesting the remaining land in the Fijian community (a considerable amount of land had been awarded to Europeans prior to the British take-over in 1874); the imposition of native tax, and the restriction of the use of native labour. Although these policies were justified under philanthropic guises (to 'protect' the Fijians, and so on), it soon became clear that Gordon did not want to risk a major Fijian rebellion which would result in a colonial war similar to that in New Zealand, where the Maoris were engaged in a long and bloody war over land against British colonial aggressors. To avoid a similar tragedy, Gordon prohibited further alienation of land and...
use of Fijian labour in the harsh conditions of plantations.

Whilst pacifying Fijians through co-opting and patronising their chiefs, the Native Policy also provided revenue for the colonial government through native taxation. The colonial state, in policing the Native Policy, used drastic coercive measures such as fines or imprisonment. In cases where anti-colonial rebellion took place, the colonial state used the Native Constabulary to respond with direct force.

Ethnic Fijians lived under a hierarchical rule that was typified by a number of legislative measures to regulate their movements, tax payments and general behaviour in the villages. Punishment in the form of fines, imprisonment or in extreme cases exile and military ‘pacification’ were imposed on those whose behaviour did not conform to the requirements of the colonial administration and capitalist development. Ethnic Fijian chiefs were co-opted in this arrangement, and became functionaries of the colonial state, to ensure an efficient and cheap way to control the ‘natives’. The mobilisation of ethnic Fijian chiefs by the colonial state became a powerful political tool to ensure the perpetual loyalty of the ethnic Fijians to the crown, and to break up the formation of working class solidarity amongst the emerging ethnic Fijian proletarians. Alliances were also forged between ethnic Fijian elites and certain merchant entrepreneurs. Meanwhile, towards the end of the 19th century, the colonial state gradually assimilated ethnic Fijians into the colonial labour force through recruitment into the constabulary, onto copra plantations, as government workers and dock workers. As a result, new social classes emerged within the ethnic Fijian category. But generally, the Native Policy led to the exclusion of the majority of the ethnic Fijian population from independent participation in the mainstream of the colonial economy, and for years they remained sources of cheap labour and docile tax payers, mostly locked into their colonially supervised rural subsistence communities. This was taking place well into the middle of the twentieth century, by which time other ethnic categories had progressed considerably in the areas of higher education and commerce.

The colonial state, through the Native Policy, also sought to regulate the seemingly archaic system of land tenure. It did this by setting up Land Commissions to investigate and make recommendations on the best possible ways to settle existing land matters. Eventually, on the basis of distorted assumptions about existing cultural norms, a new system of land tenure and socio-political structure was invented, to settle once and for all the ‘problem’ of controlling the ‘natives’ under a centralised authority. This new system consisted of a series of hierarchies headed by chiefs and sub-chiefs, and was to involve every indigenous Fijian, as shown in Figure 1.

![Figure 1: Fijian Socio-Political Structure Constructed by the British.](image)

The system of land tenure was intrinsically bound up with the socio-economic and political structure. Land ownership was tied to one’s position in the structure. This new structure became part of the unquestioned ‘traditional’ orthodoxy, as France explains:

“The land tenure system which exists in Fiji today evolved from the varied administrative decisions of a colonial government, it has been adopted as a protective device into the Fijian ethos. It has come to be regarded as inmemorial tradition. For the strength of tradition depends less on its historical accuracy than on its social significance.”

Ethnic Fijian society was not only restructured, it was also provided with a new collective identity and a new ideology revolving around the notion that the new system was ‘traditional’ and ethnic Fijians a homogeneous group.

Fijians previously lived in autonomous but fluid social units, with which they identified primordially. With the newly invented structure, the colonial discourse reconstructed an identity based upon Fijians as a collective primordial grouping, as opposed to ‘other’ ethnic groups. This provided the ideological basis for a separation of identity between the concepts of tautau (owner), and vulagi (foreigner).

For decades, the Native Policy based on this newly created system locked Fijians into a village subsistence economy, and marginalised them from the mainstream commercial arena and modern education, unlike the other ethnic categories. It discouraged individual entrepreneurship, but later on allowed individuals to pursue commercial farming on their laalagy or communally-owned land, which was leased to individuals. Education, until the middle of this century, was limited to the children of the chiefs. Again, the idea was that these educated chiefs would
provide the leadership and personnel skilled in the perpetuation of native ideologies created by the Native Policy, thus ensuring the perpetuation of the increasingly compatible interests of the chiefs and the colonial state. The Native Policy legitimised and crystallised the dominance of a reconstructed chieftainship system. Independent chieftainships and local polities were centralised under preferred paramount chiefs, acting as "comparadors" (agents) for the colonial state. Rebellious chieftainships were marginalised and colonial collaborators were supported and given a dominant position in the recreated hierarchy, to ensure a system of streamlined authority under a single structure.

The Native Policy was based on the anthropological Social Darwinist assumption that 'lower races' need to be allowed to develop separately at their own pace, because they would not be able to compete successfully with 'superior races'. Within this racist discourse flourished a relationship of dependency (on European paternalism), a system of 'traditional' despotism by chiefs, and a hierarchical world view to legitimise them. The components of this conceptual hierarchy consisted of a series of strata, with the British monarch at the apex and the bokola, the lowest form of commoner, at the bottom (See Figure 2).

One's position in the hierarchy was perceived to be divinely ordained, and thus unchangeable. Over the years, this perception gradually changed as a result of education and the spread of enlightened views. However, it was also continually revived as the 'traditional way' by ethnic Fijian nationalists. At the time of the coup and the subsequent declaration of the Republic, the prominence of the monarch was removed, leaving the link from God to bokola largely intact. This conceptual categorisation also extended to other ethnic groups such as the Chinese and Indo-Fijians, who were seen as belonging to the kaisi category, or when the adrenaline was high, the bokola category. The term bokola was associated with the lowest form of behaviour, and was seen to be an antithesis to the vakarau vakaturaga (norms for chiefs). It was (and still is) commonly used by chiefs against commoners, chiefs against chiefs and even commoners against commoners, and sometimes, in moments of anger, by commoners against chiefs. However, over the years it became socially crystallised as part of the anti-Indo-Fijian stereotype.

The reconstruction of an ethnic Fijian 'traditional' society and ethnic identity was taking place separately, but was related to the creation and consolidation of an Indo-Fijian identity.

The recruitment of Indian indentured labourers to work on the sugar plantations added a new dimension to the class system and ethnic character of the colonial economy. Indigenous Fijians were 'saved' from being used en masse as cheap labour on sugar cane plantations, which otherwise would have led to destructive changes in indigenous Fijian society, and possibly to large-scale anti-colonial rebellion.

Between May, 1879 and November, 1916, a total of 60,553 Indians were recruited under the Indentured System. As shown in Table 2, the recruits represented a good cross-section of the classes in continental Indian society.

The common dehumanising experience of colonial plantation labour greatly undermined the class and ethnic heterogeneity of the Indian migrants, and created a common bond and identity, which became the psychological force behind their future political demands. They had to work hard in very harsh conditions to create and sustain profit for the Colonial Sugar Refining Company (CSR), which controlled the sugar industry from the 1880s to 1973. They were denied political and economic rights and had no access to land. They lived according to the routine of the plantation, away from indigenous Fijians who lived in korus (villages) under the paternal 'care' of the Native Policy, and were in constant conflict with the colonial state for their persistent demands for political rights, including representation in parliament (then called the Legislative Council). These conditions created the environment for a common identification and mobilisation. 'Indian-ness' as a collective ethnic identity evolved out of the conditions of colonial plantation life.

Apart from the indentured labourers, there were other Indian entrepreneurs who came to Fiji as free migrants. They set up businesses - shops, credit systems

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**Table 2: Emigration from Calcutta to Fiji, 1879-1916.**

<table>
<thead>
<tr>
<th>Religions and Castes of Emigrants (as given in Calcutta emigration reports)</th>
<th>% to Total (Males)</th>
<th>% to Total (Females)</th>
<th>% to Total (Emigrants)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hindus</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brahmins/High Caste</td>
<td>17.0</td>
<td>14.2</td>
<td>16.1</td>
</tr>
<tr>
<td>Agriculturists</td>
<td>32.7</td>
<td>28.4</td>
<td>31.3</td>
</tr>
<tr>
<td>Artisans</td>
<td>6.9</td>
<td>6.5</td>
<td>6.7</td>
</tr>
<tr>
<td>Low Castes</td>
<td>29.3</td>
<td>35.0</td>
<td>31.2</td>
</tr>
<tr>
<td>Muslims</td>
<td>14.0</td>
<td>15.8</td>
<td>14.6</td>
</tr>
<tr>
<td>Christians</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>


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**Figure 2: Colonially Constructed Ethnic-Fijian View of Vertical Political Space**

- Kalou Levu (European God)
- Vuvale Levu (British Monarch)
- Kovan (Governor - The High Chief)
- Kaivalagi (Europeans)
- Turaga Bale kei Viti (Fijian Paramount Chiefs)
- Turaga ni Veivanua (Local Chiefs)
- Lewe ni Vanua, Kaisi (Commoners)
- Bokola (Lowest Commoners - Only fit to be eaten)
and so on, and became relatively wealthy. A significant number of Indians became educated and joined the professional ranks. Class division within the Indian ethnic category became more and more pronounced. A number of Chinese also arrived in Fiji and were quickly ‘absorbed’ into Fijian society through inter-marriage. Many set up businesses in villages and urban centres and became part of a thriving entrepreneurial class.

The political space created by the colonial economy not only generated the separate development of different ethnic identities, but also reinforced antagonistic identities. Different ethnic groups evolved their own stereotypes of each other. Fijians stereotyped Indians as ‘cunning, selfish and scheming’, while Indians stereotyped Fijians as ‘lazy, stupid and savage’. The post-colonial state, especially under the Alliance government of chiefs, began to use the political slogan of ‘multi-racialism’ to portray an image of ethnic neutrality and national representativity. But ironically, they tried to achieve this by encouraging communal politics. It was this type of politics which nurtured the powerful ethnic Fijian traditional elites, and after the multiracial Fiji Labour Party won the 1987 general election, Fijian ultra-nationalist forces mobilised (using the largely indigenous Fijian military) on behalf of the symbolic ‘Fijian Chiefs’, ‘Fijian Culture’, ‘Fijian Aspirations’ and so on, against what they saw as an ‘Indian take-over’. The post-coup state was visibly an ethnic Fijian state, acting on behalf of the ethnic Fijians, whilst marginalising other ethnic categories. Two aspects of the post-coup society’s influence were the ethnicisation of the economy, where class differences were represented in ethnic terms; and the division of civil institutions and political representation on ethnic lines. Political parties, trade unions and to some extent schools are based on ethnicity. Military and politically powerful positions are held by ethnic Fijians, and the commercial sector of the economy is dominated by Indo-Fijians, Chinese and foreign corporations, plus an increasing number of ethnic Fijian entrepreneurs.

One of the policies of the indigenous Fijian post-coup government was commercial affirmative action, aiming to address the disparities between ethnic Fijians and other ethnic categories. Affirmative action was in place even before the coup, but as a disjointed system of equality of opportunities. The term ‘affirmative action’ only came to be used officially after the coup, and since then has become a major component of the state’s political and socio-economic initiative. Commercial affirmative action in Fiji is closely tied to the development policies of the state, and entails preferential loans and selective investment opportunities for ethnic Fijians. This has led to the emergence of a wealthy and politically powerful ‘national bourgeoisie’ on the one hand, and unrealistic expectations leading to disillusionment amongst the marginal classes on the other.

The proliferation of the influential indigenous middle class with its economic privileges (such as easy access to loans from financial institutions) has sharpened contradictions between the middle class and the marginal classes. This has led to scandal after scandal, leaving the government in a deep political and economic crisis. Even in the early stages, commercial affirmative action in Fiji has gone terribly wrong. Driven by ideology and ethnic passion, and sentimentally inspired by the Malaysian commercial affirmative action ‘model’, its results have become totally incompatible with the original ideological ambition, which was to help indigenous Fijians.

However, despite the common effect of colonialism on both Indians and Fijians, which is to subjugate them to the hegemonic colonial system, the proliferation of ethnic perceptions has created suspicion and ethnic mistrust, which has been fundamental to the political culture of Fiji for most of its modern history. After independence, ethnic exclusivity became more and more pronounced, despite attempts to create a ‘multi-racial’ society.

The nature of colonial and post-colonial politics encouraged ethnic division, and in particular the growth of indigenous nationalism, through the politicisation of ethnicity. This came to the surface in 1987 when the largely indigenous Fijian military intervened, through two coups, in the political process, on behalf of what they claimed to be indigenous Fijian interests. At the forefront of the nationalist movement were right-wing politicians, fundamentalist church leaders and traditionalists. Their battle cry was that the indigenous Fijian culture,
A market place. Photo: Palle Kjerulf-Schmidt

Fiji police. Photo: Palle Kjerulf-Schmidt
land and religion (Christianity) were under threat from other races. Race became the convenient scapegoat to fuel the ethnic passion. The defeated right-wing Alliance government had a lot to lose in terms of their business links and the privileges of the chiefs, and they feared for the worst when the new government stated its intentions to nationalise some of the industries (such as mining) and to investigate the alleged corruption of the old government.

The 1987 military coups
On May 14, 1987, Lt. Colonel Sitiveni Rabuka, the third highest ranking military officer in the Royal Fiji Military Forces (RFMF), walked into the Fijian parliament with a dozen or so armed and masked soldiers and arrested all the members of the one month old National Federation Party (NFP) - Labour Party Coalition government. The military take-over was the culmination of days of protests by supporters of the defeated Alliance government, which had ruled Fiji for the 17 years since independence in October, 1970. The victory of the NFP - Labour Coalition during the April, 1987 election, with its reformist views, was a direct threat to the established order. Despite its commitment to polyethnic principles, the new government was still largely perceived as an 'Indian' party. Of the 52 seats contested during the election, 28 were won by the NFP - Labour Coalition and 24 by the Alliance Party. Of the 28 seats won by the NFP - Labour Coalition, 19 were won by Indo-Fijians, seven by ethnic Fijians and two by candidates from 'other races'.

The coup threw the whole country into chaos. The constitution was suspended and the entire state machinery of the Westminster-style government was neutralised. There were arbitrary arrests, street violence, burning, and ethnic intimidation, and the economy quickly took a nose dive. Structural adjustment measures were later put into place with the hope of salvaging the deteriorating economic situation. Attempts by Ratu Sir Kamisese Mara, the Alliance Party leader and Prime Minister until the April election, and Dr. Timoci Bavadra, the deposed Prime Minister, both indigenous Fijians, to set up a Government of National Unity in what came to be known as the "Deuba Accord" (named after the place where the agreement was signed), angered Colonel Rabuka and he promptly staged the second coup on September 25th.

Ironically, the coups overthrew an indigenous Fijian Prime Minister who was seen as a 'stooge' of the Indo-Fijians, and restored to power another indigenous Fijian Prime Minister who in his time in office was also regarded as an Indo-Fijian 'stooge'. A constitution to replace the 1970 independence constitution was drawn up in 1990. While the 1970 constitution attempted to maintain an ethnic balance, the 1990 constitution was skewed in favour of total political control by ethnic Fijians. As a result of this, the first election under the 1990 constitution, in 1992, saw General Rabuka's party, the Soqosoqo ni Vakakulawa ni Taueki (SVT) claiming an easy victory. Splits within the SVT (which was originally set up by the Great Council of Chiefs) weakened its position, and it was defeated in a parliamentary budget motion in 1994. This led to another general election later the same year which the SVT won again. The next election is due in 1999.

The coups had destroyed the multi-ethnic fabric on which Fiji's political system was based and had encouraged ethnic conflict and antagonism. Extreme nationalist indigenous Fijians saw it as an endorsement to persecute other races, in particular the Indo-Fijians. Many Indo-Fijians and anti-coup indigenous Fijians were arrested, some were tortured, some were beaten up by rioting indigenous Fijian youths, and Indo-Fijian shops and Hindu temples were fire-bombed. The soldiers sided with the indigenous Fijian extremists in legitimising religious intolerance, ethnic persecution and racism following the coups. Many Indo-Fijians left Fiji, but many remained, hoping for a peaceful solution to their plight.

The NFIP indigenous debate
During the 1990 Nuclear-Free and Independent Pacific (NFIP) Conference in Aoteaora (New Zealand), a debate on whether the conference should consider the Fijian coups as legitimate in protecting indigenous Fijian rights took several hours. The NFIP indigenous groups were clearly divided. Certain Hawaiian and Maori activists supported the Fijian coups, saying that it was politically the right thing to do, to rid the Pacific of foreigners. But they were clearly in the minority, as other indigenous groups from around the Pacific argued that both indigenous Fijians and Indo-Fijians were victims of British colonialism. Indo-Fijians, unlike Europeans in Hawaii or New Zealand, were not colonial invaders, but were recruited as semi-slaves to serve British colonial capitalism. It was also argued strongly by the indigenous Fijian delegation that the Fijian coups had nothing to do with protecting ethnic Fijian rights because Fijian land and cultural rights were already secure under the 1970 Constitution. The Fijian delegation also stressed that the military coups in Fiji only served to sustain a despotic system and ideology of chieftdoms and to oppress other innocent ethnic categories.

However, in the end, eleven resolutions and action plans on Fiji were passed by the conference. Resolution 1 recognised that "Fijians and Indians are both victims of British colonial history", and condemned the 1990 Fijian constitution as "racist, divisive, authoritarian and not in the interests of indigenous Fijians and people of all races in Fiji". Resolutions 4 and 5 condemned the Fijian regime's military links with France as a "betrayal of the just struggle of the indigenous people of Tahiti and Kanaky for self-determination and political independence", and military links with Indonesia as a "betrayal of the just struggles of the indigenous people of East Timor, West Papua and Maluku for self-determination and political independence".

Conclusion: National reconciliation and beyond
In an attempt to address persisting problems and to unite the country, the Fijian Constitutional Review Commission (CRC) was set up to review the 1990 Constitution, which was seen as racist, and to make recommendations for changes. The CRC report was submitted to the President in September, 1996 and
a Joint Parliamentary Review Committee (consisting of all the political parties - all of which are ethnic-based) was set up to review the CRC report. Based on this, a new Constitution was promulgated on 25th September, 1997.

The new Constitution, while endorsing the special interests of indigenous Fijians, attempts to encapsulate the spirit of multi-culturalism that the citizens of Fiji have been longing for. It was accepted by all the political parties, representing all ethnic groups, who saw that their rights were protected by the Constitution. The Constitution was the result of nation-wide consultation by the CRC, and we hope to see a new chapter consisting of an enlightened and ethnically tolerant future.

In multi-ethnic societies like Fiji, where indigenous peoples dominate, it is important to respect and protect the rights of the indigenous peoples. At the same time, the indigenous peoples themselves have an obligation to respect and help protect the rights of other ethnic groups. The concept of indigenousness must not be used as a political tool to serve political and commercial interests. It must not be an excuse to dominate and subjugate, because it could lead to disastrous consequences.

Notes
1 The main difference between British and French colonialism is that the British considered their colonies as relatively autonomous and as separate entities from Britain itself, which were controlled through a system of 'Indirect Rule'. The French on the other hand considered their colonies to be directly part of the French Republic; the inhabitants were considered 'French', and had to be assimilated into the French culture.


3 The official categorisations of ethnic groups in Fiji are Fijians, Indians and General Electors. I am not too comfortable with these categorisations, because to call indigenous Fijians 'Fijians' exclusively is to deny the right to call other ethnic categories Fijian. To complicate matters further, there is controversy amongst the indigenous Fijians as to who exactly (depending on blood percentage and patrilineality) should be considered 'Fijian'. To call Indo-Fijians 'Indians' is to deny that they are from Fiji. I therefore use the terms ethnic Fijians and Indo-Fijians. Defining ethnic boundaries and categories is problematic because ethnicity is a social construct which finds expression in various political, religious and cultural forms. Identity construction is a complex historical process. While I do not feel comfortable with these categorisations, one has no other choice but to use them for the purposes of this essay.

4 For a long time, Fiji and South Africa were the only countries which required visitors to state their 'races' in their arrival cards upon disembarking at their international airports.

5 A businessman, with an ethnic Fijian mother and a Chinese father, already registered in the Vatu ni Kava Bula, was declared a 'non-Fijian' by the government under the 1990 constitution, but he won a long running court battle. The 1997 Constitution is much more flexible in its definition of an indigenous Fijian - that is, anyone with either patrilineal or matrilineal ethnic Fijian lineage.

6 Ethnic differentiation is also reproduced through conceptual tools such as labels. For years, debates have been going on in Fiji as to the use of a suitable national name for everyone. Ethnic Fijian ultra-nationalists argue that to call Indo-Fijians 'Fijians' can lead to 'bystandising' the term Mainstream writers have continued to use the term Fijian to refer to indigenous Fijians, and the term Indian to refer to Indo-Fijian. This poses serious problems of categorisation at the theoretical and historical levels. Indo-Fijians are historically not Indians, just as to use 'Fijians' exclusively for indigenous Fijians is to deny other races their legitimate right to be called Fijians as well. Although I am totally uncomfortable with using ethnic labels, for purposes of clarification I will be using the terms Indo-Fijians (those of Indian ancestry) and ethnic Fijians (indigenous Fijians). For a long time, Fiji and South Africa were two of the very few countries in the world where ethnicity was officially defined. South Africa has moved away from it while Fiji has not.


8 Narayan, pp 33-34.

9 Early in the 20th century, a number of Fijian leaders were exiled or imprisoned because of their attempts to set up co-operatives to compete with colonial production. In the late 19th century, British colonial soldiers destroyed villages that belonged to anti-colonial 'rebels'. Use of force was common during the early days of colonial rule, so 'pacify' and keep the Fijians in their 'natural' place in the colonial hierarchy.

10 On various occasions, chiefs were called in by the colonial state to tell striking Fijian workers that strikes and trade unions were 'un-Fijian' and that their enemies were not connected to foreign companies or the crown but lay else where (a reference to the Indians).


12 France, p 174

13 This provided the ideological driving force behind the military coup of 1987. Ultra-nationalists used the slogan 'Fiji for the Fijian' to rally behind the right wing military coup. See Atutula Ravanu, The Facade of Democracy. Fijian Struggle for Political Control, 1830-1987, for an ultra nationalist version of military coup.

14 The notion of disparity needs to be examined here. The theses will examine these disparities critically in the light of whether they are 'real' or 'perceived'. As in the case of Fiji, politicisation of perceived disparities may be far more dangerous than identification of real disparities.

15 The term 'race' is widely used in Fiji, officially and unofficially, as a form of social and political categorisation. As a social category, based on some presumably biologically inherited characteristics, it is a meaningless concept, and has been discarded by sociologists and anthropologists. Instead, I will be using the term ethnicity. My argument is that ethnicity, like any other form of identity, is a social construct, that emerges out of particular socio-historical contexts.

16 The Great Council of Chiefs was set up by the British colonial state as the supreme 'native' body to oversee Fijian affairs, under the Native Policy. The Native Policy will be discussed in detail later in the chapter. It consisted mostly of chiefs from different parts of Fiji. Today a number of commoners, mostly those with pro-establishment politics, are also members.

17 See NFIP. 1991. 6th NFIP Conference, Aoteurua, 1990. Auckland: NFIP. It is worth noting here that after the Fiji coup, Australia and New Zealand suspended military aid to Fiji, and France quickly filled the 'vacuum' by providing $14 million worth of military aid to Fiji. The French military, since then, has been conducting joint military exercises with the Fiji military in locations in Kanakai and Fiji. This has angered anti-colonial activists who see the military exercises as Fiji's endorsement of French colonialism in the Pacific. During the French nuclear tests in Moruroa Atoll, General Rubaka was the only Pacific leader not to condemn the French. For that, the French awarded him the Tahiti Nui, the highest civilian award in Tahiti. Fiji also purchased arms from Indonesia after the coup.

Steven Ravanu is an indigenous Fijian completing a PhD in Development Studies at the Institute of Development Studies, University of Sussex, United Kingdom. He is on training leave from the Sociology Department at the University of the South Pacific where he teaches. He is a long time peace and human rights activist and was once the President of the Fiji Anti-Nuclear Group and Secretary of the Executive Board of the Nuclear Free and Independent Pacific movement (NFIP), amongst others.
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e-mail: iwgia@iwgia.org