THE INDIGENOUS WORLD 2013

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Copenhagen 2013

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EDITORIAL

2012 marked 100 years since the publication of Roger Casement's report testifying to the atrocities being committed against the indigenous population of the Amazon by the British-registered Peruvian Amazon Company.[1] This report, together with his equally devastating report on the rubber extraction in the Congo, was the first systematic denouncement on the effects of large extractive economies on the mass extermination of indigenous peoples and local populations.

The rubber boom, which lasted from 1880 until 1914, fuelled European and American economies and was a key contributor to industrial development. Unknown to consumers of rubber products in the West was the fact that production was based on the inhumane exploitation of indigenous workers and gross human rights violations directed against them. Indigenous men, women and children were systematically captured, enslaved, displaced and forced to work under the most dreadful conditions in the rubber extractive industry, while colonial and local governments eager to develop their "remote areas" turned a blind eye. To commemorate the enduring importance of Casement's report as a testimony to and reminder of the human rights risks for indigenous peoples when extractive industries approach their territories and resources, IWGIA last year co-published the first ever Spanish copy of the Peruvian report, *El Libro Azul*, and supported various cultural events and public debates related to the book in South America.

Although 100 years old, the report tells a story that is of the utmost relevance today. Global development is as much driven by the extraction of natural resources as ever, many of these being found on indigenous peoples' traditional lands and territories. In Peru, for example, this year's country report informs us that the government has leased out 60% of indigenous peoples' territories for oil and gas concessions. Additionally, numerous legal and illegal mining and logging activities are taking place on indigenous land.

Extractive activities not only threaten the livelihoods of millions of indigenous peoples by means of environmental degradation and loss of biological diversity, but also all too often lead to violations of these peoples' land rights, including, in many cases, gross human rights violations, as was seen this year in Venezuela,

Colombia, Brazil, Mexico, Guatemala, Indonesia, the Philippines and the Democratic Republic of Congo to mention just a few of the many examples found in this book.

Consultations and access to justice

In different countries that have ratified ILO Convention 169, indigenous organizations have spoken out strongly in favour of implementing the consultation mechanisms established in this international treaty in relation to the economic activities taking place on their territories. Governments, however, tend to interpret consultations as information sharing processes after decisions are taken rather than ones aimed at seeking free, prior and informed consent. There is also a worrying tendency towards trusting the companies to conduct the consultation processes, and failing to provide adequate capacity building of indigenous communities or securing their access to redress.

The lack of genuine consultations is at the basis of innumerable social conflicts between indigenous peoples, companies and governments around the world. Increasingly, indigenous peoples are turning to the legal system to solve their land claims and seeking redress – seeking justice from international complaints mechanisms and regional human rights systems once national legal avenues have been exhausted.

The Inter-American Commission on Human Rights thus continues to receive numerous complaints from indigenous peoples, and several cases have been referred to the Court. In the case of the Kichwa people of Sarayaku, Ecuador, the Inter-American Court this year ruled in favour of the indigenous demand, forcing the state to pay compensation to the Kichwa for damages caused by the Argentinean oil company, CGC. The significant number of measures imposed by the Inter-American Human Rights system is, on the other hand, causing a reaction from several governments. Venezuela, Brazil, Ecuador and Bolivia in particular have called for a reform of the system to limit its powers. This would represent a serious setback for human rights defence in the region.

In Africa, the African Human Right system is playing an increasingly important role in the protection of indigenous peoples' rights. In 2012, the African Commission referred the Ogiek people's case against Kenya for unlawful evictions and gazetting of their land to the African Court of Human Rights. The Ogiek case is

the first indigenous rights case to come before the Court and builds on the successful litigation of the landmark *Endorois Communication* at the African Commission in 2010. As with many of the rulings of the Inter-American Human Rights system, the Endorois ruling has reportedly not yet been implemented.

Despite the lack of commitments from states to implement the recommendations and rulings of the regional human rights mechanisms, they nevertheless provide indigenous peoples with a very important and viable avenue for seeking justice, a path that is so far not available to the indigenous peoples of Asia. Indigenous peoples of South-East Asia therefore had high hopes this year for the adoption of a human rights declaration for the ASEAN countries, as a first step towards improving their access to justice at the regional level. Disappointingly, the drafting process completely ignored civil society and the final version of the Declaration made not a single reference to indigenous peoples' rights. A major problem for indigenous peoples in Asia remains their basic lack of recognition as indigenous peoples.

Tightened grip on civil society

The growing threat to indigenous territories increases the importance of monitoring extractive industries as well as related public policies, and of improving indigenous peoples' access to remedy and justice. The right to communication established in Article 16 of the UN Declaration on the Rights of Indigenous Peoples is also an ever more important issue for indigenous peoples in this regard.

There are, however, clear indications that the space for civil society to raise its voice against government interests is shrinking. In Ethiopia, resident NGOs receiving more than 10% of their annual income from foreign funding have, since the Charities and Association Law was adopted in 2009, not been allowed to work on human rights issues (see *The Indigenous World 2010*). This year, in Algeria, a new Law of Association further restricted individual and collective rights and freedoms, suppressing criticism of government policies and demanding that all contact with foreign NGOs obtain ministerial approval. This years' country reports from Laos and Bangladesh also testify to the increased constraints imposed on public debate and contact between local and foreign human rights defenders.

The Philippines is an example of a country in which the practice on the ground stands in stark contrast to laws and policies. Its legal and policy framework on indig-

enous peoples is considered among the most progressive in Asia, yet indigenous civil society leaders who are trying to assert their rights are silenced with guns. Of the 132 extra-judicial killings that happened since the current President took office in 2010, 31 have been indigenous leaders. In 2012 alone, 12 indigenous people were killed and by the end of the year not a single prosecution had been reported.

Also in Latin America, several governments are promoting campaigns against NGOs and indigenous organizations (many of which were instrumental in helping these governments to power) and, as mentioned above, against the Inter-American Human Rights system, which is currently one of the most outspoken mechanisms in the defence of human rights on the continent.

A particularly grim case of repression against civil society is reported from the Russian Federation, which this year passed a law to the effect that any NGO working with foreign donors would henceforward be required to register as a "Foreign Agent". This tightening grip on Russian civil society was further exemplified when, in November, the Russian Ministry of Justice decided to suspend all activities of the indigenous umbrella organization, the Russian Association of Indigenous Peoples of the North (RAIPON). As a consequence, RAIPON was restricted in all its international and human rights activities and was not able to participate in Arctic Council meetings, where it has the status of Permanent Participant. Although the ban on RAIPON was withdrawn in early 2013 and the organization was allowed to celebrate its 7th triannual congress, such interference is unacceptable by all standards adhering to a democratic society and should be condemned by all human rights defenders and countries defined by a human rights-based approach.

These restrictions of indigenous organizations' activities are in clear violation of a principle enshrined in Art. 9 of the UN Declaration on the Rights of Indigenous Peoples, by which indigenous peoples have the right "to have access to financial and technical assistance from states and through international cooperation, for the enjoyment of the rights contained in this Declaration."

Business and human rights

While RAIPON was experiencing political harassment and restrictions in its work, its former first vice-president, Mr. Pavel Sulyandziga, took on an important role at the international level as one of five appointed expert members of the UN Work-

ing Group on Business and Human Rights (UNWG). In the fall of 2012, he called for an indigenous expert meeting in Copenhagen to prepare for indigenous advocacy with regard to the work of the UNWG and the implementation of the UN Guiding Principles on Business and Human Rights, which were adopted by the UN Human Rights Council in 2011. The outcome of the expert preparatory meeting, which included the participation of the UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues, was in the form of eight concrete recommendations brought to the Forum on Business and Human Rights in December. Although indigenous peoples were only represented by approximately 30 out of an estimated 1,000 participants, they managed to bring their problems to the forefront of the agenda. In acknowledgment of the specific vulnerability of indigenous peoples to human rights violations committed in relation to business interventions, especially from extractive industries, the Forum ended with a clear commitment from the UNWG to take the issue of indigenous peoples' rights forward by acknowledging that indigenous peoples' rights should be a central aspect of its mandate, dedicating the theme of its first thematic report to the UN General Assembly to indigenous peoples and undertaking to organize a meeting with indigenous representatives each year in connection with the Forum.

One of the clear conclusions from the indigenous participants at the Forum was the need for states to take an active role in holding companies accountable. The EU has stated that it will urge its Member States to produce national action plans for implementing the Guiding Principles and is itself currently preparing guidance notes for different business sectors on corporate social responsibility. In this connection, the conclusions and recommendations from the UNWG's thematic report will be very relevant.

Rio + 20 and the post-2015 process

Much of the world's focus was on the issue of sustainable development in 2012, and particularly on the issue of a Green Economy. Indigenous peoples were involved in the process leading up to the Rio+20 conference on Sustainable Development and were able to have their issues taken into consideration. The outcome document of this conference therefore clearly recognizes the UN Declaration on the Rights of Indigenous Peoples and acknowledges culture and local livelihood

as important contributors to sustainable development. These issues are crucial for indigenous peoples in a time where ever more states are looking for land that can be used for alternative energy production, such as wind parks, hydroelectric dams, biofuel plantations, etc. As is well-known, environmental campaigns and, particularly, conservation projects often have very negative impacts on indigenous peoples' rights and livelihoods. This year, examples of indigenous peoples being forcibly evicted from or refused entry to their traditional areas because of conservation bans relating to national parks or sites considered by UNESCO as part of world heritage come from, among others, Tanzania, Kenya, the DRC, Uganda and Cameroon.

Indigenous peoples were ignored in the process of formulating the Millennium Development Goals and have too often been prevented from enjoying the benefits of mainstream development due to their political, social and economic marginalization. Indigenous peoples represent unique cultures with distinct languages, knowledge and beliefs, and their contributions to the world's sustainable development is invaluable. For the post-2015 process to succeed in securing a more sustainable development model that is not based on the exploitation of indigenous peoples' land and resources and on violations of their rights, it is imperative that indigenous peoples are empowered to participate fully and effectively in the formulation of new development goals.

UN World Conference on Indigenous Peoples

The preparations for the upcoming High-Level Meeting of the UN General Assembly, to be known as the World Conference on Indigenous Peoples, was also on the indigenous peoples' agenda in 2012. Throughout the year, consistent coordination work, together with sustained advocacy efforts carried out by the Indigenous Global Coordinating Group Team, were crucial in ensuring indigenous peoples' effective engagement in the preparatory phase for this global event. The appointment of an indigenous co-facilitator by the President of the UN General Assembly to undertake consultations with governmental delegations and representatives of indigenous peoples on the format, organizational issues and possible outcomes of the World Conference of Indigenous Peoples was undoubtedly an important step forward in the practical implementation of indigenous peoples' right to participate in decision-making on matters that would affect their rights.

On the indigenous peoples' side, several regional preparatory processes were organized and regional declarations were developed. The regional processes, coordinated by the Global Indigenous Coordinating Group, will culminate in a global indigenous preparatory conference in June 2013 hosted by the Norwegian Saami Parliament in Alta.

It is the aspiration that the World Conference will take the implementation of indigenous peoples' rights a step further and that the outcome document resulting from the high-level plenary meeting of the UN General Assembly will reflect the demands and priorities of the indigenous global movement. IWGIA further hopes that the outcome document will be able to feed into the formulation of the sustainable development goals based on a human rights approach, taking into account issues of equality and sustainability, and endorsing the fundamental concept of development with culture and identity as well as recognizing the vital role indigenous peoples can play in the successful implementation of the Rio+20 Sustainable Development Goals.

About this book

First and foremost, IWGIA would like to thank all the contributors to this volume for their commitment and their collaboration. Without them, IWGIA would never be able to publish such a comprehensive overview of the past year's developments and events in the indigenous world. The authors of this volume are indigenous and non-indigenous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA's network. They are identified by IWGIA's regional coordinators on the basis of their knowledge and network in the regions. This year, the volume includes 55 country reports and 12 reports on international processes. All the contributions are offered on a voluntary basis – this we consider a strength, but it also means that we cannot guarantee to include all countries or all aspects of importance to indigenous peoples every year.

The articles in the book express the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated therein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is nonetheless our policy to allow those authors who wish to remain anonymous to do so, due to the political sensi-

tivity of some of the issues raised in their articles. A number of country reports presented here take their point of departure as ethnographic regions rather than strict state boundaries. This policy has attracted criticism from states that consider this a lack of respect for national sovereignty, but it is in accordance with indigenous peoples' worldview and cultural identification, which, in many cases, cut across state borders.

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

Cæcilie Mikkelsen, editor, and Lola García-Alix, director
Copenhagen, April 2013

Note

1 Casement, who had in the early 1900s documented the carnage related to rubber extraction in the Congo, was sent out by the British government to investigate the work conditions of the Peruvian Amazon Company after public accusations had been raised by, among others, the British human rights organization *Anti-Slavery Society* (today known as *Anti-Slavery International*).

PART I

REGION AND COUNTRY REPORTS

THE ARCTIC

GREENLAND

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

International Whaling Commission

At the 64th meeting of the International Whaling Commission (IWC) in Panama in 2012, Denmark requested an annual increase in its whaling quota from 211 to 221 for Greenland. The increase was made up of one additional humpback whale and nine more fin whales. Twenty-five (25) nations supported the proposal, thirty-four (34) voted against and three (3) abstained; a result that left Greenland with no IWC-endorsed quota, despite the fact that the request was considered a sustainable quota by IWC's scientific committee and that it was pursued as "aboriginal subsistence whaling" (AWS), which is a part of IWC's management regime. In the Danish press, the Danish commissioner representing Greenland at the

IWC aired concerns over the organisation and termed the decision irresponsible. The Association of Hunters and Fishermen in Greenland (KNAPK) was very critical and termed IWC a mad house. Iceland, which supported Greenland, stated

that the Commission had become "extremely dysfunctional" and criticised the conservationists that are dominating the IWC.

Under current IWC regulations, aboriginal subsistence whaling is permitted for Denmark, the Russian Federation, the USA as well as St Vincent and the Grenadines because IWC recognises that aboriginal subsistence whaling is of a different nature to commercial whaling. The latter is currently subject to a moratorium. Opponents of Denmark's quota request argued that whale meat was available in Greenlandic restaurants and supermarkets and thus also to tourists – a fact which, from their point of view, made Greenland's case weak as it could be termed commercial. What constitutes "aboriginal subsistence whaling" has been raised and discussed several times by conservationists over the years in order to reduce, phase out or stop indigenous peoples' whaling activities. In the media, Ane Hansen, the Minister for Fisheries, Hunting and Agriculture in the Greenlandic government (Naalakkersuisut), aired concerns over the IWC's decision and stated that Greenland would reconsider its membership of the organisation – a suggestion also made by the Premier of Greenland, Kuupik V. Kleist in 2010. Ane Hansen expected the Danish government to pursue other diplomatic avenues within the IWC to obtain the quota. If these diplomatic exercises are fruitless, she expects that the Greenlandic government will determine the quota itself, outside the IWC management regime but following the advice of IWC's scientific committee in order to make the catch sustainable. For the Greenlandic government, it is a political aim to use the country's renewable resources in a sustainable way to the benefit of the Greenlandic population and to base this use on scientific advice.

Greenland and its international position

Within the last few years, international attention on the Arctic has increased tremendously. This can, for example, be seen in the number of applications from non-Arctic states to become observers to the Arctic Council. Greenland, in particular, due to its location and its vast resource potential, has felt that its geopolitical position has been discussed at great length, not only within the Danish Realm but also internationally. During the first half of 2012, when Denmark held the Presidency of the European Union, 27 EU ambassadors visited Greenland. Furthermore, the Premier of Greenland received the President of the Republic of Korea, Lee Myung-bak, together with the Korean Ministers of Foreign Affairs and

the Knowledge Economy, respectively. Later the same year, the Premier in turn visited Seoul, joined by a Greenlandic business and cultural delegation. Consequently, the Government of Greenland has decided to intensify its involvement in foreign affairs in order to improve trade and to develop its foreign representation as part of the exercise of its self-determination. During 2012, the Greenland government announced that Greenlandic representations were under preparation in Washington (US), Canada, Russia, Japan and potentially also in the Republic of Korea. This is a new initiative which diverts from Greenland's normal international representation, which is Denmark's responsibility. Former Foreign Minister of Denmark, Per Stig Møller, interpreted this Greenlandic initiative as a first step to pursuing its own foreign policy, and he made it clear that such political activities were not within the Act of Greenland Self-Government. In August 2012, the Premier of Greenland announced that it might be time for Greenland to have its own Department of Foreign Affairs as resource diplomacy had accelerated at international level: "Greenland definitely needs more autonomous political latitude with respect to foreign policy…it has become a pressing issue on the agenda", as he put it in the Greenlandic media. At his New Year's reception in 2013, the Premier of Greenland made a statement in which he made it clear that :

> *Greenland does not have aspirations for greater autonomy as stipulated in the Act of Self-Government for Greenland…[but] we do want to, and indeed have the right to, exercise self-determination and to have a relationship with Denmark as one between equals. So it comes as no surprise that we actually do exercise self-determination on a daily basis. I can assure you that "secession" is not the first thing on my mind when I wake up in the morning. The exercise of self-determination and the responsibilities that come with it are much more relevant than speculation as to possible future constitutional arrangements between Denmark and Greenland…*

Extractive industries in Greenland

Due to the severe pressure on the Greenlandic economy, the Greenlandic government (which was handed control of non-renewable resources in the Self-Government Act in 2009) has decided to diversify and improve its economy by attracting large-scale industries to extract the rich oil and mineral resources in this part

of the Arctic region. Apart from looking into off shore oil extraction, the current focus is on the rich iron deposits close to Nuuk and the rare earth elements in the vicinity of Narsaq in the southern part of Greenland. Together with the huge aluminium smelter at Maniitsoq, powered by hydro-electricity, this anticipated industrial portfolio will require large-scale investments.

In order to make Greenland an attractive and favourable location for foreign investments and activities in an environment of global competition, the Greenlandic government and parliament suggested revising the requirements for large-scale industrial projects. One of the most controversial subjects discussed was the proposal to allow imported labour to work below salary standards of the Greenlandic workforce during the construction phase. Such a bill would, for example, allow the industries to import thousands of Chinese workers in order to reduce the construction costs and thus improve the overall financial feasibility of large-scale projects. Accusations of social dumping were quickly raised as a concern and the Danish trade union warned Denmark (which has the legal responsibility towards the International Labour Organisation) and stated that the Danish government could expect to face action within that body. The Greenlandic trade union was critical as well. Historically, Greenlanders have fought hard to establish a labour market in which salaries and benefits are not dependent on ethnic background, as they were until 1991 when Danish workers were more privileged than their Greenlandic colleagues. Another area of concern among the public was the size of benefits going to Greenland through taxes and royalties. The Greenland government has decided that the benefits are expected to come from company taxes and income taxes, primarily.

The bill to provide large-scale industries with a better investment environment was adopted at a special gathering of the Greenlandic Parliament in December 2012 and the process was, despite a hearing period, criticised for being hasty and thus not meeting the requirements for public participation and involvement. The Danish authorities were preoccupied with the steps taken by Greenland as it forces Denmark to take legal, economic and practical steps as well as to make exceptions to the existing law with regard to easing the importation of foreign workers due to the fact that Denmark is responsible for “the area of aliens and border controls”. Several liberal politicians in Denmark suggested that the extraction of non-renewable resources in Greenland should benefit Denmark to a larger extent than agreed upon and stipulated in the Act on Greenland Self-Government. According to the Act, Greenland has ownership rights to the subsurface

resources and the right to decide how to pursue extraction as well as on what premises user rights are granted. Greenland has made it clear that extraction licensing is to be made available on the global free market. When the Danish liberal parties argue for a larger share of the resource income and, in some cases, even suggest that Denmark and Danish companies should have a privileged position when extraction rights are granted, they are trying to bypass the decisions of the Greenlandic government and the very philosophy of the Act itself. One of the arguments put forward by Danish politicians was concerns with regard to the potential dominance of Chinese capital and workers in Greenland and its political consequences due to the geopolitical and strategic position of Greenland. The Greenlandic Parliament's decision to open up the country to large-scale foreign investments and large-scale extractive industries has thus had an impact on discussions in Denmark concerning Denmark's foreign policy obligations, its security priorities and engagement in the Arctic. Furthermore, it has become clear that the follow-up to some of the decisions made by Greenland is still dependent upon political and legal steps taken by Denmark and an increased partnership between the authorities. The Greenlandic Premier, Kuupik Kleist, stated the following at his New Year's reception in Copenhagen, Denmark, at which several Danish ministers were present:

> *Following my government's legislative initiative for a framework bill on international tendering in relation to large-scale projects, 2012 was a year of interesting and, at times, even dramatic debates. The intense discussions in Greenland were echoed in Denmark with overwhelming media coverage and debate. Against this background, it is and was with a great sense of satisfaction that Inatsisartut, our Parliament, adopted this and other related bills on December 7. We now have the important regulatory framework in place that will allow us to process applications to exploit our rich natural resources and which will, in the future, contribute to diversifying and infusing resilience into our economy.* ❍

Frank Sejersen *is a Danish anthropologist employed as associate professor at Department of Cross-Cultural and Regional Studies (University of Copenhagen), where he has been pursuing research in the Arctic in general and in Greenland in particular, since 1994. Frank Sejersen was appointed member of IWGIA's board in June 2011 and has been its chair since January 2012.*

RUSSIAN FEDERATION

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

The small-numbered indigenous peoples are protected by Article 69 of the Russian Constitution and three federal framework laws[1] that establish the cultural, territorial and political rights of indigenous peoples and their communities. However, the implementation of the aims and regulations contained in these laws has been complicated by subsequent changes to natural resource legislation and government decisions on natural resource use in the North.

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

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


Bering strait
BERING SEA
Kovran
KAMCHATKA
SEA OF OKHOTSK
JAPAN
SEA OF JAPAN
KHABAROVSK
AMUR
CHINA
ARCTIC OCEAN
SAKHA (Yakutiia)
BURYATIA
Taimyr District
KRASNOYARSK
TUVA
MONGOLIA
BARENTS SEA
LENINGRAD OBLAST
YAMAL-NENETS A.O.
KOMI
NORWAY
SWEDEN
FINLAND
KARELIA
Moscow
KAZAKHSTAN
RUSSIA

Rights of Indigenous Peoples. In recent years, some important policy measures have been adopted, including the action plan for the implementation of the Concept paper on sustainable development of the indigenous small-numbered peoples of the North for 2009-2011; however, its key components have not been implemented.

The human rights situation of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation failed to improve in a number of key areas in 2012. These include land rights, the rights to self-determination, food, education, health and work.

One indicator of the low priority assigned to indigenous issues was the fact that the Committee of the Federation Council on Northern Affairs and Affairs of Indigenous Small-numbered Peoples, the only federal legislative body specializing in indigenous affairs, was dissolved in November 2011. Several regional specialized government bodies were also dissolved and their responsibilities transferred to other bodies who are reportedly failing to adequately carry out these tasks.

Territories of Traditional Nature Use / Indigenous land rights

In 2001, Russia adopted the law "On Territories of Traditional Nature Use of Indigenous, Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation" (7 May 2001, No. 49-FZ). This law stipulates the creation of so-called Territories of Traditional Nature Use (TTNU).[2] It constitutes the only serious attempt by the Russian Federation to establish a federal-level system guaranteeing indigenous peoples those land-use rights on which they depend for their subsistence. More than a decade after the law's adoption, not a single federal TTNU has been established. While Russia's 2012 report to the Committee on the Elimination of Racial Discrimination (CERD) refers to a revised law on TTNU which should allegedly help to operationalize the law on TTNU, it fails to mention that the revised law has been pending since 2009 without even being submitted to parliament for its consideration. During the Committee's consideration of Rus-

sia in February 2013, the Russian delegation was unable to make any predictions as to when this situation would be resolved.

Indigenous peoples' right to food: fishing and hunting rights

Since 2001, clauses safeguarding indigenous peoples' use rights have been successively removed from those federal acts that govern access to and tenure of waters, forests and lands. In Para. 279 of its latest periodic report, which Russia submitted to the CERD in 2013,[3] the Russian government notes that Russia is developing legislation that would permit indigenous individuals to carry out traditional fishing for personal consumption free of charge and without volume restrictions, allegedly solving the long-standing problem of insufficient fishing rights for indigenous peoples.

In 2008, an amendment to the federal law "On fauna" *("o zhivotnom mire")* removed the provision of priority access to fishing grounds for indigenous peoples and their communities. Subsequently, many indigenous communities lost their access to fishing grounds. It will, in practice, be virtually impossible for indigenous peoples to enjoy their right to traditional fishing because most viable fishing grounds are now controlled by private leaseholders who have the legal right to deny third parties the right to fish in their lease area and are, as experience shows, prepared to do so.

Furthermore, the legislation proposed by the Russian government stipulates that indigenous peoples only have the right to fish for personal needs. It excludes indigenous cooperatives (*obshchinas*) from the realm of traditional fishery. *Obshchinas* are, however, typically the only providers of employment and income in indigenous territories. Since 2008, many *obshchinas* have lost their fishing grounds to commercial competitors. If adopted, the proposed legislation will aggravate this tendency, as the only remaining way for *obshchinas* to obtain fishing rights will be through commercial auctions, and these require financial and logistical resources that are typically beyond their capacity. As experience shows, bids submitted by *obshchinas* are very rarely successful.

Indigenous families and individuals that seek to enjoy their right to adequate food face disproportionate bureaucratic obstacles to obtaining the necessary permits. For indigenous people living in remote settlements or leading a nomadic or transhumant way of life in particular, obtaining these permits is often impossible,

and this exposes them to the risk of severe fines. In 2012, figures show that the regional administration continued to withhold fishing rights from the indigenous population. For instance in Kamchatka, for 2,762 indigenous peoples living in Olyutorski district, in which Tymlat is located, only 42 permits were issued. Indigenous peoples in Ust-Kamchatski district, which had received fishing permits, were denied the mandatory accounting sheets as they were unable to produce documentary proof of their indigenous identity, something very difficult to provide since the "nationality" entry was removed from Russian passports.[4]

Extractive industries, lack of FPIC

Various human rights bodies have called on Russia to ensure that third-party activities such as extractive industries operations affecting indigenous peoples, their territories and their livelihoods are subject to cooperation and good-faith consultation in order to obtain the affected peoples' free, prior and informed consent. However, there are no indications that any such steps are being taken.

Norilsk Nickel is one of Russia's largest industrial conglomerates and, at the same time, one of the country's largest polluters. In August 2012, the Association of Indigenous Peoples of Taimyr district published an open letter denouncing the fact that over the 80 years of its existence, the company's operations had had a devastating effect on the traditional territories of the Nenets, Enets and Dolgan indigenous peoples, many of whom engage in nomadic reindeer herding. Vast stretches of reindeer pasture as well as many sacred sites have been irretrievably destroyed. However, Norilsk Nickel's contribution to the socio-economic development of the indigenous population has been virtually non-existent. While federal legislation stipulates that indigenous peoples' associations are entitled to compensation for damage inflicted on their traditional territories,[5] there has been not one instance of compensatory payments made by Norilsk Nickel to any indigenous peoples' association.[6]

Social conditions, results of 2010 census published

In December 2011, the State Statistics Committee (Goskomstat) published the final results of the 2010 national census. In its 2012 periodic report, the Russian

government cites a 5.6 per cent increase in the overall population of indigenous small-numbered peoples over the last decade as evidence of its successful policy, thus giving the impression of an overall stable demographic development. However, due to methodological inconsistencies between successive censuses and procedural shortcomings, the results cannot be taken at face value.

The figures for many indigenous peoples show drastic fluctuations which cannot be explained by natural growth or decline alone but by changed self-identification or categorization. Some formerly distinct peoples have been re-classified as ethnographic sub-groups of other peoples or vice versa. The total number as provided by the State party therefore allows no conclusions with regard to the state of the indigenous peoples. Far less can it serve as an indicator with regard to the efficacy of any measures or programs undertaken by the government. When the data is disaggregated by region and by people, the emerging picture is far less positive: compared with the 2002 census, the populations of 24 peoples have declined and only ten have seen positive growth. In 19 out of the 26 regions, the indigenous population is showing a numerical decline. The loss is particularly significant in the republics of Tyva (Tuva), Komi and Karelia and in Tomsk and Leningrad oblasts; in the latter cases, the likely main factors are changed self-identification and assimilation. According to the Federal Accounts Chamber, unemployment among indigenous peoples is 1.5-2 times the Russian average, with 24.5% unemployment among the indigenous peoples of Yamal-Nenets okrug and 47.8% among the indigenous population of Amur oblast.[7] Incomes of indigenous peoples are 2-3 times lower than the Russian national average.

Infectious diseases such as tuberculosis, a typical indicator of extreme poverty, cause 60 deaths per 100,000, which is almost three times the national average of 23 per 100,000.[8] Furthermore, maternal deaths and child mortality are significantly above the national average. The Indigenous Rights Ombudsman of Krasnoyarsk krai links this state of affairs to the low quality of public health services in indigenous settlements as well as to a lack of clean drinking water and adequate food as well as insufficient housing, such that those suffering from open forms of tuberculosis cannot be separated from other family members, including children.[9]

As reported by the Khabarovsk association of indigenous peoples, mortality in Tuguro-Chumikanski district exceeds the birth rate several times over. Doctors are working only in the district centre of Chumikan and will not risk the journey to other settlements.[10]

Diligent research is required to assess the demographic trends in individual peoples, to identify the risks associated with these as well as their causes.[11]

One fundamental requirement for the proper assessment of the living conditions of the indigenous peoples is the availability of specific and reliable data. In 2008, the CERD therefore asked the Russian Federation to provide data disaggregated by ethnicity with regard to, inter alia, the rights to work, housing, health, social security and education in its next report.[12] However, apart from citing the total population figures from the 2010 census, Russia's 2012 report to the CERD contained no statistical data on the state of the indigenous peoples and trends affecting them.

Suspension of national umbrella organisation of indigenous peoples

In July 2012, the State Duma adopted legislation designating non-profit organisations that accepted foreign funding and engaged in activities falling under a very broad definition of "political" as "foreign agents". Protecting and promoting indigenous peoples' rights will very likely fall under this definition, and indigenous peoples' organisations will therefore be forced to either register as "foreign agents" and comply with a multitude of additional reporting obligations or decline further funding from international sources. Failure to comply is punishable with fines of up to one million roubles and prison terms of up to three years. Furthermore, the designation as "foreign agents" is likely to stigmatize indigenous peoples' organisations and thus jeopardize partnerships with regional authorities and other partners within Russia. This legislation entered into force on 1 November 2012 and is in clear violation of a principle enshrined in Art. 9 of the UN Declaration on the Rights of Indigenous Peoples, according to which indigenous peoples have the right "to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration."

RAIPON, the Russian Association of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation, is internationally and nationally widely recognised as the most representative voice of the indigenous peoples of Russia's North. RAIPON's ability to work and uphold indigenous peoples' rights is vital to the ability of Russia's indigenous peoples to participate in decision-making, as established in Art. 18 of the UN Declaration on the Rights of Indigenous Peoples.

As an association with registered member organisations in 25 regions and with a total of 49 regional representations, RAIPON is recognised as an all-Russian organisation. This status is particularly significant not only in recognition of its unique function as a trusted and legitimate representative of more than 40 peoples but also because it provides institutional access, in particular the right to participate in the preparation and consideration by state bodies of decisions concerning the protection of the traditional habitat, way of life and activities of indigenous small-numbered peoples.

In early 2010, the Russian Federal Ministry of Justice undertook an extraordinary audit of RAIPON's activity. Its conclusion makes two observations: first, it states that RAIPON's logo needs to be registered in the federal inventory. As of 2010, this logo had been in use for 20 years, during which time no objections had been raised by the federal authorities. Second, the audit concluded that, in relation to RAIPON's status as an all-Russian organisation, a list of its regional representations had to be included in its by-laws. Such a list had previously been maintained as an annex to the registration documents, which had likewise never caused any objections.

In order to comply with these observations, RAIPON convened an extraordinary congress of indigenous peoples in April 2011 with the single objective of bringing the by-laws into compliance with the requirements outlined in the audit conclusion. The delegates decided to register RAIPON's logo with the State inventory and to include a list of regional representations in its by-laws. Subsequently, while the Ministry of Justice accepted the decision to register the logo, it refused to register the decision regarding the list of regional representations, thus preventing RAIPON from complying with its own demands. RAIPON appealed the Ministry's move in court. Proceedings were still ongoing when the Ministry ordered the suspension of RAIPON's activities until 20 April 2013, to take effect from 1 November 2012 and justified by the shortcomings found in RAIPON's by-laws.

Considering the purely administrative character of the alleged flaws in RAIPON's by-laws and the association's repeated good-faith attempts to rectify the situation, the de facto closure of an organisation that constitutes the organisational embodiment of a movement comprising more than 40 indigenous peoples is a disproportionate measure and inconsistent with the right to participate in decision-making, as set out in Art. 18 of the UNDRIP.

The move to suspend RAIPON drew widespread criticism from Russian regional indigenous organisations, the governments of other Arctic states and international NGOs and indigenous organisations. On 24 January 2013, RAIPON convened another extraordinary congress in order to eradicate the issues affecting the organisation's statutes, in accordance with the demands from the Ministry of Justice. On 13 March 2013, the Ministry of Justice finally announced that RAIPON had again been registered as an all-Russian civic organisation and that the suspension of its activities had been lifted.

Crackdown on indigenous community "Dylacha"

One of the most successful indigenous-led economic initiatives in Russia is the obshchina "Dylacha" (Evenk for "sunshine"), based in Bauntovski Evenkiisky district in the Baikal region, located in the North-East of the Republic of Buryatia. It employs approximately 200 people and provides substantial assistance to the Evenk minority in rural districts of Buryatia. Dylacha pursues various traditional and non-traditional activities, including reindeer herding, hunting, fishing and the mining and processing of nephrite, a type of jade used for carvings, beads or gemstones. The mining and processing of nephrite has been a traditional occupation of the indigenous population of the Baikal region since the Palaeolithic era. The latter is conducted under a licence (UDE No. 00153) valid from 1997 to 2017. Throughout 2011, the obshchina was subjected to a large number of meticulous audits and checks. In August 2012, the state prosecutor of the Republic of Buryatia undertook a comprehensive audit together with other regional and State supervisory bodies. The experts arrived at the unanimous conclusion that the cooperative was complying with all licensing conditions and was operating within its concession area.

Nevertheless, on 4 October 2012, the premises of the cooperative in the regional capital of Ulan-Ude and their production facility "medvezhii" in Bauntovski Evenkiiskii district were raided by armed and camouflaged members of an OMON unit of the State Administration of Internal Affairs of the City of Moscow, aided by local police. Simultaneously, two helicopters carrying members of the Interior Ministry of Russia, together with representatives of a competing mining company, landed in the cooperative's production ground of "Medvezhi" in Bauntovski Evenkiiski district. Staff members were rounded up at gunpoint and locked up. The

nephrite stocks were confiscated and transported to the storehouses of a commercial company, where they remain to this day.

On 5 October 2012, two staff members of the obshchina were arrested and taken into custody at an undisclosed location, where they were held and interrogated for two months without any charges being brought, until their release on 14 December.

The cooperative has been accused of "theft" by extracting nephrite from outside of their concession to an estimated value of 600 million roubles (USD 20 million). In October, a criminal investigation was launched against "unidentified members of the management of the obshchina"; however, no suspect has been named and no indictment has been published. Meanwhile, several independent studies have concluded that the obshchina's operations where fully in compliance with the terms of the license.

Given the lack of specific evidence and the nature of the accusations, the actions of the law enforcement authorities have been inappropriate. This includes the involvement of the Interior Ministry's OMON units, which would be permitted only in very specific cases involving e.g. the smuggling of nuclear material, along with the confiscation of the obshchina's entire nephrite stocks and of documents without due record and copies taken, and the fact that the operations were aided by a company which is a business competitor to "Dylacha" and has its own vested interest in the case.

The public prosecutor of Buryatia district later turned to the district court of Bauntovski district and requested that the obshchina be dissolved on the basis that it was engaging in "non-traditional economic activities". On 13 March 2013, the district court in Bauntovski district granted the request and ruled that the obshchina had to close. The obshchina is contesting this ruling in the higher courts.

While the legal battle continues, the obshchina's operations remain suspended indefinitely, threatening the demise of one of Russia's most successful indigenous businesses. This is an example of a policy of intimidation against obshchinas in Russia and demonstrates the resolve of policy makers to prohibit obshchinas from engaging in entrepreneurial activity, even though, in his report on Russia, the UN Special Rapporteur on the rights of indigenous peoples explicitly recommended that the country make efforts to encourage indigenous entrepreneurship. ❍

Notes and references

1 The three framework laws are: 1) On the guarantees of the rights of the indigenous small-numbered peoples of the Russian Federation (1999); 2) On general principles of the organisation of communities [obschinas] of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation; and 3) On Territories of Traditional Nature Use of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation (2001).
2 In previous editions, the Russian abbreviation "TTP" was used. This has been changed in this edition for consistency with the common English translation of the expression.
3 UN Doc CERD/C/RUS/20-22, available for download from http://www2.ohchr.org/english/bodies/cerd/docs/CERD-C-RUS-20-22.pdf
4 Published on fishkamchatka.ru, 7 August 2012
5 Federal Law "On Guarantees of the Rights of indigenous small-numbered peoples of the North, Siberia and the Far East", No 82-FZ, 30 April 1999, Para 5
6 Letter from the Taimyr association of indigenous peoples to Norilsk Nickel, dated 31 August 2012; see also *"Noril'skiy nikel'" sobiraetsja zalozhit' novyj rudnik, Associacija korennyh narodov Tajmyra protestuet*, 4 September 2012, http://www.raipon.info/component/content/article/1-novosti/3352-q-q.html, IWGIA/RAIPON (eds): *Briefing note: Mineral extraction in the Taimyr Peninsula*. September 2012. http://issuu.com/iwgia/docs/taimyr_breifing_note_sept_2012
7 Federal Accounts Chamber, .p 80
8 Climate Change Impact on Public Health, ibid.
9 Upolnomochenny po pravam korennykh, malochislennykh narodov v krasnoyarskom krae: *Doklad o sublyudenii konstitutsionnykh prav I svobod korennykh malochislennykh narodov na territorii Krasnoyarskogo kraya v 2011 godu*, p. 41 http://ombudsmankk.ru/file.php?id=434
10 http://www.raipon.info/component/content/article/1-novosti/3089-2012-05-25-14-09-05.html
11 Dmitri Bogoyavlenski: *Poslednie dannie o chislennosti narodov Severa*.27.12.2011, http://www.raipon.info/component/content/article/1-novosti/2637-2011-12-27-11-54-03.html
12 UN doc CERD/C/RUS/CO/19, para 10

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INUIT REGIONS OF CANADA

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

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

The **Nunavut** Land Claims Agreement (NLCA), which covers two million square kilometres, was settled in 1993. The Nunavut government was created by the NLCA in April 1999. It represents all Nunavut citizens. Nunavut Tunngavik Incorporated (NTI) represents Inuit who are beneficiaries of the Nunavut Land Claims Agreement.

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

The **Inuvialuit** land claim was signed in 1984 and covers 91,000 square kilometres in the Northwest Territories. The Inuvialuit Regional Corporation (IRC) represents collective Inuvialuit interests in dealings with governments and industry, with the goal of improving the economic, social and cultural well-being of its beneficiaries. The Inuvialuit are also negotiating for self-government.

2012 was marked by a period of political transition among Inuit leaders in the Arctic. Inuit Tapiriit Kanatami (ITK) elected Mr. Terry Audla as the new President for a three-year term.

Preparations began in 2012 for Canada's hosting of the Arctic Council, scheduled to begin in May 2013. Canada's Minister of Health, Leona Aglukkaq, an Inuit leader from the Nunavut Territory, was appointed Chair of the Arctic Council while Canada will be the host. Inuit, represented by the Inuit Circumpolar Council (ICC), are among six Indigenous Peoples represented as Permanent Participants on the Arctic Council.

Inuit way of life under threat

In 2012, Inuit were battling on two fronts internationally against threats to the traditional way of life resulting from the European Union ban on the import of seal products, enacted in 2009, contested in European courts by ITK.

In addition, Inuit in the four regions worked to try and convince the United States not to put forward a proposal to upgrade the Polar Bear from Appendix II to Appendix I of the Convention on International Trade in Endangered Species (CITES). Despite intense lobbying efforts in Washington in September 2012, the United States proceeded to submit the proposal to upgrade the Polar Bear in October. Since then, Inuit have continued to lobby states around the world to vote against this proposal at the 16th Conference of the Parties (COP) in Bangkok, Thailand in March 2013.

National Inuit education strategy

Work continued on the implementation of the national Inuit education strategy during 2012. The "Amaujaq National Centre for Inuit Education" was launched in early 2013, located within ITK, and chaired by Mary Simon.

The strategy aims to empower parents, expand early childhood education, invest in curriculum development, and create a fully bilingual education system based on the Inuit language and one of Canada's two official languages. An important goal is to establish a standardized Inuit writing system.

Social media-based protests marked Inuit and national Aboriginal politics in 2012

During 2012, an Arctic-based protest movement called "Feeding My Family" commenced online via a Facebook page to protest at the high cost of food in Arctic communities. It developed and spread across the Arctic. Protestors holding signs expressing extreme displeasure at the high cost of store-bought food in Arctic retail outlets also staged numerous physical protests in communities such as Iqaluit, Nunavut.

Inuit also expressed their support for the First Nations movement "Idle No More" (see Canada article, this volume).

Inuvialuit Settlement Region

Important steps were taken towards self-government in 2012 when the Inuvialuit Regional Corporation (IRC) and the governments of Canada and the Northwest Territories concluded a draft Agreement-in-Principle (AiP) with a view to signing the final AiP in 2013. The AiP describes the jurisdictions and authorities of the

future Inuvialuit government and clarifies the relationship with the federal and territorial governments.

Even though the uncertain status of the Mackenzie Gas Pipeline and the downturn in the economy have restricted oil and gas activity on land in the Inuvialuit region, offshore oil and gas drilling may provide economic opportunities in the future. Chevron undertook a three-month marine seismic program in the Beaufort Sea in late summer, while several companies such as Imperial Oil and ConocoPhillips are conducting studies to determine the viability of potential exploration in the region. IRC continues to work with industry and government to ensure that economic benefits accrue to Inuvialuit and that offshore activities are carried out in an environmentally responsible and safe manner.

During the summer, the Canadian Forces conducted Operation Nanook 2012 in a number of locations in the Arctic, including Inuvik and Tsiigehtchic in the Northwest Territories. The exercises involved a simulated security event in Tsiigehtchic during which approximately 500 military personnel based out of Inuvik assisted the Royal Canadian Mounted Police through the deployment of land and air forces.

Throughout the operation, IRC ensured that the Canadian Forces undertook appropriate consultations with the communities, and confirmed that the activities were carried out in a manner that was respectful of the land, the environment and the local culture.

Nunavut

In 2012, Nunavut Tunngavik Incorporated (NTI) continued to make significant progress on its major lawsuit against the Crown in right of Canada, in the Nunavut Court of Justice, for numerous and damaging implementation breaches of the Nunavut Land Claims Agreement by the Crown. This lawsuit, launched in December 2006, is of key importance to Inuit and all Aboriginal Peoples in Canada.

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

NTI, and regional Inuit organizations within Nunavut, also invested much time, energy and creativity in working with major natural resource development proponents in Nunavut. Nunavut is rich in mineral and other resources, and it is critical that Inuit speak in a coordinated and informed way both to evaluate proposals and, as appropriate, seek to maximize and fairly allocate Inuit benefits of those that go forward.[1]

The Government of Nunavut, meanwhile, reported 4.6% growth for the Territory in 2011, and expected the same for 2012. In its 2012 budget speech, the government calculated that it would require over CAD $1 billion to address the current housing crisis in the territory.

Nunavik

2012 was a time of change in the Nunavik region, with a new President at the helm of the Makivvik Corporation. Jobie Tukkiapik was elected by the Inuit of Nunavik to push forward pressing issues such as the high cost of living and the ever growing housing shortage.

The Makivvik Corporation has also spent a lot of time and energy in formulating a position paper that will eventually outline conditions that must be met by governments and southern interests before development of the rich non-renewable and renewable resources of Nunavik is deemed beneficial to the Inuit of Nunavik. The paper is called Parnasimautik formerly known as the “Plan Nunavik”.

Makivvik continued to take a leading role in establishing a better justice system for Nunavik that would see a decline in the number of Inuit ending up in southern prisons. It worked with other major organizations to develop a plan which would provide help for individuals who would otherwise be incarcerated.

Nunatsiavut

The Nunatsiavut government released its first-ever Strategic Plan in March 2012, outlining the following six main priorities to be carried out over the next three years, namely: clarifying the roles between the Nunatsiavut government, the five Labrador Inuit community governments, and the two Inuit Community Corporations in Upper Lake Melville; transition of government personnel to Nunatsiavut;

capacity building; economic and resource development; housing; and the revitalization of Inuit culture and language.

The Nunatsiavut government also enacted its Environmental Protection Act, and amended the Labrador Inuit Lands Act, effectively lifting the moratorium on the working, production, mining and development of uranium on Labrador Inuit lands.

A political transition took place in the Nunatsiavut region as well, with Sarah Leo taking over as President from Jim Lyall following a run-off election on June 11, 2012.

On August 15, 2012, President Leo participated in the unveiling of a monument at Nutak to formally recognize an apology from the Government of Newfoundland and Labrador to former residents who were forced to relocate in 1956 following the suspension of services to the community.

September 10, 2012 marked an historic day for the Nunatsiavut government, with the official opening of the Nunatsiavut Assembly Building in Hopedale. The 10,000 sq. ft. structure includes the Nunatsiavut Assembly Chambers, the Assembly Caucus Room, and provides offices for Nunatsiavut government staff and elected officials. ❍

Notes and references

1 Developments in this region can be followed at: tunngavik.com and www.gov.nu.ca

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NORTH AMERICA

CANADA

The indigenous peoples of Canada are collectively referred to as "Aboriginal people". The *Constitution Act, 1982* of Canada recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. According to the 2006 census, Aboriginal peoples in Canada total 1,172,790, 3.6% of the population of Canada.[1] First Nations (referred to as "Indians" in the Constitution and generally registered under Canada's Indian Act [2]) are a diverse group of 698,025 people, representing more than 52 nations and more than 60 languages. About 55% live on-reserve and 45% reside off-reserve in urban, rural, special access and remote areas. The Métis constitute a distinct Aboriginal nation, numbering 389,780 in 2006, many of whom live in urban centres, mostly in western Canada.

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

Crown - First Nations Gathering

2012 started with what it was hoped would be an historic meeting between First Nations and Crown representatives, led by National Chief Shawn A-In-Chut Atleo of the Assembly of First Nations (AFN) and the Prime Minister. The divide between Indigenous and federal government leadership was emphasized by descriptions of the Indian Act at the meeting. Prime Minister Harper stated: "To be sure, our government has no grand scheme to repeal or to unilaterally rewrite the Indian Act: after 136 years, that tree has deep roots. Blowing up the stump would just leave a big hole."[3]

In response, Jody Wilson-Raybould, Regional Chief for British Columbia, said the time had come for legislation recognizing First Nations as self-governing. "This will get at the roots of the Indian Act tree. We need core governance

reform. When we do, the Indian Act tree will topple over. No gaping hole, Mr. Prime Minister, but strong and self-determining First Nations".[4]

The result of the gathering was a commitment to work together on key issues such as treaty implementation, comprehensive claims policy change, governance, education, and economic development. Sadly, the lack of concrete follow-up action was a source of disappointment and growing frustration throughout the year.

UN Declaration on the Rights of Indigenous Peoples

Indigenous peoples and their allies continue to implement the *Declaration* in diverse ways, including using it in policy development, litigation, education, media, and in the treaty monitoring processes reviewing Canada. For the 5th anniversary of the *Declaration*'s adoption, a series of educational events were hosted by Indigenous peoples and human rights organizations.[5] Kontinonhstats, the Mohawk Language Custodians Association based in Kanehsatà:ke, Quebec, published the Kanien'kéha (Mohawk)-language version of the *Declaration*.

Canada unfortunately does not engage as a constructive partner in this work and continues to attempt to devalue the *Declaration* with statements emphasizing it is an "aspirational instrument". However, in February 2012, Canada admitted before the UN Committee on the Elimination of all Forms of Racial Discrimination (CERD) that, "Canadian courts could consult international law sources when interpreting Canadian laws, including the Constitution." [6]

In *First Nations Child and Family Caring Society of Canada* v. *Canada (Attorney General)*, the Federal Court of Canada ruled that international instruments, such as the *UN Declaration on the Rights of Indigenous Peoples* and the *Convention on the Rights of the Child,* may **inform the contextual approach** to statutory interpretation.[7] This ruling is a critical advancement in jurisprudence, recognizing the legal effect of the *Declaration*. This case has been reported on in the previous three editions of *The Indigenous World*. The positive 2012 judgment of the Federal Court set aside the 2011 decision of the Canadian Human Rights Tribunal regarding discrimination in the federal funding of Aboriginal children. The Court ruled that the process used by the Tribunal was not fair and the matter has been remitted to a differently constituted panel of the Tribunal for re-determination. Canada is appealing the Federal Court's judgment.

United Nation Human Rights Mechanisms

Canada was reviewed by CERD in February 2012. The Committee was overwhelmed by the number of submissions (shadow reports) received in advance, the majority of which dealt with violations of Indigenous peoples' rights.[8] A large number of representatives of Indigenous peoples and human rights organizations travelled to Geneva for the review. This indicates the ongoing and deep challenges that Indigenous peoples face with regard to racial discrimination and the lack of domestic remedies to address concerns. The Committee made recommendations including Treaty implementation, land rights, violence against Indigenous women, good-faith implementation of Canada's duty to consult and Indigenous peoples' right of free, prior and informed consent "whenever their rights may be affected by projects carried out on their lands". CERD also called on Canada to develop a national action plan to implement the *UN Declaration*.[9]

The UN Special Rapporteur on the right to food, Olivier de Schutter, made that mechanism's first visit to a developed country, including visiting Aboriginal communities. His report was released in December 2012.[10] The Special Rapporteur raised serious concerns regarding the food insecurity of Indigenous peoples in Canada and the relationship between food security and land rights. "This right (to food) today is under very severe threats with respect to the First Nations of this country," De Schutter said. "My report will be useful, not only if it's discussed at an international level, but also if it's used to launch a national conversation on these issues, if the Canadian public opinion can be led to better understand what the situation is, what its responsibilities are."[11] Shockingly, the federal government vilified the Special Rapporteur, his visit and his conclusions. This is a disturbing pattern of behavior from a government that believes it is above international scrutiny. De Schutter criticized Canada for its "appallingly poor" record of taking recommendations from UN human rights bodies seriously.

The UN Committee on the Rights of the Child reviewed Canada in October. It criticized Canada for the inequities in child welfare services for Indigenous children (reported on in *The Indigenous World 2012, 2011 and 2010*) and raised other issues of discrimination.[12]

Undemocratic Legislative Strategies

During 2012, the federal government introduced a significant number of legislative bills affecting Indigenous peoples. Countless amendments and laws are being adopted that undermine Indigenous peoples' human rights, including Aboriginal and Treaty rights guaranteed in the Canadian Constitution. These legislative measures were developed with little or no consultation of Aboriginal peoples and without their consent. Such actions erode democracy, the rule of law and the integrity of parliament. Of particular concern are two omnibus "budget" bills, C-38 and C-45, which between them comprise almost 900 pages that have not had proper parliamentary debate. Bill C-38 amended approximately 70 different laws and Bill C-45 around 60. About half of Bill C-38 comprises environment-related amendments to weaken existing laws. C-45 introduced far-reaching changes, including changes to land provisions in the *Indian Act* that compound existing problems. It also re-writes environmental laws, in-

cluding the *Navigable Waters Protection Act*, *Fisheries Act* and *Hazardous Materials Information Review Act*, which were used to promote and protect a sustainable environment, clean water and healthy oceans. The integrity of the environment is being assaulted, to the detriment of present and future generations.

Canada is estimated to contain nearly 32,000 major lakes and more than 2.25 million rivers. Yet a new *Navigation Protection Act* reduces federal environmental oversight and covers only 3 oceans, 97 lakes, and portions of 62 rivers. Certain key rivers in British Columbia, along the path of the proposed Northern Gateway pipeline, are not included.

Resource development projects on the traditional lands of Indigenous peoples will be much less likely to be subject to rigorous public environmental impact assessment. These changes are on top of cutbacks in environmental safeguards already passed in the previous C-38.

Bill S-8, *Safe Drinking Water for First Nations Act* also poses critical challenges for Indigenous peoples. Previously reported in the 2011 Yearbook (then entitled S-11), this dangerous legislation is making further progress. For the first time, the law would include an active "derogation" provision; that is, the proposed law explicitly allows abrogation or derogation from existing Aboriginal and Treaty rights if deemed necessary to ensure safe drinking water. In the event of any conflict or inconsistency, the new federal law and regulations are deemed to prevail over First Nations law-making. Bill S-8 thus raises serious concerns over constitutional validity and discrimination. No other people in Canada are compelled to give up other human rights in order to enjoy the human right to safe drinking water.

Many Indigenous communities are desperate for an improved water supply after decades of federal under-funding. More than 100 Indigenous communities do not enjoy safe drinking water. Under the new law, eligibility for future federal funding for improved water services would be tied to a willingness to live under the new derogation regime.

These and several other pieces of legislation, including Bill C-27, *First Nations Financial Transparency Act*; Bill S-2, *Family Homes on Reserve and Matrimonial Interests or Right Act*; Bill C-428, *Indian Act Amendment and Replacement Act*, have been developed without proper consultation and cooperation with Indigenous peoples. The *Declaration* sets consultation and cooperation as the *minimum standard*. Yet the Canadian government agenda of unilaterally

advancing laws that affect Indigenous peoples' rights simply perpetuates the colonial model. Indigenous peoples' attempts to re-set the relationship are ignored. Reconciliation is not possible in such an environment.

Resource Extraction

Resource extraction on Indigenous peoples' lands and territories continues to be a source of major conflict and concern in many areas of Canada. Governments often abdicate their constitutional responsibilities, allowing resource companies to proceed without adequate consultation and accommodation or the free, prior and informed consent of Indigenous peoples. Affected Nations are often forced to resort to expensive litigation in order to have their rights respected.

In December 2012, the Ross River Dena won a significant victory in *Ross River Dena Council* v. *Yukon*.[13] The ruling states: "The Government of Yukon has a duty to notify and, where appropriate, consult with and accommodate the plaintiff before allowing any mining exploration activities to take place within the Ross River Area, to the extent that those activities may prejudicially affect Aboriginal rights claimed by the plaintiff."

Northern Ontario is also a critical area known as the "Ring of Fire" – for what resource companies and governments see as potential development. It is also an area of Indigenous peoples' territories. The province of Ontario released a "modernized" Mining Act, which purports to be consistent with section 35 of the *Constitution Act, 1982*. However, the province does not wish to discuss Indigenous peoples' right to free, prior, and informed consent. This is only going to lead to further litigation. In 2012, both the Kitchenuhmaykoosib Inninuwug (KI) and Wahgoshig First Nation won cases regarding the inappropriate involvement of resource companies on their territories.[14]

The proposed Enbridge Northern Gateway pipeline, addressed in *The Indigenous World 2012*, remains highly controversial and 2012 saw continued opposition from Indigenous peoples and others. Over the course of the year, the government held an environmental assessment review panel to examine the real and potential impacts of the proposed pipeline. The province of British Columbia has also recorded its opposition and concerns.

Tsilhqot'in Nation v. British Columbia

A strong lower court ruling was weakened by a decision from the British Columbia Court of Appeal. In *Tsilhqot'in Nation* v. *British Columbia*, (2012 BCCA 285) Canada and British Columbia argued that only small site-specific areas may be subject to title claims. The Court of Appeal regressively ruled that respect for the traditional rights of First Nations must not place "unnecessary limitations on the sovereignty of the Crown or on the aspirations of all Canadians". Further, the Court invoked the "principle of discovery" otherwise known as the doctrine of discovery: "European explorers considered that by virtue of the 'principle of discovery' they were at liberty to claim territory in North America on behalf of their sovereigns." International law rejects the doctrine of discovery as racist and legally invalid, since it is largely based on European and Christian superiority over Indigenous peoples.[15]

Idle No More and Hunger Strikers

2012 ended with action. Fed up with the federal government's unilateral discriminatory approach and the inability of the Indigenous leadership to stop the aggressive assault on Indigenous rights, grassroots actions sprang up under the banner of "Idle No More". Originally used by four women based in Saskatchewan at a teach-in protest against Bill C-45, the catchy slogan spread quickly across the country and was used by thousands of people in dozens of social protest actions. Thanks to the effectiveness of social media, global solidarity and media attention further awareness was raised of the diverse concerns. Although some grassroots people chose to distance themselves from the Indigenous leadership, it is clear that there are common objectives and institutional support for the goals of the movement.[16]

Also in December 2012, Chief Theresa Spence of the Attiwapiskat First Nation began a liquids-only hunger strike in a tepee on Victoria Island, a ceremonial location for Indigenous people near the federal parliament in Ottawa. She was joined by elder Raymond Robinson and Jean Sock in solidarity with her concerns at the broken relationship. The objective was to draw attention to Canada's violations of Treaty obligations and to have both the Prime Minister

and a representative of the Crown (many Treaties were signed with the British Crown, rather than the government of Canada) meet with Indigenous leadership.

While the Canadian media do not often engage with Indigenous issues, the combination of "Idle No More" and the hunger strikers mobilized so many people in a dramatic public manner that mainstream media was forced to catch up with social media and engage with the growing protests. Many prominent public figures also became active, visiting Victoria Island and urging the government to engage constructively with Indigenous peoples. On 11 January 2013 a meeting took place between the Prime Minister and Indigenous leadership and the hunger strikers later ended their fasting. The social movement continues, with awareness raising and protests on the part of both Indigenous and non-Indigenous peoples.

As reported in the previous three Yearbooks, Canada has been holding a Truth and Reconciliation Commission to address past gross violations of human rights experienced by Indigenous peoples in the Indian residential school system. Unfortunately, Canada has resisted full disclosure of and access to historical records and documents in their possession despite provisions in the residential schools settlement agreement obligating Canada to cooperate in the handover of such evidence to the Commission. The federal government continues its adversarial colonialist approach to the detriment of all, and this has forced the Commission to apply for relief from the courts to enforce the terms of the settlement agreement. This is in direct violation of Canada's obligations, both in domestic and international law.

In September 2012, the UN General Assembly held a high-level meeting on the rule of law. A new Declaration was approved by consensus. Heads of State and Government declared: "We reaffirm the solemn commitment of our States to fulfil their obligations to promote universal respect for, and the observance and **protection of, all human rights … for all**."[17] Canada must fundamentally reform its approach if this is to become a reality for Indigenous peoples. ❍

Notes and references

1 **Statistics Canada, 2009:** *Aboriginal Peoples of Canada: 2006 Census*. Released 29 January 2009. http://www.statcan.gc.ca/bsolc/olc-cel/olc-cel?lang=eng&catno=92-593-X

2 The Indian Act remains the principal vehicle for the exercise of federal jurisdiction over "status Indians", and governs most aspects of their lives. It defines who is an Indian and regulates band membership and government, taxation, lands and resources, money management, wills and estates, and education. **Hurley, Mary C., 1999**: *The Indian Act*. http://dsp-psd.pwgsc.gc.ca/Collection-R/LoPBdP/EB/prb9923-e.htm.

3 Statement by the Prime Minister of Canada at the Crown-First Nations Gathering January 24, 2012, online at http://www.afn.ca/uploads/files/cfng/pm-cfng.pdf

4 Puglaas (Jody Wilson-Raybould), "Unlocking the Potential of First Nation Economies: A Presentation to the First Nations Crown Gathering", 24 January 2012, online at http://www.afn.ca/uploads/files/cfng/cfng-jody-wilson-raybould.pdf

5 Amnesty International Canada et al. 2012: "Fifth anniversary of *United Nations Declaration on the Rights of Indigenous Peoples:* protection of Indigenous peoples' rights to lands, territories and resources more urgent than ever", September 12, 2012, online at http://quakerservice.ca/wp-content/uploads/2012/09/UNDRIP-5th-anniversary-joint-statement-Sept-12-FINAL-.pdf

6 Committee on the Elimination of Racial Discrimination, "Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*): *Nineteenth and twentieth periodic reports of Canada* (continued)", Summary record of 1242nd meeting on 23 February 2012, UN Doc. CERD/C/SR.2142 (2 March 2012), para. 39.

7 *First Nations Child and Family Caring Society of Canada* v. *Canada (Attorney General)*, 2012 FC 445 (Federal Court of Canada), para. 353.

8 Amnesty International Canada et al. 2012: "*UN Committee urged to examine discrimination against Indigenous peoples during review of Canada's human rights record*", 16 Feb. 2012, online at http://quakerservice.ca/wp-content/uploads/2012/02/CERD-joint-media-advisory-Feb-16-2012.pdf

9 Committee on the Elimination of Racial Discrimination, "*Concluding observations of the Committee on the Elimination of Racial Discrimination of Canada* UN Doc. CERD/C/CAN/CO/19-20. 9 March 2012. Online at http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.19-20.pdf
See also Amnesty International Canada et al. 2012: "UN Committee calls for "comprehensive strategy" to uphold the human rights of Indigenous peoples in Canada", 14 March 2012, Online at http://quakerservice.ca/wp-content/uploads/2012/03/CERD-joint-media-advisory-March-14-2012-copy.pdf

10 **Human Rights Council, 2012:** *Report of the Special Rapporteur on the right to food, Olivier De Schutter*. 24 December 2012, UN doc A/HRC/22/50/Add.1

11 **Brent Wittmeier, 2012:** "Aboriginal access to food under scrutiny" *Edmonton Journal* 13 May 2012.

12 Committee on the Rights of the Child, *Concluding observations: Canada*, UN Doc. CRC/C/CAN/CO/3-4 (5 October 2012).

13 *Ross River Dena Council* v. *Yukon*, 2012 YKCA 14.

14 **Saul Chernos, 2012:** "The mining onslaught in native communities", NOW Magazine, May 2012

15 **Robert A. Williams, Jr.:** *Savage Anxieties: The Invention of Western Civilization* (New York: Palgrave Macmillan, 2012) at 228; **Robert J. Miller:** "The International Law of Colonialism: A Comparative Analysis", (2011) 15 Lewis & Clark L. Rev. 847, at 849 and 854; **Steven T. Newcomb:** "The Evidence of Christian Nationalism in Federal Indian Law: The Doctrine of Discov-

ery, *Johnson v. McIntosh*, and Plenary Power", (1993) 20 N.Y. U. Rev. Law & Social Change 303.

16 **Amnesty International Canada et al, 2013:** "Joint Statement Supporting Chief Spence and "Idle No More"" January 2, 2013, online at http://quakerservice.ca/wp-content/uploads/2013/01/Joint-statement-supporting-Chief-Spence-and-Idle-No-More-2-Jan-13-updated-9-Jan.pdf

17 *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, GA Res. 67/1, 24 September 2012 (adopted without vote), para. 2.

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UNITED STATES OF AMERICA

According to the United States Census Bureau, approximately 5.2 million people in the U.S., or 1.7% of the total population, identified as Native American or Alaska Native in combination with another ethnic identity in 2010. About 2.9 million, or 0.9% of the population, identified themselves only as American Indian or Alaska Native. There are currently around 365 federally recognized tribes in the United States, and most of these have recognized national home-lands. Almost 80% of those identifying as American Indians or Alaska Natives live outside Native areas, many in large cities.

The government has treaty and trust obligations toward indigenous nations, stemming from individual treaties, federal Indian law, and the Alaska Native Settlement Act. They are under the tutelage of the state, which acts as their guardian. Separate federal agencies, such as the Bureau of Indian Affairs and the Indian Health Service, are responsible for the implementation of the federal government's responsibilities.

The United States has not ratified ILO Convention 169. The United States announced in 2010 that it would support the UNDRIP after voting against it in 2007. This support is limited, however, to a moral acknowledgment.

Federal Administration

In 2012, President Obama, Democrat (D), was re-elected as President of the USA, which means that the federal policies toward indigenous peoples will remain stable. The re-election also ensures that the American Indian Health Care Improvement Act, which was included in the national healthcare reform (see *The Indigenous World 2011*), will not be threatened. Native issues were, however, absent from the presidential campaign.

Visit of the UN Special Rapporteur on the rights of indigenous peoples

In April and May, the UN Special Rapporteur on the rights of indigenous peoples, Professor James Anaya, paid an official visit to the United States. He held meetings and consultations across the country and released an official report on the human rights situation of indigenous peoples in the USA in August.[1] The report found that:

> *indigenous peoples in the United States [...] constitute vibrant communities that have contributed greatly to the life of the country; yet they face significant challenges that are related to widespread historical wrongs, including broken treaties and acts of oppression, and misguided government policies, that today manifest themselves in various indicators of disadvantage and impediments to the exercise of their individual and collective rights.*

The Special Rapporteur highlighted social and economic conditions, violence against women, land and treaty rights, including access to sacred places, child welfare issues, sovereignty, recognition, and cultural change as continuing prob-

lems for Native communities in the United States. Special emphasis was placed on obstacles in the access to lands and waters for subsistence hunting and fishing in Alaska. He lauded the policy trends of the past few decades but noted that implementation and funding of these policies was still lacking. He noted that:

> *unless genuine movement is made toward resolving these pending matters, the place of indigenous peoples within the United States will continue to be an unstable, disadvantaged and inequitable one, and the country's moral standing will suffer.*

The report issued a call for a "programme of reconciliation," "a resolve to take action to address the pending, deep-seated concerns of indigenous peoples, but within current notions of justice and the human rights of indigenous peoples." Finally, the Special Rapporteur emphasized the weight of the UN Declaration on the Rights of Indigenous Peoples, which the federal government supports as a moral guideline (see *The Indigenous World 2012*). Anaya noted that "the Declaration is now part of United States domestic and foreign policy" and that it "should now serve as a beacon for executive, legislative and judicial decision-makers in relation to issues concerning the indigenous peoples of the country". This is unfortunately not likely to be a perspective on the Declaration that will meet with the agreement of the federal government. While the Declaration has surely given indigenous peoples one more argument in their fight for self-determination, that argument in part depends on whether the national political establishment accepts the value of UNDRIP.

Violence against Women

To improve the protection of Native women against violence (see *The Indigenous World 2012*), in April the Senate voted for a re-authorization of the Violence Against Women Act (VAWA), which includes language to strengthen Native communities. It requires the inclusion of "Native Alaskan villages" in a national baseline study on violence against Native women, it clarifies that tribes can issue and enforce protection orders over anybody on their territory, and it restores jurisdiction to tribes over non-Indians who commit violence against their Native spouses, partners and close acquaintances. This last provision would expressly not apply

to Alaska Natives. Alaska Senators Lisa Murkowski (R) and Mark Begich (D) argued that this was necessary because the definition of Native territories works differently in their state from others, although many Alaska Natives themselves wanted to be included in the provision.[2] Although passed with the support of Senate Republicans, the House of Representatives has blocked the VAWA because of the last provision. "For the first time, the committee would extend tribal criminal jurisdiction over non-Indians," Sen. Chuck Grassley (R-Iowa) said in defense of his opposition to the bill.[3] Sen. Kay Bailey Hutchison (R-Texas), although voting for the bill, worried that: "One of the problematic provisions of the [...] bill would give tribal courts authority to arrest, try and imprison any American."[4] The Republican-controlled House of Representatives passed a version of the VAWA that lacked these provisions and, as a consequence, the Act was not re-authorized in 2012 because the two bills were not reconciled. Tribal courts thus still lack any means to address the issue of non-Natives who attack their Native partners.

The New York Times reported in February that, in 2011, the government was still declining to pursue 65% of rape charges and 61% of cases involving charges of sexual abuse of children on reservations.[6] In a follow-up, it showed that funding for the Justice Department's Coordinated Tribal Assistance Solicitation program, for example, had actually dropped between 2010 and 2012, and that several tribes were employing fewer police officers in 2012 than they had done in 2000, among them Pine Ridge in South Dakota and Fort Apache in Arizona.[7]

Oil Production

Hydraulic fracturing or fracking technology has led to major booms in gas and oil production. The Fort Berthold Indian reservation, home to the Mandan, Hidatsa and Arikara, in North Dakota, the Southern Ute Indian Tribe in Colorado, and the Northern Arapaho and Eastern Shoshone tribes of the Wind River Reservation in Wyoming are the three Native nations outside of Alaska probably most affected by - and taking most advantage of - these new economic potentials, although others, such as Fort Peck and Blackfeet Reservations in Montana, are starting to see large interests. In many rural Native communities, resource booms bring much needed funds, but also increased population through the influx of workers, often without permanent housing solutions, social instability, increased crime and environmental threats. Enforcement of regulations and law enforcement are often

overwhelming for tribal and federal governments. Furthermore, indigenous peoples draw fewer benefits from the resource developments on their lands than is popularly perceived. On Fort Berthold, 60% of members do not receive any individual royalties from the oil boom but have to live with rents that have quadrupled, higher commodity prices and an insufficient infrastructure. Tribal governments, on the other hand, welcome the new opportunities. Many have built their own energy companies; the most successful is probably Red Willow Production, owned by the Southern Ute Tribe, which is active in oil and gas extraction all over the United States. Although in planning and under construction for several years, in October, the Department of the Interior gave official permission for a newly-built refinery on the Fort Berthold Reservation. Some citizens of the reservation continue to oppose the refinery, with the support of the Indigenous Environmental Network. The chairman of the Three Affiliated Tribes, Tex Hall, has opposed increased federal regulations over oil extraction and fracking at several hearings of Congress this year. If regulations for tribal lands are more cumbersome than those for private or state lands, tribal governments fear that companies will not invest in reservations.

Land and Water Rights

While federal agencies are attempting to increase oversight of fracking, the federal government has reviewed and eased its regulations for the leasing of lands on reservations. In July, President Obama signed the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act. If tribes write their own regulations for the leasing of tribal lands for residential, educational, business, public, religious and recreational purposes, and these regulations gain the approval of the Secretary of the Interior, then the tribes can process these leases without having to seek Bureau of Indian Affairs (BIA) approval. This will reduce the time needed for the approval of new homes and businesses, and thus, it is hoped, might hasten economic development and ease housing shortages. In November, the BIA announced a comprehensive reform of leasing regulations over Indian lands. The new regulations establish concrete steps to complete an application, put in place deadlines for the BIA to review applications, and limit the reasons for which the BIA may decline an application, among other things. By limiting the role of the BIA in the approval of leases, tribes gain more self-determination, and the process should become a lot more transparent.

The Cobell Settlement over mismanagement of federal trust fund accounts (see *The Indigenous World 2012*) became final in November, with the first payments to members of the class-action lawsuit possible in December. The last challenges to the settlement were dismissed by the Supreme Court and the appeals period ended, and so the US$1.5 billion can be distributed to the approx. 500,000 members of the lawsuit. This includes at least 5,000 Alaska Natives who had obtained individual lands under the Allotment Act. The Department of the Interior will use US$1.9 billion to purchase fractionated land interests from willing sellers so that consolidated interests can be put to use by tribes. In April, the federal government also reached a settlement over the mismanagement of tribal trust funds with 41 tribes for slightly over US$1 billion. Negotiations with other tribes continue. Some of the tribes will invest their share of the money in private accounts until they decide what to do with it, while others will leave it with the federal government.

Grassroots activism on the Navajo and Hopi reservations in Arizona have probably derailed the Navajo-Hopi Little Colorado River Water Rights Settlement. The agreement would have made the two tribes waive their water rights in return for guaranteed delivery of drinking water to communities. The Navajo Nation Council voted in opposition to the settlement, and thus against the Navajo Nation President. This left the settlement up to continuing negotiations between a Navajo water rights task force and the Department of the Interior. The Hopi, whose government approved the settlement, are also dependent on the outcome of these negotiations. If the settlement fails, the tribes will have to go through litigation to enforce their water rights.

In Oklahoma, the Chickasaw and Choctaw Nations are involved in a federal lawsuit against the state of Oklahoma over water rights to Sardis Lake. This lawsuit is currently stayed, and the parties are negotiating. The tribes claim that the water rights are guaranteed to them by treaty. The state wants to sell access to water from the lake to Oklahoma City. Increasingly, states, cities and tribes in the south-western United States are trying to secure water rights as it becomes more obvious that there may not be enough water to sustain future population growth, agriculture and industry.

In Alaska, on the other hand, too much water is endangering Native villages because of climate change. Melting permafrost is making communities sink or is causing erosion that endangers them. The village of Newtok, for example, is planning a complete relocation to a new site. The military has been helping the com-

munity prepare the new town site but, in June, a military landing boat bringing equipment to help with the move ran aground near Kodiak. The community is continuing with the project because the present town site will soon be uninhabitable due to sinking. The total costs for this relocation are estimated at US$130 million. According to some estimates, 30 other communities are in need of total or partial relocation in Alaska because of climate change.

Land and Environmental Concerns

The Great Sioux Nation has been successful in buying a site in the Black Hills that is sacred to the Lakota people. The site, Pe' Sla, came up for auction in August. The Reynolds family owned the land for generations, and had always allowed Lakotas access to perform ceremonies there; this practice was called into question when the land was slated for auction and potentially subdivided. Because the family worked with the tribes, they had enough time to raise US$9 million and purchased the land in November. The tribes contributed around US$6 million but much of the money came from fundraising efforts over the Internet, endorsed by national celebrities.

Six months after filing a lawsuit against the Bureau of Indian Affairs, the Hopi tribe reported in July that the Environmental Protection Agency (EPA) had announced that it would step up efforts to protect drinking water supplies in the area of the Tuba City open dump. The dump site, operated by the BIA for almost 50 years, was used by the Rare Metals Uranium Mill in the 1950s and 60s to deposit radioactive materials. The EPA has promised to drill more monitoring wells on the site and to monitor the drinking water for the village of Moenkopi.

In Wisconsin, activists from the Keweenaw Bay Indian Community and the Bad River Band of the Lake Superior Tribe of Chippewa Indians, who had joined with non-Natives to form the Mining Impact Coalition of Wisconsin, saw temporary success. Gogebic Taconite pulled out of a plan to open a huge iron mine after the State Senate failed to streamline environmental protections in mining companies' favor. Governor Scott Walker (R) said he was confident that industry-friendly laws would be passed next year.

Both Minnesota and Wisconsin opened hunting seasons for wolves in 2012, now that the EPA has taken grey wolves off the endangered species list, thus placing their management under state control. The wolf hunting seasons met with

resistance from the Ojibwa people in both states because they regard wolves as their relatives. In Minnesota, all seven bands banned wolf hunting on their lands. In many cases, Indian-owned lands amount to only a fraction of the total reservation area, however. States have regulatory control over privately-owned lands on reservations. The state Department of Natural Resources (DNR) denied a request by the bands to close all reservation lands to the hunt. The DNR commissioner reportedly said that his department was not tasked with considering cultural arguments but with managing the wolf population.[10] Categorizing wolves as a manageable population seems to close the door to the realization that the decision to open the wolf hunt is also based on specific cultural arguments.

Contract Payments

In June, the Supreme Court published its decision in the case of *Salazar v. Ramah Navajo Chapter*. This case dealt with payments for contracts between the federal government and tribes. Under the Indian Self-Determination and Educational Assistance Act of 1975, tribes can enter into contracts to deliver services, such as education, healthcare, environmental protection, etc., that were previously delivered by the Bureau of Indian Affairs and other federal agencies. The agencies remain responsible for funding, and the contract can be revoked should the tribe not fulfill its service expectations, as happened on Spirit Lake. Over the past decades, these contracts have been underfunded, that is, the government has not covered the full contract costs for tribes. In its decision, the Supreme Court has now decided that the government needs to cover all costs, as promised. However, the Court explicitly left open the possibility of Congress changing the law. This would basically mean that if Congress publicly states that it is not going to pay all the costs of the contracts it enters into, it can do so; Congress could also make it lawful for the government to refuse to enter into these agreements, however.[11] This would be a large blow to Native self-determination. The potential consequences of the case are large, however. Already, a similar case, this time affecting Alaska Natives, has been changed. In *Arctic Slope Native Association v Sebelius,* the Federal Circuit Court decided that the Indian Health Service (IHS) had to pay full health service contract costs to the Arctic Slope Native Association. It is safe to say that other tribes will seek similar back payments.

In good news for Native veterans, in December, IHS and the Veterans Administration (VA) announced an agreement through which the VA will directly reimburse IHS facilities for health services rendered to Native veterans. This means that they will not have to travel to VA healthcare facilities but can seek services at often much closer IHS facilities. Access to healthcare, is one of the most important obstacles for American Indians with medical needs, in particular because of transportation issues.

Russell Means

In October, long-time activist, celebrity, politician and movie star Russell Means passed on. A former leader of the American Indian Movement, he had a penchant for finding the media spotlight to publicize injustices committed against Native peoples. While some suggested that his quest for publicity was for himself, and while his goals and strategies were often controversial, there is no question that he put himself in harm's way for the cause he was following until this year. Even though Means faced opposition from many American Indians, all American Indians lost one of the most recognized voices of resistance with his passing. ❍

Notes and references

1 The Report, the Situation of Indigenous Peoples in the United States of America, is available online at http://unsr.jamesanaya.org/list/country-reports

2 Rob Capriccioso: *VAWA Passes Senate With Major Tribal Court Provisions; Status Quo for Alaska Natives*. April 26, 2012, online: http://indiancountrytodaymedianetwork.com/article/vawa-passes-senate-with-major-tribal-court-provisions%3B-status-quo-for-alaska-natives-110401

3 Rob Capriccioso: *Tribal Provisions of Women Safety Law Under Senate Attack*. April 1, 2012, online: http://indiancountrytodaymedianetwork.com/article/tribal-provisions-of-women-safety-law-under-senate-attack-105634

4 Rob Capriccioso: *U.S. Senator Worries Tribal Courts Will Imprison 'Any American.'* April 16, 2012, online: http://indiancountrytodaymedianetwork.com/article/u.s.-senator-worries-tribal-courts-will-imprison-%E2%80%98any-american%E2%80%99-108508

5 http://www.un.org/esa/socdev/unpfii/documents/EGM12_US_statement.pdf

6 Timothy Williams: *Higher Crime, Fewer Charges on Indian Land*. February 20, 2012, online: http://www.nytimes.com/2012/02/21/us/on-indian-reservations-higher-crime-and-fewer-prosecutions.html

7 Timothy Williams: *Washington Steps Back From Policing Indian Lands, Even as Crime Rises*. November 12, 2012, online: http://www.nytimes.com/2012/11/13/us/as-crime-rises-on-indian-lands-policing-is-cut-back.html
8 http://coalitionforindianchildren.org/about/mission_vision/
9 The only Supreme Court decision on ICWA so far has been *Mississippi Band of Choctaw v. Holyfield* (1989).
10 Dan Kraker: *Ojibwe Bands Ban Wolf Hunting - but only on Indian-Controlled Lands*. October 31, 2012, online at: http://minnesota.publicradio.org/display/web/2012/10/31/environment/ojibwe-ban-wolf-hunting/
11 *Salazar v. Ramah Navajo Chapter,* 132 S. Ct. 2181, 183 L. Ed. 2d 186 (2012)

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MEXICO AND CENTRAL AMERICA

MEXICO

In 2010, the National Institute for Statistics, Geography and Computing (INEGI) conducted the 13th Census of Population and Housing, which indicates that there are a total of 15,703,474 indigenous people in the country, a figure that is obtained by adding 6,695,228 "Indigenous language speakers and Population aged 0 to 4 years living with a head of household that is an indigenous language speaker" to the 9,008,246 on the registry of "Population in indigenous census households". This population size makes Mexico the country with the largest indigenous population on the American continent, and the greatest number of native languages spoken within its borders, with 68 languages and 364 different dialects recorded.

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

2012 saw an increase in conflicts, an escalation of violent actions in response to these, and renewed private sector strategies for exerting pressure and grabbing land, in collusion with public officials, political parties and institutions. Alongside

this, and as a consequence of this situation, the indigenous peoples launched actions aimed at broadening their demands for autonomy and self-defence.

Different sectors of opinion, and particularly the indigenous communities and organisations, made their discontent known to President Enrique Peña Nieto's new government regarding the state's lack of compliance with the San Andrés Accords, approved exactly 16 years ago, while at the same time the "neoliberal project" that is affecting indigenous territories, natural resources, autonomy projects and cultures continues apace. Against this backdrop, on 13 February, the government – through the Ministry of the Interior – approved the "Agreement creating the Commission for Dialogue with Mexico's Indigenous Peoples". "The aim of the Commission will be to reach the necessary agreements with the different indigenous peoples of Mexico in order to ensure full respect for their human rights, to meet their needs and strengthen their right to self-determination and autonomy, while preserving their own social, economic, cultural and political institutions." [2] It is significant that the Agreement refers to the Law for Dialogue, Conciliation and Dignified Peace in Chiapas but fails to refer to the indigenous right to

lands and territories or, no less important, to the historic problem of Zapatismo in Chiapas.

The end of President Felipe Calderón's administration (Dec 2006-Nov 2012) was characterised by a deepening of inequality and increased poverty for indigenous peoples. Despite some manipulation of the figures,[3] various government bodies did note this increased vulnerability on the part of indigenous Mexicans in their reports (CONEVAL, National Commission for the Evaluation of Public Policies).

Chimalapas

On 6 November 2011, the then Governor of Chiapas, Juan Sabines Guerrero, announced the creation of four municipalities on Zoque communal lands in Chimalapas.[4] In January 2012, the municipal presidents of Santa María and San Miguel Chimalapas lodged a constitutional complaint before the Supreme Court of Justice (SCJN) for the invasion of 164,000 hectares of their territories. Without naming the Zoque or their communal land, the Oaxaca state government said it was taking action to defend the territorial integrity of Oaxaca in the face of plans by Chiapas to move the inter-state boundary. It therefore lodged a constitutional challenge, which was rejected by the Supreme Court as inadmissible. Alongside this court action, the governments of Chiapas and Oaxaca established a "negotiating table" involving the participation of the Ministry of the Interior. While the "negotiations" were in progress, it became apparent that 25 sawmills linked to Cintalapa (Chiapas) had been established on Zoque territory, with logging permits issued by the Ministry for the Environment and Natural Resources (Semarnat), which will mean logging in the area which provides between 30% and 42% of the country's water resources. Santa María Chimalapas declared itself an Autonomous Municipality on 16 October 2012, while the Oaxaca government again lodged a constitutional challenge with the SCJN. On 21 December 2012, this latter declared both the dispute over the invasion of 164,000 hectares of Zoque land and the dispute regarding the inter-state boundaries admissible and suspended the creation of the new municipalities on indigenous territory until these matters had been resolved.[5]

Wind power projects in the Tehuantepec Isthmus

Although the Oaxaca state government has been increasingly demonstrating its public support for wind power generation ("Wind power is the engine of Oaxaca's development"[6]), conflicts with the isthmus' indigenous communities are increasing in number. For example, in San Dionisio del Mar (Huave or Ikoots peoples) there has been a growing number of roadblocks, marches, blocking of access, storming of municipal offices and halls, clashes with roving and violent gangs from the companies, kidnappings, threats and slander, along with police actions, among other things. This process has led the Huave of San Mateo del Mar and San Francisco del Mar to mobilise alongside those from San Dionisio del Mar, and the Zapotec (Binizá) from Juchitán, Xadani and Álvaro Obregón to join forces with the cooperatives of Emiliano Zapata and Charis. All live around and share the Laguna Superior, which is where Barra de Santa Teresa is to be found, the place chosen by MacQuaire (Australia) to establish its wind project, despite opposition from the Huave and Zapotec peoples. In September, Vestas (Denmark), supplier of turbines to the project, sent a representative to decide whether to continue their cooperation or not. For its part, the Oaxaca government has appointed a negotiator to smooth MacQuaire's path with the indigenous opposition who, in turn, have taken legal action against Mareña Renovable, one of the Australian company's subsidiaries, denouncing the fact that PGGM from the Netherlands (Pension Fund) is investing in projects that are violating their rights. On 4 December 2012, the judge of the Seventh Circuit granted a temporary suspension of the wind project in the community of San Dionisio del Mar. Following this, the company began a public and xenophobic campaign against the region's social leaders and even distributed 8 million pesos among some of them. The Huave are calling for the permanent suspension of the project but, in the meantime, new players are becoming involved in the conflict: the Oaxaca government is coming out clearly on the side of the wind energy companies; the courts have ruled partially in the indigenous peoples' favour; and there is now greater public involvement on the part of not only the Zapotec and Huave communities but also the regional organisations (*Unión de Comunidades Indígenas de la Zona Norte del Istmo,* ucizoni*; Asamblea de los Pueblos Indígenas del Istmo en Defensa de la Tierra y el Territorio*). The business decisions are taken over the heads of the indigenous peoples, with the support of the state government and in the continu-

ing absence of the state and federal institutions that have responsibility for indigenous affairs. Meanwhile, the regional and local organisations are still unable to come up with an alternative, coherent and inclusive proposal for wind power projects that would take economic, societal and environmental issues into account while also embarking on decisive legal action aimed at implementing ILO Convention 169 and enforcing the right to binding consultation and to free, prior and informed consent.[7]

Community police

In the middle of the year, Purépecha community members from Cherán denounced the fact that, despite the agreements signed with the federal and Michoacán state governments aimed at protecting them and their forests from attacks and even murders by loggers and drugs traffickers, the authority had done nothing to help them. They stated that although they had sought justice and respect for their institutions, they were now having to resort to self-defence to prevent the looting of their forests, kidnappings and threats by organised crime.[8] For its part, the Ministry of Environment and Natural Resources states that Cherán and Chimalapas are the areas with the highest concentration of illegal logging in the country.[9]

Now celebrating its 17th anniversary, the Regional Coordinating Body of the Community Authorities/Community Police (*La Coordinadora Regional de Autoridades Comunitarias-Policía Comunitaria* – CRAC-PC) has 80 affiliated communities, with applications being considered from some 60 more in the regions of Costa Chica, Montaña and Montaña Alta. This organisation states that, due to its presence, there has been a 90% decline in common crime in the area but also that, over the past year, there has been a campaign of harassment, arbitrary detention, selective kidnapping and death threats unleashed, with the increasing presence of organised crime (drugs trafficking) in the region. During the celebrations for its 17th anniversary, Working Group No. 3 came to the following conclusion: "Territorial defence is an integral task that involves not only protecting the land but also the air, water, sacred places and food. The threat comes not only from mining companies but also from dams and conservation projects, such as payments for environmental services and the Biosphere Reserve".[10]

In other words, the CRAC-PC's work of territorial defence is becoming broader and deeper, and it is now having to face up to and protect itself from the impacts of the state and federal programmes that are being planned for its territory with international investment. Given the federal and state authorities' failure to protect the communities and municipalities, the Community Justice and Police model is being extended to Guerrero. On 17 September, the Popular and Civic Police (PCP) movement was established in the communities of Huamuxtitlán, Cualac and Olinalá; on 25 November a Community Police Force was established in 30 areas of Ayutla de los Libres and Tecoanapa, and on 2 December a similar force was established in 30 Nahua villages of Tenalacatzingo.[11]

Mining

Mexico's mining boom forms part of a wider Latin American and, indeed, global situation.[12] In Mexico, land that is officially designated as being socially owned (cooperatives and communities, the territorial base of indigenous populations) covers 1.6% of the country's area; small landholdings (private property, including indigenous peoples) account for 37.1% and public property (also some indigenous) 11.3%.[13] If we consider that 70% of the national territory has mining potential and that half of this territory is under social ownership,[14] we can see that there is likely to be increased contact between mining companies and indigenous peoples, and potentially a concomitant increase in conflicts.

Medium-scale mining, which is having the greatest impact, produces 5.29% of the country's gold and 4.79% of its silver, and is made up of what are known as "junior" or "Canadian" mining companies. Although they are not all of Canadian origin, most of them are listed on the Vancouver or Toronto stock exchanges. These companies "are characterised by two distinctive elements: a) their ephemeral nature, derived from the model of intensive exploitation that they use; and b) their location in what we can term the third frontier of Mexican mining, in addition to the use of technologies that produce notorious environmental liabilities and result in conflicts among the affected populations", establishing settlements in "isolated and inaccessible areas of the national landscape" and where national companies do not generally go due to the high production costs. These areas are the Madre Occidental mountains and the Guerrero, Oaxaca, Chiapas, Puebla,

Michoacán and Veracruz mountains, in other words indigenous areas of high deprivation and poverty, and with little or no state presence.[15]

It is estimated that there are more than 200 environmental conflicts over natural resource exploitation processes in Mexico.[16] In truth, no-one knows how many current conflicts there are in total, nor how many are due to mining.[17] The main thing to understand is that the environmental liabilities relate not only to a problem of risks and impacts but also to "a debt in terms of a loss of heritage for the countries in which the work takes place, with its communities and ecosystems affected by the extractive activities".[18] Concern over the relationship between indigenous peoples and extractive companies in Mexico has reached as far as the United Nations. As stated by CERD in March 2012: "The Committee expresses its deep concern at the growing tensions between outsiders and indigenous peoples over the exploitation of natural resources, especially mines".[19] Local organisations have also mobilised against mining companies on their territories or against some activities that are not viewed positively by their members. Such is the case of Puebla, where the *Unidad Indígena Totonaca Nahua* (Unitona), the *Organización Independiente Totonaca* (OIT) and the *Organización Indígena Independiente Ahuacateca* (OIIA) are taking collective action against open-cast mining in Tetela de Ocampo. On 21 November 2012, they supported the expulsion of the Chinese company, JDC Minerales, from Tlamanca, Zautla municipality in the Sierra Norte de Puebla.[20] In Veracruz, an "Agreement for a Veracruz Free from Toxic Mining" has been organised in the cases of La Paila, Las Cruces, Bandera, Minas, Los Tuxtlas and Caballo Blanco.[21] In Guerrero, the Regional Coordinating Body of Community Authorities and Community Police of Costa Chia – Montaña (*Coordinación Regional de Autoridades Comunitarias y la Policía Comunitaria de la Costa Chica – Montaña*) is supporting the Náhuatl cooperative of Ayotitlán against the Ternium mining company.[22] In Chiapas, for its part, Blackfire Exploration Ltd. is accused of murdering an anti-mining leader and mining concessions have been noted in Acacoyagua and Escuintla on El Triunfo Reserve in the Sierra Madre, affecting pine forests, mangrove swamps and coastal estuaries.[23]

Loss of lands and decision-making

There are also other processes threatening the indigenous peoples of Mexico and which sometimes lead to a loss of control over their territories. Tourism is one

such process, for example the Barranca del Cobre Tourist Project, which began in 1996 in Chihuahua without any consultation and without including the affected Rarámuris (Tarahumaras) communities. After 15 years of its presence, the Rarámuris communities are still suffering from a lack of clean water and services in general; their healthcare is deficient, their habitat has been affected, as have their sacred places, their agricultural and pasturelands; their handicrafts have been displaced from the markets, their water has been contaminated through wastewater discharge and there is now speculation and growing pressure on their lands due to a desire to expand the hotel trade. In March 2012, the SCJN issued a ruling that called on the three branches of government to include the Rarámuris communities in the Consultative Council for the Barranca del Cobre Tourist Project.[24] Meanwhile, the Kumiai of Baja California are trying to defend their last 3,000 hectares – of the 19,500 they used to hold - in the face of growing pressure and demands from real estate and hotel groups.[25] At the other end of the country, in Chiapas, Zapatista cooperative members and grassroots supporters in Bachajón are facing threats, attacks and constant pressure due to the creation of the Montes Azules Reserve, linked to tourist projects.[26]

The Triqui, displaced from the Autonomous Municipality of San Juan Copala, remain on the streets of Oaxaca city, unable to return despite the state government's promises and the Peace and Harmony Agreement for the Triqui Region, signed in January 2012. The Yaquis are continuing their protest against the Independencia Aqueduct, as they assert that it will illegally draw water from the Yaqui River to take to Hermosillo, in Sonora, causing the drying up their agricultural plots and pastures. They refuse to sow genetically modified seeds or use agrochemicals but this does not, however, prevent their crops from being sprayed by planes covering the fields of neighbouring mestizos.[27] It should be recalled that Monsanto and Pioneer (a subsidiary of DuPont) plan to sow GM crops over 2 million hectares of Tamaulipas and Sinaloa, with the support of Semarnat which, since 2011, has been trying to make a distinction between centre of origin and centres of diversification of maize. In Mexico, 59 breeds and thousands of varieties of maize are recognised, and "the indigenous and peasant farmers are the ones who have created and maintained this genetic wealth".[28] The sowing of GM maize will cause the erosion of native seed varieties in their centres of origin and diversification and will threaten the indigenous peoples' food sovereignty, along with that of the country in general.[29]

Other mechanisms, also of transnational origin, that are placing pressure on territorial administration are: the Programme of Payments for Environmental Services; Reduced Emissions from Deforestation and Forest Degradation (REDD), and REDD+. All these mechanisms are being promoted by the World Bank (WB) and the Inter-American Development Bank (IDB). They are advertised as instruments of the "green economy", aimed at financing carbon capture (which normally takes place in a forest) through the issuing of certificates and bonds that are traded on global speculative markets. The creation of protected areas thus appears to be a backhand way of expropriating the lands of indigenous and peasant farmers in order to turn them into spaces for financial speculation in terms of their oxygen and carbon, hardly a subtle way of turning air into a commodity (for example, the Lacandona Forest), privatising it by means of bonds and certificates that are traded on the Stock Market.[30] The issue does not end there, however. Now the PROCEDE and PROCECOM government programmes are at an end, the Support Fund for Unregularised Farming Settlements (FANAR) is being promoted with the aim of dividing up farms opposed to any form of external interference in their landholding. This links into the search to create a private market for land in Mexico (a longstanding desire of the WB). Before handing over the Presidency of the Republic, Felipe Calderón sent Congress a legislative initiative comprising 28 amendments to the Agrarian Law aimed at bringing cooperative ownership of land to an end and expressly facilitating the Mexican land market.[31]

Chiapas and the EZLN

Having organised no protests since May 2011, the Zapatista National Liberation Army reappeared on 21 December 2012, mobilising between 30,000 and 50,000 indigenous people in the municipalities of Ocosingo, Margaritas, Palenque, Altamirano and San Cristóbal de las Casas to protest peacefully and in silence at the entrances to their municipalities. By means of a press release, Sub-comandante Marcos, one of the EZLN's leaders, indicated that the protests were not a message of war but one of struggle and resistance. Following this protest, Subcomandante Marcos published a series of press releases containing proposals and politico-organisational statements along with civic and peaceful initiatives aimed at continuing the support of Mexico and America's native peoples. He indicated that the EZLN would not ally itself with any Mexican electoral movement; he

also stated that there was still a need to clarify and establish the why, how, when and wherefore of their struggle. In these press releases, he commented on the failure of Felipe Calderón's administration, exposed Enrique Peña Nieto's record and proposed a simulation by Héctor Álvarez Álvarez, who headed the Commission for Harmony and Peace in Chiapas (*Comisión de Concordia y Pacificación en Chiapas* - Cocopa) that sought to contribute to the peace negotiations between the federal government and the EZLN. In one of his last statements, he also presented "Sub-comandante Insurgente Moisés" and called on the members of the Sixth Declaration of the Lacandona Forest to listen to the new Zapatista leader.

On 22 January 2013, President Enrique Peña Nieto launched the Hunger Crusade, a campaign that seeks to mitigate the poverty and marginalisation of the 400 municipalities with the lowest human development indices. The EZLN leader described this campaign as little more than "alms" for the poor. The EZLN maintains there is a lack of guarantees of their constitutional rights, that there are structural factor behind the growing inequality and that the socio-economic project being carried forward by the dominant society has a unilateral vision of reality that does not take into account what the indigenous peoples are proposing and implementing. This is why it continues to insist on full compliance with the San Andrés Accords.[32] ❍

Notes and references

1 **Aragón Andrade, Orlando, 2007:** Los sistemas jurídicos indígenas frente al derecho estatal en México. Una defensa del pluralismo jurídico. *Boletín Mexicano de Derecho Comparado*, Nueva Serie, Year XL, Num. 118, Jan-April 2007, pp. 9-26.

2 *Diario Oficial de la Federación*, Ministry of the Interior, Mexico, 13 February 2013.

3 The government rejects the data from the INEGI 2010 Census and takes as its demographic base the estimates of the National Population Council for 2007, "so as not to affect the indicators used in the presidential and sectoral reports" (Enrique del Val Blanco, "Manipulación de la información", *Excelsior*, 12 August 2012).

4 Press Release 6929 of the Chiapas government, 6 November 2012.

5 Copious information has been produced on this case by the National Committee for the Defence and Preservation of the Chimalapas and by Maderas del Pueblo del Sureste A.C. through www.chimalapas.blogspot.com

6 Statements from the Oaxaca Minister of Finances, 26 September 2012, at <www.nssoaxaca.com>.

7 Further information from UCIZONI <ucizoniac.blogspot.com/> and from the Assembly of Indigenous Peoples of the Isthmus in Defence of Land and Territory <tierrayterritorios.wordpress.com>.

8 *Milenio*, "Busca Cherán justicia sin violencia", 10 July 2012.
9 Angélica Enciso, *La Jornada*, 31 July 2012.
10 <www.agenciassubversiones.org/foto/2012/11/29/solo-el-pueblo-defiende-al-pueblo/>
11 Montaña de Guerrero "Tlachinollan" Human Rights Centre <www.tlachinollan.org/> and Regional Coordinating Body of Community Authorities-Community Police <www.policiacomunitarias.org/>.
12 On the website of the UNAM Multicultural Mexican Nation University Programme (PUMC-UNAM) you will find the "Database of Mining Megaprojects in Indigenous and Black Regions of Latin America", <http://www.mezinal.com.mx/mineria.php> and <http://www.nacionmulticultural.unam.mx/>.
13 Francisco López Bárcenas and Maya Monserrat Eslava Galicia, *El Mineral o la Vida. La Legislación minera en México*, México, COAPI, 2011.
14 Martín Cuadra, "Minería Mexicana perforadora de Autonomía", at *Ecoportal*, <www.ecoportal.net>, 27 March 2012.
15 Juan Luis Sariego Rodríguez, "La minería mexicana: el ocaso de un modelo nacionalista", in *Apuntes*, vol. XXXVIII, no. 68, University of the Pacific Research Centre, 2011, pp. 137 – 165.
16 Martín Cuadra, *op. cit.*
17 Joan Martínez Alier, "¿Cuántos conflictos ambientales por minería hay en el mundo?", in *La Jornada*, 17 July 2012.
18 Consuelo Infante, *op. cit.* The issue can be clearly seen when one analyses, for example, mining in glacial zones and its impact on the water that rises there and which feeds vast areas. In short, if there were no glaciers in the Andes there would be no Amazon River.
19 Committee for the Elimination of Racial Discrimination, 80th period of sessions, United Nations CERD/C/MEX/16-17, 9 March 2012, paragraph 17.
20 Rosa Rojas, "Surgen en Puebla movimientos de resistencia contra mineras", in *La Jornada*, 23 December 2012.
21 Javier Hernándes Alpizar, "México: se le cae el teatrito a la minera", in *Kaos en la Red*, 27 February 2012, <www.kaosenlared.net/>; "Semarnat clausuró el proyecto Caballo Blanco por afectación forestal y no por su cercanía a la planta nuclear de Laguna Verde", in *Minería al Día*, 24 May 2012; David Bacon, *op. cit.*
22 National Indigenous Council, CNI, "Nahuatl de Ayotitlán: nuestras formas de autodefensa y la autonomía", in *ADITAL*, 20 November 2009.
23 Gustavo Castro Soto, "CIEPAC", in *ADITAL*, 7 December 2009; and in *Minería al Día,* 5 July 2012 and 27 December 2012.
24 Victor M. Quintana S. Dignidad "Rarámuri en Acción", in *La Jornada*, 28 September 2012.
25 Rosa Rojas, "El Pueblo Kumiai enfrenta la codicia de invasores por la riqueza y amplitud de su territorio", in *La Jornada*, 9 September 2012.
26 Magdalena Gómez, "El despojo de los tzeltales en Bachajón", in *La Jornada*, 20 November 2012; Sergio Ferrer, "A nuestros pueblos los han oprimido y engañado con la reserva Montes Azules en Chiapas", in *Kaos en la Red*, 10 October 2012.
27 Karim Oswaldo Duarte Nafarrete, María Marcela Rascón González and Reyna Selina Valenzuela Rendón, "Historia de resistencia Yaqui", in *CIP América*, 17 October 2012.
28 Grain, "¡Alarma!: avalancha transgénica en México", 20 November 2012.
29 Greenpeace, *Y tú… ¿sabes lo que comes? Guía de Transgénicos y Consumo Responsable*, 2nd edition, March 2011, in <www.ytusabesloquecomes.org>.
30 Elva Mendoza, "Áreas Naturales Protegidas: el disfraz del despojo", in *Red Voltaire*, 11 November 2012.

31 Francisco López Bárcenas, "Adiós al ejido", in *La Jornada*, 30 November 2012.
32 Gloria Muñoz Ramírez "Desinformémonos, Nosotros no nos vamos a dejar", in *Kaos en la Red*, 28 August 2012.

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GUATEMALA

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

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

2012 was one of the most controversial years in terms of indigenous peoples' development in Guatemala. Indigenous peoples found themselves seriously affected by the repressive policies of the new government that came to power at the start of the year, a government headed by Otto Pérez, a former soldier whose electoral campaign focused on taking a hard line in order to improve governance, security and justice. Little progress was therefore made in terms of recognising indigenous rights, and hitherto unseen and regrettable actions – that could only be described as massacres – were perpetrated upon indigenous communities, such as in the case of the Maya K'iche' peoples on 4 October 2012. The social organisations generally, and indigenous peoples in particular, very quickly realised that there will be little hope for progress during this government's term in office (2012 -2015) as long as political rhetoric and legal actions regarding development policies and programmes favour the interests of the country's traditional economic and political elites and transnational companies, interests that are focused on the natural resource extraction industry.

DEPARTMENTS

1. Santa Rosa	4. Quetzaltenango	7. Guatemala	10. Totonicapán
2. Jutiapa	5. Quiché	8. Escuintla	11. Baja Verapaz
3. Jalapa	6. Chimaltenango	9. Sololá	12. Department of San Marcos

The presidential and legislative elections brought little change in terms of indigenous representation within the new government's structure: only ten indigenous deputies, of which a mere four were women, and, as usual, only one indigenous person appointed to head a ministry: the Ministry of Culture and Sports.

From a "Mayan face" to a "hard-line policy"

One of the new government's main actions was to dismantle what little progress had been made by its predecessor on indigenous affairs. While there had been serious concerns raised over the folkloric image and media use made of indigenous peoples by the previous government of Alvaro Colom, a policy known as the "Mayan face", and over the little progress made with regard to the indigenous agenda, Colom's government did at least give the impression of being more open to dialogue with the indigenous organisations, even if these talks resulted in little. The current government, in contrast, rejected the use of the Mayan flag (often flown on public buildings), abandoned the holding of any kind of Mayan ceremony during public events and abolished the "Indigenous Peoples' Embassy". Although these actions were more symbolic than anything, they made it clear that the new government was not going to be willing to listen to indigenous demands, far less be interested in building a plural state. Spokespersons for the country's conservative elite demonstrated their support for the new government position by inundating the mass media with messages harking back to the most deep-rooted racism, discrediting indigenous peoples' demands, denying their existence and forcing through the construction of a single Guatemalan identity that would allow no room for ethnic differences. To cap it all off, they accused the indigenous organisations of being manipulated by foreign organisations. Following the events in Totonicapán (see below), representatives of these elites not only showed their support for the government's "hard line" but also called for the expulsion of the Office of the UN High Commissioner for Human Rights from Guatemala, accusing this body of interfering in domestic affairs.

Another issue on which the new government sought to distance itself from the previous was that of social programmes. These programmes, aimed at supporting the poorest families living primarily in indigenous areas, have been considered a mechanism used by the previous government to gain electoral support and the incoming president therefore promised to depoliticise them. They were not abolished, however, and despite some superficial changes to the way in which they are managed (previously known as the Solidarity Fund, they are now called the Security Fund), they have finally ended up perpetuating the same welfarist and clientilist logic as before. The introduction of other programmes such as the "super tortilla" and the "Zero hunger pact" does not seem to be contributing to poverty reduction or reduced malnutrition.

Controversial government reforms

The new government was hoping to establish itself on the international stage with a proposal to legalise drugs aimed at committing consumer countries to a new strategy for reducing the impact of drugs trafficking on the developing world. This proposal did not receive the expected support, however. Then came the failed attempt at constitutional reform, intended to introduce changes to the 1985 Constitution that would enable greater efficiency of security and justice. On the premise that the "country must come to terms with what it is a pluricultural, multiethnic and multilingual nation", and that "it will only be a truly democratic society if it recognises its cultural diversity", official recognition of the languages of the Maya, Xinca and Garífuna peoples was also included in this planned reform, along with a mandate to create ordinary laws governing the identity and rights of indigenous peoples. The intended reform declared that the state would undertake to respect, protect and promote the indigenous peoples' rights to their own organisation, language, traditional dress, culture and customs. The proposal was, in actual fact, contradictory in this regard as it established that "the Guatemalan nation is one, and united", which curtailed the possibility of building a Plural State.[1] In fact, a single nation, mono-ethnic and monocultural, i.e. with no Indians, has long been the overriding historical goal of the country's elites. Nonetheless, faced with opposition from different sectors, above all business, and after a great deal of wasted effort, the government dropped its planned constitutional reform.

Government repression of movements in defence of land

The government's policy is explicit with regard to promoting investment in the natural resource extraction industries, particularly oil, minerals and hydro-electric power. Agreements have therefore been reached with national and international investors and changes have been proposed to current legislation. At the start of the year, the government announced that the mining companies had voluntarily agreed to pay a higher percentage of royalties than established by law. It is assumed that, in exchange, these companies have received an undertaking that they will receive protection from the security forces if faced with community protests.

On 1 May, one person died and three more were injured, allegedly at the hands of a security guard from the hydro-electric company, Hidro Santa Cruz, in Santa Cruz Barillas municipality, Huehuetenango department. This created uproar among the local people, and they attacked a military outpost. In response, the government decreed a state of emergency in the area aimed at maintaining order. It was in this context that a military post was also established in San Juan Sacatepéquez, in order to safeguard the interests of the main cement company there.

Likewise, in December the government mobilised the police force to violently disperse a group of local community members who were blocking access to the El Tambor mine, in San José el Golfo and San Pedro Ayampuc municipalities, Guatemala department. The demonstration was being led by women from the community of La Puya, who had been protesting since the start of the year because the mine was contaminating their water sources and transforming community life. The use of force during these and other evictions put the lives of the protestors, including women and children, at risk, especially when tear gas was used. The protestors do not believe that the dialogue being proposed by the government will offer any greater prospects given that the government's main objective is to keep the companies running.

The continued use of state force has failed to bring under control more than 80 ongoing conflicts over mining and biofuel activities in 13 departments, including Huehuetenango, Chiquimula, Jalapa, Alta Verapaz, Guatemala and San Marcos. Community consultations have continued in some areas in this regard, now with the support of the municipal authorities, as in the case of Nueva Santa Rosa and Casillas, Santa Rosa department, and Mataquescuintla, Jalapa department, where the population has stated its firm opposition to these projects. At the end of the year, however, the Constitutional Court ruled that such consultations were not binding and merely gave an indication of the population's feelings. According to the Court, community consultations bear no legal weight in terms of preventing mines from opening.

The Totonicapán massacre: the government fails to respect indigenous right to life

The event that had the greatest impact on indigenous rights during 2012 was undoubtedly the massacre of protestors from the *Asociación de los 48 Cantones* (Association of the 48 Cantons), the ancestral representative organisation of the

indigenous K'iches of Totonicapán, on the part of state security forces. On 4 October, thousands of indigenous community members blocked the Pan-American Highway running to the west of the country, at kilometre point 170, while their leaders, headed by Carmen Tacam, the first woman to lead this organisation, met with the government authorities in the capital. The indigenous people were protesting at the high cost of electricity, the government's proposed constitutional reform and the changes to teacher training courses. Accustomed to using force to put down popular demonstrations, and under pressure from a private sector that has been calling for a hard line to be taken in relation to protests, the government sent in the army to dismantle the blockade, with the result that seven protestors were killed and many more wounded.

This regrettable event led to a wave of national and international indignation at the disproportionate use of force, particularly the use of the army to suppress popular protests, and the possibility of a return to the militarism of the past was hotly debated once more. The various explanations put forward by the authorities, headed by the President of the Republic, were highly contradictory: first they claimed that the protestors had killed each other, alleging that the soldiers and police were not armed; then they maintained that a security guard from a private company was responsible for provoking the incident; and, finally, that the soldiers had fired into the air. Overwhelming photographic evidence published in the media along with the evidence gathered by the Public Prosecutor's Office finally led the government to admit that it was the soldiers who had fired, taking their defence into their own hands because the chain of command had been broken and they were surrounded by protestors.

According to analysts, this event demonstrates the true intentions of a government that sees itself as representing the return of the military to power, and whose fundamental plan is to hand over the country's natural resources to transnational companies on the premise that this will promote economic growth, while imposing order through the use of military force.[2]

Quite apart from the details of this incident, it raises questions over the lack of dialogue when dealing with popular demands and, in contrast, the use of force as a priority option. This has a high cost in terms of human life and thus demonstrates the government's failure to respect indigenous peoples' rights to freedom of expression and to life. On 24 October, the Office of the UN High Commissioner for Human Rights submitted a report to the UN Human Rights Council in this re-

gard, stating that the right to life was one of the most violated in Guatemala, also highlighting the malnutrition and discrimination suffered by indigenous peoples.

Indigenous women demand justice

A group of 15 Q'eqchi women from the Río Polochic region, in Alta Verapaz and Izabal departments, has lodged an official complaint through the courts against members of the national army that enslaved and raped them during the internal armed conflict that ended in 1996. These events occurred in military outposts during the 1980s and, prior to being kidnapped and subjected to humiliation, sexual violence and slavery, their husbands and sons were killed by these soldiers. It is for the state to compensate them and the only honourable way of doing this would be to bring their torturers, who still enjoy impunity, to justice.[3] In another case, in November, members of the Q'eqchi people introduced a civil lawsuit in Toronto, Canada against the Canadian company, Hudbay Minerals, for serious human rights violations committed by its subsidiary, *Compañía Guatemalteca de Níquel* (CGN). The plaintiffs are calling for justice with regard to the humiliations committed against Q'eqchi women by the company's security staff during the evictions that took place in 2007, along with the murder of a teacher and for having left a young man paralysed following a peaceful protest in 2009. The aim of these cases is to set a precedent that will force the jurisdictions of parent companies to rule on the human rights violations and environmental damage caused by their subsidiaries in the developing world.[4]

The conservative business sector prevents approval of the Rural Development Law

Despite the political promises of governments and deputies, the draft Law on Integral Rural Development once again failed to obtain the approval of the Congress of the Republic. Lobbying on the part of businessmen from the most conservative agricultural sector during November proved more powerful than the supposed consensus that the President of the Republic had reached with the different groups in Congress. These businessmen are opposing the law because they believe it represents a threat to private property, and because a law should

not consider peasant farmers as a "priority subject" and because they think that rural development will not be achieved through laws. In addition to these arguments, however, they are threatening a return to armed conflict because, according to them, the law is a smokescreen for various agrarian reform mechanisms.

During the year, the peasant organisations were very active in their plans for getting the law approved. Some of the most noteworthy of these actions were the Peasant March, which covered more than 200 km in a week, walking from Cobán, in Alta Verapaz department, to the capital, where a petition was presented to the President of the Republic calling for a strengthening of the peasant economy. In addition to demanding approval of the rural development law, they called for a halt to the granting of mining licences and the cancellation of the agrarian debt, which affects hundreds of peasant families.

The end of Oxlajuj Baktun and the start of a new era for the Mayan world

On 21 December, according to the Mayan calendar, the end of a 5,200-year era known as Oxlajuj Baktun (13 times 400 years) was commemorated. This is of profound significance in the Mayan cosmovision because of the changes a new era is expected to herald. The Mayan people's organisations prepared to commemorate this event and highlight one of the most important features of their civilisation, namely its capacity to count the days like no other people on the basis of its extensive astronomical knowledge. The date was a propitious one in terms of encouraging a debate on the situation of the Mayan people, strengthening their organisational unity and reaffirming their vision of a just and inclusive development in harmony with Mother Nature. Thousands of Mayan ceremonies were held in different places around the country, during which spiritual guides led rituals expressing humankind's links with Mother Nature.

It was hoped that this event might commit the government and Guatemalan society in general to seek options by which to overcome the structural discrimination, exclusion and racism suffered by indigenous peoples and that steps might be taken towards building a Plural State and a more inclusive society. However, the government's response in this regard was to turn the commemoration into a tourist attraction and thus a series of media events, far removed from the cosmo-

genic and spiritual significance that an event of this kind represents for indigenous peoples.

The government refuses to recognise the rulings of the Inter-American Court on Human Rights

Following the rulings passed down on Guatemala by the Inter-American Court on Human Rights (IACHR), the Guatemalan Foreign Ministry issued a government decree stating that it was not prepared to accept more rulings or pay compensation for cases committed prior to 1987, when the country recognised the Court's jurisdiction. According to analysts, this position "is irresponsible, fanciful and senseless",[5] and clearly seeks to protect soldiers who were involved in genocide due to actions committed, above all, against the indigenous population during the internal armed conflict that ravaged the country from 1960 to 1996. The most significant acts occurred during the 1980s and were perpetrated by soldiers who are now retired. A number of unsuccessful cases have already been taken against these men in the national courts and so the plaintiffs have now turned to this international court.

The most recent ruling passed down against Guatemala was in the case of the Río Negro Massacres, perpetrated by the Guatemalan Army and members of the Civil Defence Patrols during 1980 and 1982, along with the persecution and elimination of community members and subsequent human rights violations committed against the survivors, including a failure to investigate the events. The Court ruled that the state was responsible for the forced disappearance of 17 members of the Río Negro community. In addition, the Court declared the state internationally liable for the consequences of the sexual violations suffered by a member of that community at the hands of soldiers and patrol members, for the disappearance of 17 people (16 of them children) from the Río Negro community during the Pacoxom massacre, and for having subsequently forced them to work in the houses of the civil defence patrol members.[6] ❍

Notes and references

1 www.elperiodico.com.gt/es/20121105/opinion/220149/

2 La Rue, Frank. Reflexiones. Prensa Libre 11 October 2012

3 http://cerigua.org/1520/index.php?option=com_content&view=article&id=10779:quince-valientes-mujeres-reclaman-justicia-por-abusos-de-miembros-del-ejercito-congcoop&catid=46:mujeres&Itemid=10
4 http://www.conflictosmineros.net/contenidos/15-guatemala/11514-mujeres-y-hombres-qaeqchi-demandan-a-empresa-minera-canadiense
5 El Periódico. 3 January 2013, p. 5
6 http://www.corteidh.or.cr/docs/comunicados/cp_27_121.pdf

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NICARAGUA

The cultural and historic roots of the seven indigenous peoples of Nicaragua lie both in the Pacific region, which is home to the Chorotega (221,000), the Cacaopera or Matagalpa (97,500), the Ocanxiu or Sutiaba (49,000) and the Nahoa or Náhuatl (20,000), and also on the Caribbean (or Atlantic) Coast, which is inhabited by the Miskitu (150,000), the Sumu-Mayangna (27,000) and the Rama (2,000). Other peoples who enjoy collective rights in accordance with the Political Constitution of Nicaragua (1987) are the black populations of African descent, known as "ethnic communities" in national legislation. These include the Creole or Afro-descendants (43,000) and the Garífuna (2,500).

Among the most important regulations are Law 445 on the Communal Property System of Indigenous Peoples and Ethnic Communities of Nicaragua's Atlantic Coast and of the Bocay, Coco, Indio and Maíz Rivers which, from 2003 on, also stipulates the right to self-government in the titled communities and territories. The 2006 General Education Law also recognises a Regional Autonomous Education System (SEAR). In 2007, Nicaragua voted in favour of the UN Declaration on the Rights of Indigenous Peoples and, in 2010, ratified ILO Convention 169.

The Sandinista National Liberation Front (FSLN) came to power in Nicaragua in 1979, subsequently having to face an armed insurgency supported by the United States. Indigenous peoples from the Caribbean Coast, primarily the Miskitu, took part in this insurgency. In order to put an end to indigenous resistance, the FSLN created the Autonomous Regions of the North and South Atlantic (RAAN/RAAS), on the basis of a New Political Constitution and the Autonomy Law (Law 28). Having lost democratically-held elections in 1990, Daniel Ortega, of the FSLN, returned to power in 2007. Despite the fact that Nicaragua's Constitution does not permit re-election, Ortega is now in his third term of office (2011-2016).

1. Mayangna territory
2. Rama y Kriol territory
3. Awaltara Indigenous territory
4. Jinotega department

The 2012 local elections consolidated the FSLN's dominance yet further, as they won a majority in 134 out of 153 councils, a result that was nonetheless challenged by the main liberal opposition party (PLI) and civil society organisations, who highlighted irregularities in 70 constituencies. The FSLN made similar progress in the RAAS while the YATAMA party, the Miskitu political party, won in its strongholds in the RAAN such as Bilwi, Waspan and Prinzapolka. One noteworthy feature of these elections was that three female former presidents from the Chorotega people were elected as the mayors of each of their local councils: Mosonte, San Lucas and San José de Cusmapa (each council corresponds more or less to a Chorotega territory). They all stood as FSLN candidates.

As had been announced the previous year, bilateral cooperation reduced in 2012 although, instead of withdrawing altogether, Danish development cooperation (Danida) designed a new Regional Human Rights Programme for Central

America - PRO-DERECHOS 2013-2015. Its "Managing Civil Society Empowerment in Central America" component will be managed by the Danish NGO IBIS in Nicaragua, which will work directly with the Nicaraguan Human Rights Centre (CENIDH) to defend women's rights and violations of collective rights and also with the Rama y Kriol Territorial Government to resolve land tenure conflicts on their traditional territory. Some bilateral funds are also still being implemented through IBIS, with national government support, by means of the Civil Society Joint Support Fund for Democratic Governance in Nicaragua, the priority beneficiaries of which are indigenous peoples.

In September 2012, a meeting took place between the authorities of the 22 territories that are in the process of being demarcated and titled under Law 445, Communal Property System for Indigenous and Ethnic Community Lands on the Atlantic Coast and in the Coco, Bocay, Indio and Maíz River Basins. Together, they made the following statements:

1. There has been a total paralysis in the operations of the National Demarcation and Titling Commission (CONADETI) since its presidency transferred from the RAAS to the RAAN in June 2012. We hereby call for its reactivation, and particularly that the last stage of demarcation and titling, that of regularisation, be commenced.

   Regularisation refers to the process of resolving conflicts with third parties over the ownership of land within the boundary of territories that are already titled. More particularly, it requires that CONADETI establish a Regularisation Commission and set aside a state budget for its operations. Although the regularisation process is fundamentally a civil one, between the communal and territorial authorities and third parties, it is also considered important that CONADETI support this process. Moreover, it is clearly the responsibility of the Property Division and CONADETI's Regularisation Commission to take control of this process in the few cases where third parties claim to have documentation to back up their land ownership within the territory and which, where necessary, would need to be respected. CONADETI has now failed to hold any proper meetings for two years. There have only been Skype meetings and face-to-face meetings to hand over titles. The titling process is, nonetheless, making progress and, to date, CONADETI has issued 17 titles recognising collective ownership (of the 22 territories claimed). As CONA-

DETI has not commenced the regularisation of these territories, however, incidents of inter-ethnic violence are continuing and even escalating.

2. Because of the failings and ineffectiveness of the state institutions responsible for conducting the regularisation process, the indigenous and Afro-descendant peoples hold the Government of Nicaragua responsible for the subsequent violent incidents that are endangering their lives when defending their territories and natural resources.

   Meanwhile, some territorial governments have been making progress in the regularisation process either on their own initiative or with the financial support of international cooperation. The Rama and Kriol Territorial Government (*El Gobierno Territorial Rama y Kriol* GTR-K) has conducted an initial pilot regularisation project. In 2012, through this process, GTR-K received requests from 24 mestizo families asking to be allowed to continue living on their territory as they now realise they have no other legal recourse open to them. Awas Tingni (AMASAU) made progress in drafting an assessment of third parties and, on the Miskitu territory of Twi Waupasa, the settlers withdrew after their leaders were kidnapped by indigenous groups in retaliation for the invasion. In most of the nine Mayangna territories, the general position seems to be that all third parties without a valid property title must leave their territories.

3. All 22 regional governments jointly support the actions brought against the state institutions.

   There were a number of legal cases in 2012. One of them related to the complaint of Awas Tingni Mayangna Sauni Umani (AMASAU) against the Government of Nicaragua and the presidency of CONADETI for having permitted the invasion and settlement of their territory by organised armed groups including the Civic Power Cabinets and Councils (*Consejos y Gabinetes del Poder Ciudadano* - CPC y GPC). These are Sandinista organisations supported by the Bonanza and Rosita municipal authorities which have established a regional cabinet of 16 CPC coordinators and a delegate from the Bonanza Property Division. They are working with a government negotiating committee that includes the political secretary of the Bonanza FSLN Council,

and have thus been illegally titling the land since 2010. The land grabbers state that they have titling agreements with the central government.[1] They are thus ignoring the landmark judgement of the Inter-American Court of Human Rights passed in 2001 in the case of *Awas Tingni versus the State of Nicaragua*. This situation deteriorated further following the events of 2011 when the Ministry of Environment and Natural Resources (MARENA) imposed a negligible fine on the MAPIINICSA logging company for opening up a landing strip and a permanent road to extract timber within the boundaries of their titled territory. Such issues are arising in areas where conflicts over land ownership still persist because the regularisation process has not been completed. Another Mayangna (Arungka) territory was also subjected to the construction of a road across their land in the direction of Kukalaya and the "BOSAWAS Biosphere Reserve".

Another action relates to the new international airport built in the Kriol community of Graytown. This case is noteworthy for a number of reasons: on the one hand, the construction work damaged the Kriols' historic cemetery and took place without any prior agreement having been reached with regard to the use of the community's lands. The national government and the International Airports Authority (*Empresa Administradora de Aeropuertos Internacionales* - EAAI) cancelled the official opening ceremony for fear of retaliation but quietly began operations while awaiting a reaction or agreement with the Rama y Kriol Territorial Government and the Kriol community of Graytown. In addition, the Brazilian company Andrade Gutiérrez completed the feasibility studies for construction of a deep water port at Monkey Point in the Rama y Kriol Territory, along with a 70 km road linking the port to Nueva Guinea through the Rama y Kriol titled territory. The study concluded (according to the media) that the project was not financially viable. A number of public documents now suggest the likely construction of an interoceanic canal, following the course of the San Juan de Nicaragua River, with its starting point in Graytown. An airport would be needed to complete this megaproject.

Linked to this case, the Rama and Kriol communities lodged a constitutional challenge with the Supreme Court of Justice (CSJ) due to the lack of consultation prior to enacting the new Law 800, which establishes the legal regime making the construction of the Nicaraguan Grand Interoceanic Canal legally possible.

Work began on the construction of an all-weather road linking the Pacific with Bluefields in the RAAS. This also relates to a megaproject on the Rama y Kriol

territory that has not received the consent either of this body or of the Indigenous Negro Kriol Community of Bluefields. This project is being financed with funding from Japan and the World Bank. Using trust funds from British cooperation, the World Bank's Caribbean Coast Development Programme - focused on providing physical infrastructure in line with the indigenous regional governments' priorities - was expected to complete its work in 2012. In the case of the Rama y Kriol territory, however, the WB and the government have been unable to accommodate the GTR-K's priorities. After three years of continual disputes over content, the project has now been extended until April 2013.

Lastly, the 12 communities of the Laguna de Perlas Basin lodged an action against the construction of megaprojects on their territory. Another action also calls on the Nicaraguan government. In this case to intercede with the Honduran government on their behalf because of the systematic destruction of crops and environmental damage to the farmland of the Miskito communities living on the Nicaraguan side of the Wangky (Coco) River but who traditionally use lands in Honduras to supplement their food. This action takes the principles of Convention 169, ratified by both countries, as its basis.

One specific feature of the above three joint statements is that the indigenous authorities were supported by the National Assembly's Ethnic Affairs Committee, headed by parliamentarian and Miskito leader, Brooklyn Rivera, who is also a member of CONADETI and leader of YATAMA, politically allied with the FSLN for a number of years.

This is the first time that all territorial governments recognised by Law 445 have joined forces to claim their collective rights and it remains to be seen whether this dynamic can become institutionally established of its own accord.

Law on Indigenous and Afro-descendant Peoples' Territories

At the start of the year, the National Assembly's Ethnic Affairs Committee began to circulate a text entitled "Law on Indigenous and Afro-descendant Peoples' Territories". This proposal seems to incorporate elements of Law 445 and the Regional Autonomy Statute (Law 28), as well as the political organisational characteristics of the different peoples, in order to bring these elements together in what appears to be a prototype for a model territorial statute, although it is in actual fact a draft bill of law. This is an apparently unnecessary bill, which is confusing and

runs the risk of violating the right of each and every people to freely determine their political condition and organisational structure.

The process that seems to be of highest priority to the indigenous peoples of the Caribbean Coast is the reform of the Regional Autonomy Statute itself, which also raises the issue of the right to self-determination. This is an initiative that has been around for a few years and which could be perceived as a constitutional obligation of the state to "organise a system of autonomy for indigenous peoples and ethnic communities of the Atlantic Coast, which should define, amongst other things, the powers of their government bodies, their relationship with the Executive and Legislative Powers and with the local authorities, and the exercise of their rights" (CP Art. 181, 2000). In other words, it should correct the current Autonomy Statute from 1987, which establishes *regional autonomy* when - given their historic rights - it should in actual fact be *indigenous autonomy*. Regional autonomy was implemented in 1987 when the Nicaraguan Constitution was not particularly clear on that point (it was later amended). At that time, the state was not aware as it is now (a positive result of the implementation of Law 445) of the size of the traditional territories nor had each territory's authorities been identified. The indigenous and Afro-descendant authorities are clear that they wish to establish a true system of indigenous autonomy, quite distinct from the current administrative decentralisation which, moreover, has been shown not to work, for example, on issues related to education and natural resource management. In addition, Law 28 has favoured party politics and an immigrant segment of the mestizo population which today dominates the government structures of the Caribbean Coast.

In 2012, a call went out to indigenous professionals to propose possible alternatives to the reform that is currently with the National Assembly. This resulted in a number of ideas but, during a second call (with a closing date of March 2013), the request was limited to making comments on the pre-existing reform bill. The perception of the indigenous professionals involved is consequently that they were simply needed to give credibility to the reform process given that, in actual fact, no steps were taken to initiate the compulsory consultation process with each indigenous and Afro-descendant people of the Caribbean Coast. This is particularly serious if – as it would seem – the decreed reduction of the RAAS by three municipalities is a consequence of negotiations with the state to create a future autonomous indigenous jurisdiction in Jinotega. The proposal circulated very controversially recognises that the natural resources are owned by the state,

but gives great importance to a direct link between the communal and territorial political structures and the regional councils and government.

Adverse affects of drugs trafficking

The direct and indirect effects of drugs trafficking continue to unfold throughout the whole of Central America, with consequences for all of the Caribbean Coast's communities. The Miskito communities of Kuamwatla, on the RAAN coast, complained to CENIDH that the inhabitants of this area were falling victim to murders, torture and illegal detention at the hands of the Navy, when it is seeking out drugs traffickers. Naval soldiers based at Puerto Cabezas opened fire without warning on 150 local inhabitants while in their fields or settlements doing their daily chores. As a result, two young people were wounded and, two days later, the body of a civilian appeared floating in a local river. The Kuamwatla leaders indicated that the Navy had killed other Miskitos in 2008 and 2009 but that, at that time, the Human Rights Prosecutor had not followed up these complaints.

Public funding for territorial governments

Increased public funds were transferred to recognised indigenous territorial governments, as a consequence of the demarcation and titling process and smaller experimental transfers during 2011. In 2012, nine territories received almost US$ 500,000, and the Ministry of Finances and Public Credit (MHCP) and the National Assembly plan to increase the number of territorial governments receiving funds and the amount of such funds in 2013. However, the Caribbean Coast Development Council and its secretariat continue to interfere in the handling of these funds, claiming a lack of decision-making capacity on the part of the authorities in this regard. Moreover, the MHCP has reduced or – in some cases – denied the authorities their rightful allocations under Law 445, i.e. 25% of the taxes charged for natural resource concessions granted on indigenous territories. ❍

Note and reference

1 These events were recorded during a trip to analyse the legal and socio-economic status of third parties as part of the self-diagnosis for regularisation conducted by the community between March and May of last year, the report of which is in the hands of all competent authorities.

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COSTA RICA

Almost 6% of the national area of Costa Rica is made up of 24 indigenous territories, covering a total of 3,344 km^2 and with an indigenous population of 104,143 people, out of a total population of 4,301,712 inhabitants; indigenous peoples therefore account for 2.42% of the total population. Costa Rica continues to be one of the few countries on the continent that does not constitutionally recognise its ethnic and cultural diversity.[1] Costa Rica ratified ILO Convention 169 two decades ago but this does not mean that indigenous rights have been recognized, nor that the legislative changes required by the Convention have been made. Costa Rica also voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007.

In May 2012, the leaders of the indigenous movement handed the government a National Indigenous Agenda containing the principal historic demands of their peoples and calling for public policies to be implemented, from a perspective of respect and self-determination, aimed at overcoming the inequality and social exclusion suffered by the country's indigenous population. Approval of the law on the autonomous development of indigenous peoples (which has been held up at Congress for the last two decades) was the focus of this proposed agenda, along with the right to consultation and to the return of lands taken from them. Despite commitments made by the government following the UN Special Rapporteur on the rights of indigenous peoples' earlier report, this agenda received no concrete response, however, and the situation of indigenous peoples continued to deteriorate. The indigenous organisations grouped in the National Indigenous Council of Costa Rica (*Mesa Nacional Indígena de Costa Rica*) therefore took the decision to begin recovering lands which, although within the boundaries of their territories, had been settled by non-indigenous peoples since the enactment of the Indigenous Law in 1977, and were thus illegally occupied.

This process of territorial recovery began on the indigenous territory of Salitre and then continued in Boruca, Cabagra, Guatuso and Quitirrisí. It resulted in a situation of conflict and violence, with non-indigenous armed groups attacking those who had recovered the illegally occupied land. One indigenous person was branded like cattle and one of the Salitre leaders received death threats, while many were beaten up and wounded.

The Ombudsman's Office verified the aggression suffered by the indigenous people and noted the climate of conflict that had been created in the country's southern region.

These events, along with the tensions created by the El Diquis Hydroelectric Project and the lack of free, prior and informed consent, raised the profile of the region's critical political situation in the eyes of the government, and helped to establish the conditions for commencing a dialogue on indigenous issues. The Vice-Presidency of the Republic was given responsibility for creating an inter-institutional committee capable of discussing the agenda received in May 2012 along with the necessary timetable for the dialogue. The Vice-President of the Republic[2] acknowledged that the violence in Salitre was the result of "the passivity of many Costa Rican governments, who have ignored the different indigenous requests and proposals". He also accepted that "the country has overlooked these peoples".

In January 2013, the government and representatives of the indigenous peoples from the south agreed a joint working agenda to discuss the region's problems, addressing the main issues related to the development and rights of indigenous peoples. Although the dialogue space that has been created is regional in nature, the government and indigenous representatives believe that it will be of importance to the country's indigenous population as a whole. Representatives from six indigenous territories from the south of the country are participating in the dialogue committee (Curré, Cabagra, Térraba, Salitre, China Kichá and Boruca), along with representatives of the Ministries of Security, Education, Social Well-being, Culture and Youth and Planning. In addition, the national-level Department for Community Development is involved. The Rural Development Institute is not participating, even though it has direct institutional and legal responsibility for the regularisation and titling of the indigenous territories and for resolving land conflicts, which form the crux of most of the current problems. This institution has, moreover, described the current indigenous law allocating it these responsibilities as unconstitutional.

HUETAR
1. Quitirrisi
2. Zapaton

CABECAR
3. Nairi-Awari
4. Bajo Chirripo
5. Alto Chirripo
6. Tayni
7. Telire
8. Talamanca Cabecar
9. Ujarras
10. China Kicha

BRIBRI
11. Keköldi
12. Talamanca Bribri
13. Salitre
14. Cabagra

TERIBE
15. Terraba

BRUNCA
16. Boruca
17. Curre

NGÖBE-BUGLE
18. Coto Brus
19. Abrojos Montezuma
20. Osa
21. Conte Burica
22. Altos de San Antonio

MALEKU
23. Guatuso

CHOROTEGA
24. Matambú

* El Diquis Hydroelectric Project

Five areas of work have been agreed for the talks: 1) territorial security, 2) governance of indigenous territories, 3) public policies and development plans for indigenous territories, 4) the law on autonomous development of indigenous peoples, and 5) indigenous peoples' right to consultation and analysis of the report of the UN Special Rapporteur on the rights of indigenous peoples. The talks are being observed and facilitated by the UN system in Costa Rica and the Ombudsman's Office.

Indigenous peoples in public policies

The political events of the last two years, and especially the land claims, the demand for consultation and the UN Special Rapporteur's report, have contributed to some public institutions initiating processes to incorporate diversity into their policies, plans and strategies. The Ministry of Culture and Youth is particularly noteworthy. In 2010 this body began to formulate a consultation method, with indigenous peoples' participation, for the National Cultural Policy. This ministry hopes to reach an agreement on the method during 2013, and to commence the consultation In contrast with this process, the Ministry of Foreign Affairs began a "consultation" for a national policy on discrimination which, in the case of indigenous peoples, was limited to a few interviews with selected informants. The Ministry of the Environment, for its part, has ignored indigenous considerations with regard to paying for environmental services that ban the traditional use of forest resources (fishing, hunting, plant extraction). Such contrasts clearly show that public policies for indigenous peoples are not as broad, solid and consistent as might be hoped and may respond more to the fact that some branches of government simply want to appear respectful of human rights.

Regarding the health sector, the members of the Indigenous Peoples National Health Council (CONASPI) were sworn in on 22 January 2013. This body was established in April 2006 by means of an Executive Decree but it was short-lived as the following administration (2006-2010) failed to convene it and the current administration (2010-2014) has only done so one year before the end of its term in office, largely due to pressure from the indigenous peoples in the context of the recently-initiated talks. Oldemar Pérez Hernández, a member of CONASPI and Chair of the National Indigenous Council of Costa Rica (MNICR), has stated that it is important that this council functions as determined by the decree and in line with indigenous peoples' demands, which include the recognition and exercise of cultural medicine based on ancestral knowledge and know-how. The necessary consultation with regard to this decree, however, has not been conducted.

In the Ministry of Education, a process has commenced to involve local people in the appointment of teachers to indigenous schools, along with discussions on the creation of indigenous departments and networks that would group together the 259 indigenous schools locally or regionally. This is one of the changes envisaged with the creation, by means of an executive decree, of the Department

for Interculturality, and the SuLá Regional Department has already been incorporated, which has four school networks in Bribri and Cabécar territories in Talamanca, in the south-east of the country. The move from an indigenous education previously provided by one specific department (Department of Indigenous Education) to an intercultural education that abolishes this body and visualises indigenous peoples as just one more element of cultural diversity continues to attract doubts and serious criticism, because of the way in which it obscures the specific within the general. In any case, Costa Rica has not drawn up or established any integral bilingual intercultural education policies and, for the education authorities, the inclusion of diversity is restricted to two hours of indigenous culture and language each week. However, the director of the Department for Interculturality, José Estrada, is a highly-qualified indigenous professional who is committed to ensuring greater local impact on indigenous education by grouping schools together into more independent units. The schools on indigenous territories continue to have the greatest shortages and the lowest quality of education, increasing inequality of opportunities and maintaining indigenous peoples in a position of exclusion. It should be emphasised that this decree, which has already led to the restructuring of education on indigenous territories, has also not been put out to consultation as required by ILO Convention 169.

Legal actions

The incorporation of the Sub-commission of Indigenous Peoples within the judiciary since 2008, following the adoption of the "Brasilia Regulations regarding access to justice for vulnerable people" by the Supreme Court, has significantly changed the way in which indigenous peoples access or see their cases progress through the courts, in terms of the need for cultural expert testimony and the way in which legal regulations are interpreted, particularly in criminal and agricultural cases. In addition, this body has endeavoured to conduct visits to and workshops in indigenous communities, to recognise and promote local bodies that are encouraging alternative or customary forms of justice administration, and to issue important guidelines for encouraging part of the legal process to be conducted *in situ*, along with the compulsory use of interpreters, priority attention for indigenous peoples within judicial bodies and the use of appropriate procedures for recording and dealing with complaints.

One significant and encouraging example of the changes that are beginning to take place can be seen in a circular that was sent by the Attorney-General's Office to all of the country's prosecutors containing guidelines as to how indigenous cases should be handled and indicating, for example, that acts of apparent grabbing of non-indigenous people's land on the part of indigenous peoples should not fall within the corresponding criminal definition but needed to be analysed in the light of indigenist legislation. This same circular, after an expert cultural witness had established the legitimacy of the Maleku's practice of traditional fishing in the north of the country on channels and rivers covered by environmental conservation regulations, proposes as an obligatory guideline for prosecutors and judicial bodies that "The fishing undertaken by the indigenous Maleku is excluded from the criminal definition described in Article 97 of the Law on Wildlife Conservation because it is not a criminal activity… [as] fishing has been practised since time immemorial in the north of the country, ….".[3]

It is clear that judiciary's actions are heralding a significant change in the way in which indigenous rights are being considered, although we cannot yet talk of indigenous justice properly speaking, as this would imply recognising their internal justice administration mechanisms in law.

Consultation

For at least the past five years, the Costa Rican Electricity Institute (ICE), a state body, has been forging ahead with the El Diquís Hydroelectric Project (PHED) in the southern region, without having conducted the consultation required by ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. The ICE has stated that it is only conducting feasibility studies and that the project is not yet being implemented properly speaking, hence a consultation is not yet necessary. The indigenous communities that would be affected by the dam, however, in particular Térraba, state that the institution has invested so many resources in machinery and specialist studies that it is clear that it is already operating in the region. Two years ago, this confrontation led to the intervention of the UN Special Rapporteur, Mr James Anaya, who warned the government of the unavoidable need to organize consultations. Since then, the government has accepted that it will put the project out to consultation but it has established no timeframe nor methodology acceptable to all parties. The government's under-

standing of consultation has become clear in recent comments from the Minister for Environment and Energy: "Consultation does not mean that anyone can argue arbitrarily that 'they do not like' or 'do not want' the project nearby but that they can ask to be provided with information if any harm is likely occur to their health or environment and, in carrying out the work, the state or private sector is obliged to provide this information." [4]

In the conventional style of Costa Rican indigenist policy, behind the indulgent rhetoric and the holding of a consultation lies an intention to make no significant changes to the PHED; in other words, the consultation will not be truly binding. The time that has passed, the co-optation of official indigenous leaders, the demobilisation of the grassroots, all point to a clear strategy of generating confusion, despair, surrender. The government's calculations have perhaps not had the anticipated effects, however, because - as was the case in the nearby Brunka community of Curré where the first threats of flooding from a hydroelectric project occurred - the failure to hold free, prior and informed consultations and the fact that the developmentalist intentions have been concealed from them have led to a significant backlash on the part of the Teribe, reaffirming their culture and their traditional institutions, even creating such institutions where they had not previously existed or had been lost. The Térraba community has thus presented itself to the ICE as a "Brorán people" and reaffirmed its links with the Naso people of Panama, declaring that it will not allow itself to be defeated by the exclusive development advocated by the Costa Rican state.

Conclusion

Indigenous peoples' rights are experiencing worrying contrasts between the three state powers in Costa Rica which, in addition to highlighting the growing lack of governance in the country, also demonstrates a lack of consistency in Costa Rican indigenist policies. A legislative power that does not even wish to discuss the draft bill of law on the autonomous development of indigenous peoples, despite its being with Congress since 1994, lies in stark contrast with a judiciary that is seeking to implement the most appropriate forms of justice by which to recognise indigenous rights, while the executive's attitude wavers between these two camps, emitting incomplete or contradictory signals. ❍

Notes and references

1 These countries are: El Salvador, Honduras, Chile, Uruguay and Costa Rica. Gonzalo Aguilar, Sandra La Fosse, Hugo Rojas, Rebeca Steward. Análisis comparado del reconocimiento constitucional de los pueblos indígenas de América Latina. New York, Conflict Prevention and Peace Forum, 2010. Mimeo.

2 Vice-President Alfio Piva accepts this: El país ha invisibilizado a los indígenas. www.costaricahoy.com. 23 February 2007.

3 Circular 13-ADM-2011

4 According to René Castro, MINAE Minister: Proyecto El Diquís a consulta indígena. Diario Extra, 12 January 2013, http://diarioextra.com/2013/enero/12/nacionales14.php

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SOUTH AMERICA

COLOMBIA

Projections from the National Statistics Department for 2012 establish that the indigenous population numbers around 1,450,000 (or 3.5% of the national population). With 87 peoples and 65 different languages, Colombia is, after Brazil, the most ethnically-diverse country in the Americas. Approximately one-third of the national territory is collectively owned by the indigenous peoples in the form of "reserves". Large parts of the indigenous territories are now being affected by oil and mining operations, along with plantations (banana, palm oil, coca), all of which severely affect the lives of the indigenous communities. There are two national-level organisations representing a large number of communities: the National Indigenous Organisation of Colombia (ONIC) and the Indigenous Authorities of Colombia (AICO). There are also a number of macro-regional organisations such as the Organisation of Indigenous Peoples of the Colombian Amazon (OPIAC) and the Tairona Indigenous Confederation (CIT). The 1991 Political Constitution recognises the fundamental rights of indigenous peoples and ILO Convention 169 has been ratified (as Law 21 of 1991). Having originally voted against the UN Declaration on the Rights of Indigenous Peoples, Colombia signed up to this text in 2009. By means of Ruling 004 of 2009, the Constitutional Court ordered the Colombian state to take measures to protect the lives of 35 indigenous peoples at risk of physical and cultural extinction because of the internal armed conflict.

The political climate in Colombia in 2012 was rather similar to the weather in Bogota: mornings with clear skies heralding glorious days, suddenly clouding over and ending up with storms by the end of the afternoon. For Juan Manuel Santos' government, too, the beginning of the year augured well. The reason: Santos had decided to support the law on victims and the return of land to those displaced by the violence, and talks were making progress in Havana (in the utmost secrecy) with the Revolutionary Armed Forces of Colombia (FARC) in order to agree an agenda that would result in the demobilisation of the main guerrilla

force in Colombia, and the oldest in the Americas. By the end of the year, however, this bright outlook had suddenly clouded over. These processes are being weighed down by obstacles and are not making the progress the country needs if it is to make amends for historic injustices and move towards a reconciliation process that will result in a more just and modern society. The violence suffered by the country in recent decades has severely damaged the safety and security of all Colombians and especially violated the rights of ethnic groups and the poor-

est rural people. However, instead of an accelerated compensation process, as was expected, the pernicious relationship between the state and large companies aimed at establishing the extractivist engine of mega-mining has begun to wreak havoc in the territories and on the indigenous peoples' ability to govern their lands. To this state of affairs must be added the fact that former President Uribe, hostile to reparations for victims of violence, unleashed a sordid propaganda campaign against the Santos government when, halfway through the year, the country found out that the government was embarking on a peace process with the FARC. The forces of ex-President Uribe now rose up in opposition to Santos, adding to the discontent of victims at the poor progress being made in reparation and restitution processes, and the peasant farmers' and indigenous and black organisations' rejection of mining projects. As cattle farmers and new landowners desperate to legalise the occupied lands, Uribe's supporters felt threatened by the peace negotiations.[1] When, in November, Colombia lost its case against Nicaragua in the International Court of Justice in The Hague, resulting in the loss of around 100,000 km² of the country's maritime territory, the end-of-year political storms broke with a vengeance, with disastrous results for President Santos' image. At the beginning of 2012 he had enjoyed an 80% popularity rating in the polls but by the end of the year he could scarcely muster 50%.

Under these circumstances, it is doubtful whether Santos will achieve his dream of going down in history as the president who brought peace and modernisation to the Colombian state. On the contrary, he will be seen as an inferior successor to Uribe, and one who continued the job of impoverishing the rural sector and uprooting the indigenous, black and peasant farmer population.

The peace process

Nearly all Colombians welcomed the start of the peace negotiations between the Colombian government and the FARC. A number of factors are spurring this process on, making it almost irreversible. Firstly: although the military option is still a possibility for the government, it would mean continuing an irregular war which, according to the analysts, has resulted in GDP growth of 1% less than would otherwise have been expected in the country over the last 20 years. This is not to mention the cost in human life, destruction of infrastructure, capital flight, increased unproductive expenditure and uncertainty given that a military solution will

not resolve the problems that led to the conflict in the first place. Secondly: now the negotiations have started, it is essential that Santos makes significant progress with a view to improving his damaged image in the run-up to the 2014 elections. Thirdly: the FARC realise that although they have not been militarily defeated, they have lost their main leaders. They understand above all that the correlation of forces is now against them and that the time is ripe for resolving the armed conflict by political means. And they are aware that they are coming to the process divided, because not all of the guerrilla organisation's forces are represented at the negotiating table. The Southern Bloc, commanded by two historic leaders of the FARC, Joaquín Gomez and Fabián Ramirez, and the Western Bloc led by another historic commander, Pablo Catatumbo, are openly opposed to the peace process.

While this process may be irreversible, however, we cannot ignore the opposition to it on the part of some sectors, who are banking on the negotiations ending in failure. First in line is former President Uribe and his landowner supporters, who see the negotiations as a betrayal of his government's policy of "Democratic Security", which Santos had promised to continue. Second are the sectors that have benefited from the land dispossessions of the last two decades, most of them related to drugs trafficking and paramilitary activity. Third is the traditional extreme right wing, which sees these negotiations as a sham, with the FARC exploiting a fragile government. Lastly, there are those who have benefited from the war and who do not want to lose the advantages it offers them. There are divergences between all these groups but also channels of communication; in particular, they have come to an agreement to unleash a dirty propaganda war against the negotiation process underway between the government and the FARC. The biggest beneficiary of this campaign is former President Uribe who, after four years out of office, has aspirations to return to power once more.

The ordinary people, for their part, however, have not been quiet either: at the start of 2012, around 30,000 peasant farmers, most of them displaced, gathered in Necoclí (Urabá, Antioquia) to support the government's land restitution policy and protest at the murders of leaders of the pro-restitution organisations. At the end of the year, another protest took place involving around 4,000 people in Puerto Asís (Putumayo). These civic actions in defence of, and for the reparation of, the victims of the conflict have resulted in an alliance between the political parties, human rights organisations and social organisations known as "Colombia without victims", an alliance which will play an important role in 2013 in terms of countering the opposition to land restitution.

Indigenous peoples and the peace process

Colombia's history over the last two decades has been marked by violent processes linked to a dispute over land and the control of natural resources. The rise of the paramilitaries and their involvement in politics, the FARC's involvement in drugs trafficking and its military expansion in order to control crop areas and marketing channels, the forced displacements from land, the complicity of rural business sectors in usurping lands for plantation crops, the struggle for control of the natural resources in a country that is moving towards a mining/energy economy: all these factors have had a drastic impact on the territories of the peasant farmers, black and indigenous peoples. No-one would deny that these are the people with the most to gain from an end to the armed conflict, a conflict that has not only taken place on their territories but has also seriously threatened their lives and organisations, caught in the crossfire. The issue of land is therefore the first and most difficult issue on the negotiating table, as it lies at the heart of Colombia's historic political armed conflict.

The indigenous peoples have repeatedly stated that the conflict over land and resources has led to a deterioration in the social situation in rural areas. They have also stated that the way in which these problems have been addressed, seeking solutions by means of an armed struggle, has only exacerbated the exclusion and socio-economic inequality of the rural population, leading to a social haemorrhaging of the communities through a loss of young people to economies generated by drugs trafficking or to swell the ranks of the armed sectors. The cure ended up being worse than the disease. This is why they welcome a negotiated end to the armed conflict. Nonetheless, a cessation of hostilities does not mean that the social and economic conflicts will be resolved. It will, however, open the path to new possibilities for redefining social and political relations because, if arms are finally removed from the social conflict equation, the political space will then open up to enable the transformation of society.

Civil society's participation is not envisaged in the schema for the negotiations, given that the purpose is to negotiate a permanent ceasefire and a surrendering of arms on the part of the FARC. In return, the government will provide the insurgents with all necessary guarantees for their reintegration into the political and legal life of the country. "Peace does not mean that the FARC will give up its ideas but that it will continue fighting for them by democratic means," said the

government's chief negotiator, Humberto de la Calle, who suggested that, by forming a political opposition group, the insurgents could act as a catalyst for the government's land restitution and other policies. He gave assurances that the government's aim in the negotiations was to transform the FARC into a "political force, a political party".[2]

Although the negotiators on both sides claim to speak on behalf of the whole country, in particular the indigenous and peasant farmer sectors, the country's most important indigenous organisations, in particular the CRIC, have commented that they do not feel represented either by the government or the FARC.[3] Nonetheless, the negotiators, particularly the FARC, have made it known that they value the contribution that indigenous and rural organisations could make in terms of constructive proposals. In this regard, at the end of the year, the Government – FARC negotiating table promoted a forum on Integral Agricultural Development, co-ordinated by the National University and the United Nations Development programme (UNDP – Colombia). More than 1,000 rural organisations attended this forum, including those representing indigenous and Afro-Colombian interests. Around 500 proposals were produced as an essential input to the negotiations. This contribution is of great political value and will carry a good degree of weight with the parties. Among the proposals that reached the negotiating table were: a) reformulation of the land policy with a territorial and environmental focus; b) recognition of the autonomy and collective rights of indigenous peoples and Afro-descendant communities; and c) respect for the constitutional obligation to support the peasant economy and an understanding that the armed conflict originated and developed in the countryside and therefore requires strategies and measures aimed as a priority at resolving the causes and circumstances of the conflict. For its part, the FARC has announced that it will take this "mandate" from the agricultural organisations into account, alluding to the need for agrarian reform that involves, among other things: a) access to and redistribution of highly concentrated agricultural properties; b) the establishment of limits on national and international property ownership; c) the eradication of rural poverty; d) stimulation of the peasant economy and improvements in rural infrastructure, and e) recognition of the boundaries of peasant farmer, indigenous, Afro-descendant and inter-ethnic territories.[4]

It is not clear from these general statements how the FARC will develop its agricultural proposals. What can be said, however, is that their statements thus far have been realistic and sensible. In addition, it should not be difficult to find the financial resources to conduct an agrarian reform along the lines they are propos-

ing. In the eight years of former President Uribe's term in office, more than US$80 billion were ploughed into the war. The agrarian reform and rural development plan proposed by the FARC could be financed with half this amount. The ball is therefore in the government's court.

Resettlement of indigenous territories?

In the same way that the war is continuing alongside the peace negotiations, so the extractivist policy is also progressing in the countryside, despite the fact that the first and most important point on the agenda for the negotiations is the very issue of land, and within that the important aspect of a reformulated land policy with a territorial and environmental focus, recognising the autonomy and rights of the indigenous peoples and Afro-descendant communities to their territories and natural resources.

At the negotiating table, the right of ethno-territorial peoples to protect and block their territories from the onslaught of mining projects forms a part of the discussions, and the FARC are advocating autonomy for indigenous, peasant farmer and Afro-Colombian communities in terms of managing the natural resources on their territories. Such a scenario would have been improbable only a couple of years ago. Even more surprising, however, is that while the FARC is doing this about turn, there are indigenous leaders (fortunately very few) who are openly promoting mining on their reserves. Leaders who are opting for this route are using the excuse of the bad socio-economic status of their peoples. While the rest of society is modernising and resolving its problems, pressures on health, nutrition and education are growing in the communities and their damaged territories no longer have the capacity to guarantee their food supply. This situation is creating unease and discord among the communities; more than this, it is dividing the organisations.[5] It is, however, worrying that the indigenous territories are being invaded by this extractive phenomenon, which is quite clearly nothing less than a modern form of colonisation. While this is taking place in the communities, the leaders of some organisations are using a strong dose of indigenous rhetoric to envelope the communities in a fundamentalist mantle that satisfies the desire for dignity and need for social and political appreciation but does little in terms of empowering the communities to address the real problems they are facing in relation to all kinds of mining operations (small, medium and large, illegal groups).

Differences with the state rejuvenate the indigenous movement

The environmental movement considers indigenous peoples' integral vision and intimate ways of relating to nature to be a valid alternative for supporting the planet's biodiversity. They have recently been vehemently opposing the exploitation of minerals and hydrocarbons on their territories. This rhetoric and action on the part of indigenous peoples in defence of their territories has placed rights to nature on the human rights map because, as the indigenous organisations maintain, irreversible harm to the natural environment can only be described as a crime against humanity.

This well-known rhetoric is of great significance and it is no less valid because some leaders, communities or peoples have distanced themselves from it and are being swept along by the resource extraction companies. They are being swept along also by the state, however, which is painstakingly seeking to discredit those indigenous organisations that are criticising the haste of these leaders and defending the right to prior consultation.[6] The state prefers to deal with weak local organisations, reserves and leaders in order to "buy" their consent. And it scorns the sensible assessment of the indigenous and Afro-Colombian organisations that are criticising the economic development model and agricultural and mining/energy policies that pay no consideration to the environment. The state has never been willing to treat these peoples differently because of their cultures and different ways of living with nature.[7] The indigenous peoples' right to prior consultation, for example, has been considered an unacceptable privilege. The state has even described the protection actions filed through the courts, and which have overturned such important legislation as the Rural Development Law and Forestry Law, as little less than a betrayal of the nation, and damaging to the economies and territories of the indigenous peoples. These laws were, in the end, declared invalid by the Constitutional Court due to the lack of consultation that took place with the indigenous and Afro-Colombian peoples. This support from the country's highest court has encouraged indigenous peoples to continue the long struggle to get their rights enforced. Such events have rejuvenated Colombia's indigenous movement, which now realises the need for improved channels of communication in order to counter the smear campaign being played out in the pro-government media. The National Indigenous Communication Forum is noteworthy in this regard. It was held in Cauca and brought together more than 700

participants, including traditional authorities, organisations, processes, networks, independent press and communication networks. Friendly communication agencies from Mexico, Peru and Ecuador also participated in this event.

In addition, Bogotá has hosted a number of events that have contributed to the political revival being experienced by Colombia's indigenous movement. Given its importance in disseminating news on indigenous peoples' lives, the XI Indigenous Peoples' International Film and Video Festival is worthy of note. This took place under the banner of "*For life, images of resistance".* Fifty countries were invited, and 65 audio-visual productions were shown, alongside 30 special film and video exhibits, integrational concerts, artistic and cultural activities and different political and academic fora. The aim of the festival was to strengthen indigenous peoples' communication processes and promote audio-visual production as a tool for disseminating the reality of indigenous rights. The International Public Policy Forum also took place within the context of this festival. After the closing ceremony on 30 September, various films were taken to Medellín to be screened. The Medellín Festival, organised by the Indigenous Organisation of Antioquia (OIA) and the Coordinating Body for Indigenous Communication and Film (CLACPI), offered various public spaces for analysis and opinion aimed at highlighting the reality in which indigenous peoples live and the violations of their rights by extraction companies.

Congress of the National Indigenous Organisation of Colombia

Against this backdrop, around 5,000 indigenous people from 28 departments met in Bogota from 7 to 12 October to hold their national congress. The most important discussions revolved around the problems of the indigenous territories and how to defend them from mining/energy projects; the armed conflict, which has had serious consequences for the life and integrity of the communities; and, of course, the peace process and the negotiations between the government and the FARC.

In accordance with the mandates received at ONIC's 8th National Congress, the Governing Council that is leading the national organisation from 2012-2016 has the fundamental challenge of reaffirming the unity of the Colombian indigenous movement throughout the country in order to resist the policies of aggression being suffered by the communities at the hands of armed actors and the onslaught of ex-

tractive projects that are threatening the territories and violating the rights and political freedoms of Colombia's indigenous peoples. The Governing Council is led by Senior Advisor Luis Fernando Arias from the Kankuano people. ❍

Notes and references

1 The FARC proposes returning land to the peasant farmers, establishing a "Land Fund, made up of lands coming from unproductive, idle or inadequately farmed estates, wastelands, lands appropriated by violent means or dispossession, and lands used for drugs trafficking."
2 At a press conference in October, during the inauguration of talks in Oslo.
3 "We say that the FARC does not represent us, insofar as we consider that the armed conflict and the guerrilla action that was a part of it are one of the greatest evils that requires a solution; we also want respect from the State given that despite the fact that we have rights... these are largely violated and unenforced... in addition they have used the armed conflict to silence and weaken our social and political struggle for these rights." (Extract from a CRIC press release on the peace process).
4 The proposal for *inter-ethnic territories,* which was in the conclusions of the forum on Integral Agricultural Development, was produced and presented by various Afro-Colombian, indigenous and peasant farmer participants from the Pacific region, primarily the Naya River.
5 The divisions being experienced by the Indigenous Organisation of Antioquia (OIA) are likely to be taking place against this backdrop. Not long ago, the communities of the Docabú (Risaralda) Reserve removed their governor in order to allow mining companies onto the reserve, in exchange for derisory sums of money.
6 According to the government, the indigenous peoples have converted prior consultation into a form of "veto", turning it into a "negotiating scenario" in which the leaders seek purely personal gain (travel expenses, top-class hotels and government privileges).
7 This attitude is all the more reprehensible as it has been precisely the environmental proposals of the indigenous movements in the Americas and other continents that have contributed to an increased global awareness of the serious harm being caused by the limitless exploitation of the planet's natural and environmental resources.

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VENEZUELA

Venezuela is a multicultural country. According to the XIV National Census of Population and Housing conducted in 2011, Venezuela's indigenous population totals 725,128 people out of a total population of around 27 million. This represents an increase of 41.8% between 2001 and 2011.

The census recorded declarations of individuals belonging to 51 indigenous peoples in the country. Among these the Wayuu counted for the majority of the population with 58% of the total, followed by the Warao with 7%; Kariña 5%; Pemón 4%; Jivi, Cumanagoto, Anu, and Piaroa 3% each; Chaima and Yukpa 2% ; Yanomami 1% and others 9%.

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

2012 was marked by the presidential campaign that led to the reelection of Hugo Chávez for the period 2013-2019 on October 7 and the election of governors in December.[1] After his re-election, President Chávez announced the appointment of Aloha Núñez, indigenous Wayuu, as the new Minister for Indigenous Peoples. Of major importance to indigenous peoples throughout the year was the handing over of collective land titles; violence associated with a conflict between ranchers and indigenous Yukpa in the Sierra de Perija, which claimed the lives of five Yukpa[2]; conflicts related to illegal gold mining in indigenous territories; research on mercury contamination in the Caura river basin; and the alleged massacre of a Yanomami community at the hands of illegal Brazilian miners.

Handing over of property titles to indigenous lands

In October 2011, President Chávez announced the 2012 schedule for the handing over of title deeds for demarcated indigenous land and habitats, foreseeing 64 titles to be handed over between April and August. For the Yukpa leader Vladimir Aguilar[3] "it was funny to think that the National Executive, in a (election) period of 12 months, could demarcate an extension of indigenous territories that it had not been able to delimit during a (political) span of 12 years of constitutional entrenchment." [4]

On August 6, the Coordination of Indigenous Organizations of the Amazon (COIAM) spoke with concern about the hasty manner, without effective consultation, in which the Amazonas State's Regional Demarcation Commission approved several demarcation records, arbitrarily reducing the surface area marked by indigenous peoples and communities. The most serious situation identified is that of the Hoti people, who saw the surface area they had self-demarcated reduced by 42.2%.

On August 7, minister Maldonado announced the handing over of 65 property titles to indigenous lands that were issued by the Attorney General's Office. On 9 August, there was a ceremony for the handing over of indigenous land titles in the Kavanayen community, Bolivar State. According to official media, 23 titles were handed over. The event was chaired by Vice President Elias Jaua, who explained that titles were given to the communities of the Cumanagoto, Warao, Pumé, and Ka'riña peoples.[5] Despite this progress in the recognition of land rights of indigenous peoples, it has not been possible to obtain more information about these titles, the location of the beneficiary communities, and quantification of the areas.

Yukpa rejects land title

On January 6, the Yukpa chiefs of the Tokuko sector (Perijá, Zulia state) met to discuss the land title, handed over to them by President Chavez on 15 December 2011.[6] The Yukpa leaders rejected the document because they had no prior knowledge of it and refused to recognize the surface area or the boundaries of the land that had been handed over, also noting that they had never been given a map of the titled land.

The aspiration of the Yukpa is to achieve the regulation (*saneamiento)* of the territory they had traditionally occupied and from which they were displaced by the large landowners. For this, in the opinion of the Sociedad Homo et Natura, "the Chavez government should compensate the land improvements from the invader landowners and cattle farmers, and prohibit (...) all mining and hydrocarbon exploitation."

The killing of indigenous Yukpa continues in the Sierra de Perijá

On April 15, the dead bodies of Silfrido Romero, a relative of Chief Sabino Romero, and Lorenzo Romero were found with injuries from high caliber firearms. Ac-

cording to members of the Venezuelan Work Group for Indigenous Affairs (GTAI), "there is an alarming escalation of violence in the Perijá, which national and regional authorities cannot control, resulting in a huge institutional vacuum in the area." [7] According to Lusbi Portillo, "President Chavez announced the [government would provide] payment of the *haciendas* [large estates] in order to give the lands to the indigenous peoples. The army, believing that the Yukpas would occupy the land by force, occupied about 70 *haciendas.* The Yukpas accuse the gunmen and the army, who guarded these premises, for the deaths of their brothers." [8]

On May 7, President Chavez announced the approval of 249 million bolivars to pay of the 25 *haciendas* located in the territories of the Yukpa and Bari peoples. Despite these announcements, so far there has been no payment.

On June 23, hooded gunmen killed the brothers Alexander and José Luis Fernández Fernández, as well as their brother-in-law Leonel Romero.[9] These events occurred on the former small land holding Las Flores now reclaimed by the Yukpa. On July 9, in the wake of these events, the public prosecutor issued a protective measure for Carmen Fernández Romero, the mother of Alexander and José Luis Fernández. Despite the order issued by the prosecution, the National Guard has not provided protection.

In October and November there were two Yukpa protests. On October 15, a group of more than 120 Yukpa attempted to occupy the Medellín *hacienda* located in the Yaza River basin. The action sparked a confrontation between indigenous peoples and farmers supported by the National Guard and the Army, which resulted in several injured, including two Yukpa women. On November 6, more than 50 Yukpa set out from Zulia state to demand answers from the national government. After 27 hours of travel, in which they were subjected to successive blocks in order to keep them from continuing on, and several days waiting to be received by the Vice President, Nicolas Maduro, they returned to their communities without any concrete answers to their claims: the reviewing of land titles of the Yukpa; the purchase of the buildings and plots of the *haciendas*; and judicial investigations into the cases of murder and aggression.

Conflicts over illegal mining

The tension between indigenous peoples, the military, and criminal gangs vying for control of the mines has converted the Alto Paragua (Bolivar State) into a

conflict zone. On January 20, Alexis Romero, captain of the Musuk Pa de La Paragua community, was arrested in an irregular manner on instructions from the Military Prosecutor and held in the Monagas state's Judicial Prison. In the following days the National Guard arrested the Pemón leaders Norberto Pinto, Julio González, and Ramón Elías Mujica, accused by the military prosecutor on charges of theft of effects of the national armed forces and attacks on a guard. The group was later released.

The Forum for Life (*El Foro por la Vida*), a coalition of human rights organizations in Venezuela, rejected the criminalization of protest against Alexis Romero and the other leaders arrested, saying that, "rather than investigate and punish the corruption of some military, the denouncers are punished." [10]

Mercury contamination in the Caura river basin

In the Caura river basin (Bolivar State) lies part of the Ye'kuana, Sanema Hoti, and Jivi peoples' traditional territories. Since 2000, many gold miners have arrived. Mercury contamination resulting from this activity poses grave threats to ecosystems and risks to the health of local residents.

A new scientific study requested by the local indigenous organization Kuyujani was conducted between 2011 and 2012, demonstrating that there is a high level of mercury contamination among residents of the Upper and Lower Caura. The study analyzed the hair of 152 girls and women from five communities, three Ye'kuana and two Sanema, living along the Erebato and Caura rivers, finding that 92% of the samples analyzed exceeded the allowable amount of mercury in the human body established by the WHO, which is 2 milligrams per kilo. 36, 8 % of the study group had more than 10 milligrams per kilo, and 7.2% of the total had a mean value of 10 times more mercury.[11]

Report of massacre in the Yanomami community of Irotatheri

On August 27, the COIAM published a pronouncement of a "new massacre of indigenous Yanomami in the Irotatheri community," located at the headwaters of Ocamo River in the municipality of Alto Orinoco of the Amazonas state. According

to the testimonies of witnesses, there had been a violent attack committed by Brazilian miners (*garimpeiros*) resulting in an undetermined number of casualties.

The document stated that since 2009 the COIAM had been issuing complaints to authorities about the presence of *garimpeiros* and attacks on several Yanomami communities of the upper Ocamo River. The document requested an urgent judicial investigation and the adoption of bilateral measures to control the entry of Brazilian *garimpeiros*.

In early July, according to Yanomami testimonies, three Yanomami from Hokomawë went to visit the Irotatheri community. When they reached Irotatheri, they saw that the collective home of the community (*shabono*) was burned and there were charred bodies on the ground. They deviated from the path and went through the jungle for fear of encountering the prospectors, and there they met three survivors. The survivors told them that earlier that morning they had gone hunting, and when they returned to the community in the afternoon they saw the miners' supplies helicopter hovering over the *shabono*. Then they heard an explosion and the *shabono* caught on fire. They fled to the forest and hid there.

The Yanomami visitors returned home to Hokomawe, bringing the news to the communities of the Momoi sector. About ten days later a group of 15 Yanomami went to Parima B (Sierra Parima, Brazilian border) to ask for help.

On August 20, representatives of the Armed Forces, the CAICET, and the Venezuelan News Agency arrived in Parima to hear the testimonies. Two of the Yanomami were still in Parima B and they explained that they felt threatened by the Venezuelan military operating in the Momoi sector where they lived because their presence incited violence from the Brazilian miners. They asked that the military be removed so that they could live peacefully: "The last time there were military, there were shots fired. Because of this, the miners attacked." The two Yanomami claimed that the Irotatheri *shabono* had been burned down as a result of some Irotatheri arming themselves to rescue a woman who had been taken by the *garimpeiros*. They asked for help to end the violence.

Commission of enquiry and Government response

Back in Puerto Ayacucho, the Horonami Organization filed a complaint with the Attorney General, the Ombudsman, and the Armed Forces, requesting a judicial inquiry. The government's response was immediate. The Public Ministry announced the formation of an investigative committee with officials from various

government institutions. On September 1 the commission went to La Esmeralda (the capital of the municipality of Alto Orinoco), while the Minister for Indigenous Peoples, Nicia Maldonado, accompanied by the highest military authorities, headed by helicopter to the Momoi community. Here they broadcast on state television (VTV): "We can tell the country that there was no evidence of any deaths or evidence of burned houses of the alleged massacre of 80 Yanomami brothers and sisters in Upper Orinoco of Amazonas state." [12] Meanwhile, the commission of inquiry remained in La Esmerelda without even having entered Yanomami territory.

In the following days, the Ministers of Interior and Justice, the Minister of Defense, the Attorney General, and President Chavez declared that the complaint was false and that no evidence of a massacre had been found. All these statements were made before the return of the commission investigating in the Upper Orinoco.

Several NGOs, including COIAM and the Inter-American Commission on Human Rights (IACHR), urged the government not to dismiss the complaint until they had completed the investigation. The IACHR reminded the government of the amiable agreement of March 2012, by which the Government committed itself to monitor and control the presence of illegal miners in Yanomami territory.

The commission of inquiry then on 5 September flew to the Warapahi Tiwaroopetheri community where they met a Yanomami they had met in Irotatheri who offered to be their guide. From the helicopter they saw a community where they decided to land. The village elder received them and said, "I am Irotatheri," but their Yanomami guide did not recognise this community. Thus, it is doubtful that the commission arrived at the site they were looking for, and the members of the commission expressed these doubts. They returned to Irotatheri with minister Maldonado, who made a new contact with VTV, announcing that they had arrived in Irotatheri where there were no signs of the massacre and that it had all been a false alarm. With this declaration the government concluded the investigation.

"Nothing happened here"

On September 5, President Chavez repudiated that the media published "information lacking in fundamentals" and urged reporters to show proof. The next day, minister Maldonado, speaking from the presumed Irotatheri community, declared that, "This is one more act of the Venezuelan opposition aimed at destabilizing

[the country] with the pain and suffering of the Yanomami brothers and sisters. (...) Here nothing has happened, here harmony is breathed, the happiness of our people." [13] On September 7, Attorney General Luisa Ortega Diaz spoke in the same terms, assuming the matter closed. She added, in addition, that the request by the IACHR was a harassment of Venezuela. This disagreement caused the final break with the IACHR, which left the Venezuelan state outside the jurisdiction of the Inter-American Court.

The Horonami wait for answers

On September 18, the Horonami Organization handed over its own report on the course of the commission of inquiry to the prosecutors, the Ombudsman, and the 52nd Infantry Brigade of the Amazon. This report showed evidence of the presence of *garimpeiros*, with photographs and coordinates of the sites visited. They asked the ombudsman of the Amazonas state to convene an interagency meeting to present the report and the evidence and to agree upon the measures necessary for the eviction of the *garimpeiros*. They also submitted the report to the Commission of Indigenous Peoples of the National Assembly and requested a hearing to make their case. They never received responses to these requests.

On September 25, the Horonami Organization issued a statement requesting an official report with the results of the investigation, noting that although they had not encountered evidence of a massacre, there was evidence of a significant presence of illegal miners. They asked the national government to take precautionary measures to control the situation and to deepen the research into possible acts of violence and other abuses by the *garimpeiros*. The government never presented a formal report or responded to the requests of the Horonami.

Hugo Chávez dies

On March 5, 2013, the death of President Hugo Chávez Frías caused profound national shock, as well as demonstrations of international solidarity. His commitment to the indigenous peoples was sealed in a document signed on March 20, 1998, which promised to pay off the country's historical debt to indigenous peoples if he became President of the Republic. His government put forward – like no other – the recognition of specific rights of indigenous peoples, made the indige-

nous visible on the national scene, and created spaces for indigenous political participation at all levels of government. ❍

Notes and references

1 20 governors from the United Socialist Party of Venezuela were elected, led by President Chávez, and only three governors from opposition parties
2 On March 3 2013, the principal leader of the struggle to recuperate the Yukpa territory, Sabino Romero Izarra, was assassinated.
3 The Working Group over Indigenous Affairs, University of the Andes (GTAI)
4 Aguilar, Vladimir: *Sombras chinescas en los títulos de propiedad colectiva sobre los hábitats y tierras indígenas en Venezuela* (Shadow puppets in collective property titles of lands and habitats of indigenous peoples in Venezuela), (12.01.12).
5 According to information from the Ministry for Indigenous Peoples (Minpi), between 2005 and 2012, 66 titles for collectively owned indigenous lands and habitats have been handed over, equivalent to 1,813,328 hectares, benefiting 31,526 inhabitants from 337 communities belonging to nine indigenous peoples. See: Rondón, Dubraska. "23 Títulos Colectivos de Tierra y Hábitat para cuatro pueblos indígenas de Veneuzuela" ("23 Collective Titles of Land and Habitat for four indigenous peoples of Venezuela"). *Prensa Minpppi*, 13.08.12.
6 On this occasion titles of territories of the Barí people, neighbors of the Yukpa, were also handed over.
7 GTAI-ULA. *Comunicado (*Communication). Mérida, 01.05.12
8 Carpio Olivo, I. Y E.J. Nacarro. *Entrevista a Lusbi Portillo: Ejército y ganaderos se encompinchan contra los Yukpas* (Interview with Lusbi Portillo: The Army and Cattle dealers unite against the Yukpas). 16.04.12
9 Alexander Fernández Fernández was unjustly kept in prison for 18 months from October 2009 through March 2011, together with Sabino Romero and Olegario Romero
10 "ONG rechazan juicios militares a indígenas" ("NGOs reject military trials for indigenous"). *El Nacional*, 28.01.12. Regiones/6.
11 Zerpa, Fabiola. "Comunidades indígenas del Caura están contaminadas con mercurios" ("Indigenous communities of Caura are contaminated with mercury"). *El Nacional*, 13.08.12. Regiones/6.
12 "Fue falsa supuesta masacre de Yanomami en Amazonas" ("The supposed massacre of the Yanomami in the Amazon was false"). *Correo de Orinoco*, 02.09.12.
13 "Aquí no ha pasado nada" ("Nothing happened here"). *El Nacional*, 28.09.12. Ciudadanos/1.

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SURINAME

Indigenous peoples in Suriname number 18,200 people, or approximately 3.7% of the total population of 492,000[1] (census 2004/2007), while an additional 2-3,000 live in neighboring French Guiana after fleeing the "Interior War" in the late 1980s. The four most numerous indigenous peoples are the Kali'ña (Caribs), Lokono (Arawaks), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian indigenous peoples in the south-west and south of Suriname, including the Akurio, Apalai, Wai-Wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. The Kali'ña and Lokono live mainly in the northern part of the country and are sometimes referred to as "lowland" indigenous peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as "highland" peoples.

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

Legislative and political developments

There have been no major legislative developments on indigenous (and tribal) peoples' rights in Suriname over the past year, in spite of the long-passed December 2010 deadline for implementation of the judgement of the Inter-American Court of Human Rights in the Saramaka case.[2] This judgement obliges Suriname, among other things, to adopt national legislation and standards to demarcate and legally recognize the collective ownership of the Saramaka maroon people over their traditional tribal lands, and to respect their right to free, prior and informed consent. Such legal recognition would obviously have implications for all indigenous

and maroon peoples in Suriname. Two other similar cases are under consideration by the Inter-American Commission on Human Rights, submitted by the indigenous peoples of the Lower Marowijne River area in East Suriname and the Maho indigenous community in Central-West Suriname. The government has also not acted on the precautionary measures that the Inter-American Commission on Human Rights issued against Suriname in December 2010[3] in the case of the indigenous Maho community versus the State of Suriname with regard to "tak[ing] the necessary measures to ensure that the Maho community can survive on the 65 hectares that have been reserved for it free from incursions from persons alien to the community until the Commission has decided on the merits of the petition".

A Presidential Commission on Constitutional Reform has been installed and requested the input of various actors, including from the Association of Indigenous Village Leaders in Suriname, VIDS, which gave substantial input to the Commission, among other things, recommendations for a deeper constitutional dialogue mechanism, inclusion of indigenous and tribal peoples and their rights in the Constitution, which is currently not the case, elaboration of further legislation on these rights and revision of existing, discriminatory legislation. The Commission has not yet finalized its report to the President.

The Ministry of Regional Development instituted a "regular" dialogue with representatives of the traditional authorities of all indigenous and tribal peoples in December 2011 after an abruptly terminated conference on land rights that did not conclude with a tangible outcome. A small working group was tasked with drafting a joint statement and outline of a roadmap to get the process back on track. These documents were completed and submitted to the President for approval, but have thus far not been commented on or endorsed.

A "Bureau for Contacts with the People" has been established in the Cabinet of the President, which focuses on improving the livelihood situation of local communities (not only indigenous or tribal, although much attention goes to these). Their efforts are generally well-appreciated but they do not (noticeably) touch on the underlying issues of secure land and resource rights.

Continued threats to indigenous peoples' rights

In the absence of legal protection, violations of and threats against indigenous peoples' rights continued, particularly in relation to the issuing of concessions for

natural resource exploration or exploitation or other land titles in indigenous or tribal territories without their effective involvement in decision-making. Still of particular concern are the large-scale development projects that are being planned in relation to gold mining and hydroelectricity. While (parts of) some local communities are willing to welcome these developments because of expected employment opportunities, many see the more fundamental threats due to the absence of secure land and resource rights, namely expropriation of their lands and the extensive, long-lasting environmental and social impacts on their communities.

Feasibility research has been undertaken in relation to oil exploration along the coast of Suriname which would affect at least two indigenous communities (collectively known as Galibi) in East Suriname. Further research is also being undertaken in relation to potentially increasing hydroelectricity from diverted waters from the Tapanahony River and Jai Creek in South Suriname towards the Suriname River, which would increase the water volume for the existing Afobakka hydroelec-

tric plant (the so-called TapaJai Project). This intervention would affect many indigenous and maroon communities, including the displacement of at least one indigenous community, Palumeu, and the disturbance of various major river flows.

Gold mining companies such as Iamgold Canada and Newmont USA continued to increase their production in the light of favourable world prices, and new joint ventures with these mining companies are proposed. Often illegal, small and medium-sized '*garimpeiro*' operations, working with mercury that pollutes water and fish resources, and subsequently humans, have continued and are extending to West Suriname.

The government has submitted a renewed REDD Readiness Preparation Proposal (R-PP) to the Forest Carbon Partnership Facility (FCPF) of the World Bank.[4] While reduced large-scale deforestation would be positive, in the absence of secure land and resource rights, yet again, REDD-preparedness and eventual REDD projects may well become new threats to indigenous and tribal peoples' ownership, use and control of their territories, e.g. by instating new protected areas and/or new rules or effectively handing over forest management to governmental or other partners in these programmes. The Association of Indigenous Village Leaders in Suriname, VIDS, has protested against its exclusion from the elaboration of the new R-PP in 2012, which is to be presented to the Participants Committee of the FCPF in March 2013.

In West Suriname, where political intervention had been trying to interfere with the traditional authority of three communities, the situation has meanwhile stabilized after the communities continued their protests and forced a local referendum to be held. In this referendum, it was decided to hold 'Western-style' elections, during which the traditional chiefs were re-elected to their same positions and the politically-installed persons were dismissed.

Strengthening traditional authorities

VIDS, as the structure of the traditional indigenous authorities, has continued to strengthen its institutions. The regional working arm of VIDS in East Suriname, namely KLIM (Organization of the Kali'na and Lokono in Lower Marowijne) has taken steps towards further autonomous functioning, while the regional working arm in the Para region, namely OSIP (Organization of Collaborating Indigenous Villages in Para), renewed its Board. The Sixth VIDS Conference was held in November/December 2012.

This is the highest national decision-making authority of the indigenous peoples in Suriname, and involves the participation of the leaders (chief and basja), women and youth representatives from all indigenous villages throughout Suriname. The outline of the new multi-annual programme of VIDS was discussed and adopted, and a new VIDS Board was appointed following nominations by the various regions.

The VIDS Conference, held in Galibi, East Suriname, was preceded by the Fifth Transboundary Conference of Indigenous Peoples from Suriname, French Guiana and northern Brazil, held from 25–28 November in Oiapoque, Brazil. This was part of a series of meetings in a Guyana Shield project being run by Iepé, an indigenous support NGO in northern Brazil. The meeting focused on strengthening the traditional leadership and on recognition of land rights.

Various villages have renewed their leadership. Noteworthy was the selection of female chiefs in three villages, bringing the total number of female indigenous chiefs to six out of 41 chiefs countrywide.

VIDS participated in two studies related to indigenous community controlled and conserved areas (ICCAs): one describing the current situation in Suriname in this regard, and one focusing on the legal environment related to indigenous peoples' rights to land, resources and nature management.[5] ❍

Notes and references

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

2 http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

3 http://www.cidh.oas.org/medidas/2010.en.htm

4 http://www.forestcarbonpartnership.org/Node/175

5 http://www.cbd.int/pa/doc/ts64-case-studies/suriname-en.pdf and http://naturaljustice.org/library/our-publications/legal-analysis

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ECUADOR

The total population of Ecuador numbers 15,430,577 inhabitants, of which indigenous peoples account for some 1,1,00,000. Of these, 78.5% live in rural areas.

The current Constitution of the Republic recognises the country as a "constitutional state governed by law and social justice, democratic, sovereign, independent, unitary, intercultural, plurinational and secular". Ecuador was the first country in the world to recognise rights to nature in its Constitution and to include ancestral principles such as "Sumak Kawsay" (calm and harmonious life) in this fundamental text.

Ecuador ratified ILO Convention 169 in 1998 and voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007.

Recent events are indicative of two key issues in relation to the Ecuadorian indigenous movement: on the one hand, the persistent disagreements and open conflict between the main national organisations and the central government, headed by Rafael Correa and, on the other, a crisis within the movement, which is severely limiting the organisations' capacity to act proactively, influence public policies or express the political will of the people they are supposed to be representing.

Rights undermined and persistent disagreements

The state institutions have been implementing a number of the recommendations established in the "National Good Living Plan 2009-2013", and this has resulted in progress considered positive by various official sources, backed up by the Economic Commission for Latin America (ECLAC). Between 2006 and 2012, the rate of poverty in Ecuador fell by 12 percentage points (from 37.6% to 25.3%) and that of extreme poverty from 16.9% to 9.4% .[1] However, this general trend was not

replicated within the different indigenous peoples. There remain deep social divisions that illustrate the persistence of widespread discrimination. According to information from the National Statistics and Census Institute (INEC) and the National Statistics Commission for Indigenous Peoples, Afro-Ecuadorians and Montubios (CONEPIA), although poverty affects 54.69% of the mestizo population and 45.99% of those who identify as white, it affects 86.16% of the indigenous population, i.e. a 31 percentage point difference.

Social indicators are just the start of a long list of demands that have not been satisfied from an indigenous perspective. For Humberto Cholango, President of the Confederation of Indigenous Nationalities of Ecuador, "We have a new political constitution but no-one in Ecuador seems to realise this. Society, the government, the political actors all continue to act as if we did not have a new Constitution. Acting as if they were in the old Ecuador, and a large part of the indigenous movement is no exception in this".[2]

Nor has there been any great change in the outlook for other indigenous rights. The land redistribution policy moved forward only slowly during the year and, by November 2012, official figures indicated that a total of 17,807 hectares had been allocated, i.e. only 8.9% of the stated goal. Most of these lands were state-owned. It should be recalled that, in 2010, the government adopted important measures in this regard: on the one hand, it abolished the national Agrarian Development Institute (INDA) and created, in its place, the Sub-Secretariat for Lands and Agrarian Reform. On the other, in October of that year, the so-called "Organic Law on Food Sovereignty" was approved.

In reality, trends in the agricultural sector are demonstrating an inexorable continuation of the land concentration process that occurred during the 1980s and 90s, involving large agroindustrial complexes which monopolise the water, the best lands in terms of fertility and service and infrastructure provision, credit, political influence and markets, including having close links with global markets.

With regard to the legalisation of ancestral territories, the Sub-Secretariat of Lands indicates that around 404,554 hectares have been legalised (some 30% of the target). In the last two years, 92.6% of the ancestral territories titled have been territories in the Central South Amazon (Achuar, Kichwa de Pastaza, Sapara and Shuar nationalities). A further 4.9% corresponds to Kichwa de Napo territories, and the remainder to indigenous territories on the coast, representing 2.42% of the total.[3]

Rights to autonomy and self-government have also shown no demonstrable progress. In March 2010, an agreement was reached between the central government (through the coordinating ministries of policy and heritage) and 26 organisations representing the ten Amazonian nationalities. This was aimed at establishing a number of one-off agreements that included creating a political and technical committee to coordinate the process of establishing Indigenous Territorial Constituencies (*Circunscripciones Territoriales Indígenas* - CTIs). This is in line with Art. 257 of the Constitution, according to which, "CTIs may be established in the context of the political organisation (...), which will exercise the powers of the corresponding autonomous territorial government". This committee was to be responsible for coordinating the implementation of a road map, including promoting and disseminating the process, demarcating the territorial jurisdictions that make up the CTIs, and coordinating the production of land-use plans, life plans and articles of association. According to Efrén Calapucha, the coordinator responsible for the process, "This is a new form of regional planning aimed at

strengthening the ancestral peoples. The CTIs are a way of reclaiming the forms of government of those that first lived in this territory." [4]

Over the course of 2010-2012, the complexity of a process that involved incorporating organisational and cultural aspects into the state structure became clear, along with the limitations of monocultural and ethnocentric institutional structures in terms of accepting, revitalising and strengthening self-government dynamics. Political tensions and disputes emerged in at least three municipalities of Napo and Pastaza (Chontapunta, Ahuano and Arajuno respectively) and, within 30 months of the CTI agreements being signed, only four indigenous organisations of the Amazon were still continuing with the somewhat tortuous process.

The outlook remains equally gloomy with regard to free, prior and informed consent. While the provisions of the Constitution and the Organic Law on Civic Participation have been paid lip service, there have been significant failings in terms of complying with important principles and minimum criteria with reference to free, prior and informed consent, and this has formed the main catalyst for conflicts and disagreements between the national indigenous organisations and central government.

Disenchantment and intensification of conflicts

At the start of the year, on 15 January, in Yantzatza parish located in Zamora Chinchipe province, in the Condor Mountains, in the south-eastern Amazon, on the border with Peru, representatives from different social organisations agreed to organise a March to Quito, entitled "For Life, Water and the Dignity of the Peoples". The protest began on 11 March, three days after the signing of a mining contract between the government and the transnational corporation Current Resources (Ecuacorriente SA ECSA),[5] for the so-called "Mirador" project.[6] Various representative organisations of teachers, farmers and indigenous peoples joined the march, including CONAIE and Ecuarunari, political parties such as the Democratic Popular Movement (MPD) and Pachakutik, and what is known as the "Assembly of the Peoples of the South".[7]

In a public statement, CONAIE explained that the main objectives of the collective action were to demand five key points from the government: "1) the redistribution of water via the urgent approval of a new water law; 2) an agrarian revolution, for which the approval of the land law and an agricultural reform were ur-

gent, on the basis of food sovereignty; 3) replacement of the current mining/extraction model with a new model, that of Good Living-Sumak Kawsay; 4) the rejection of new taxes affecting small landowners and producers; and 5) an immediate halt to the criminalisation of social protest along with a quashing of the cases against 194 leaders and community leaders for sabotage and terrorism." [8]

They reached Quito on 21 March, having crossed seven provinces and a distance of some 700 km on the way, either by vehicle or on foot. On 22 March, the protestors were joined by some 8-10,000 members of different opposition groups until they reached the seat of the National Assembly, where a delegation was received by President Fernando Cordero.

Delfín Tenesaca, President of Ecuarunari – the main Andean-based organisation, and member of CONAIE – considered that: "...the Good Living model cannot become a reality as a way of life when there is no stable employment, no access to education, health, no participatory budgets (...) it is impossible to hold talks with the government when it is constantly violating the Constitution, placing natural assets in the hands of multinational companies, approving infrastructure megaprojects and ignoring the proposals of the indigenous organisations with regard to such important laws as the Water Law." [9]

In response to this demonstration headed by CONAIE, the peasant farmer and union organisations organised within the pro-government "*Alianza País*" movement mobilised more than 60,000 members to take over the city's main squares. President Correa visited them all during the course of the day, promoting rallies and giving rousing speeches as his supporters converged on different areas around the Carondelet Presidential Palace. Correa stated in one of his speeches on state television that "...the doors have always been open to the sensible people of CONAIE. They did not need to organise a march if they wanted to talk." He also minimised the magnitude of CONAIE's protest: "Quite unlike the uprisings of the 1990s (…) no-one takes any notice now because the country has changed and if the government is so unpopular, why not wait for the elections and throw us out via the ballot box?" [10]

Uncertainties and outlook

On 27 June 2012, at its headquarters in San José, Costa Rica, the Inter-American Court of Human Rights (IACHR) ruled in favour of the Kichwa de Sarayaku peo-

ple of Pastaza province in a case brought against the Ecuadorian state.[11] The Court's decision obliges the state to pay US$1,400,000 in compensation for damages caused by the operations of the Argentine oil company, Compañía General de Combustibles (CGC).

This company signed a seismic exploration contract in 1997 and, in 2001, began operations without any prior consultation of the local communities of the Bobonaza River. After various violent incidents, which included displacements of people, intimidation and court cases against local leaders, a militarisation of the area and a ban on free movement within the territory, the Sarayaku people, supported by various human rights organisations, brought their case before the IACHR.

After several years of proceedings, the Court ruled that the state was liable, citing that it should have conducted free, prior and informed consultations. It also ruled that the state had violated the rights of the Sarayaku people, their indigenous communal property and cultural identity. The Court emphasised that it was also an error not to have granted effective legal remedy and to have placed the lives and personal integrity of the Sarayaku people at risk, given the presence of high explosives on their territory. The ruling further ordered the neutralisation, deactivation and withdrawal of pentolite (explosive) from the Sarayaku people's land; their prior consultation with regard to any possible natural resource extraction activity on their territory; and the adoption of the legislative, administrative or other measures necessary to guarantee the prior consultation of indigenous and tribal peoples and communities.

Through the legal secretary of the Presidency, Alexis Mera, and the Minister of Justice, Johana Pesántez, the government indicated that it would comply with the IACHR's ruling in favour of the Sarayaku people in relation to omissions and negligence resulting from violations of collective rights that occurred between 2002 and 2003. Mera clarified that: "The issue was the responsibility of Lucio Gutiérrez' government" but that "the government will comply with these moral and economic reparations".[12]

However, in the middle of September, the Sarayaku leaders, headed by José Gualinga, sent an open letter to President Correa in which they expressed their discomfit at the authorities' failure to embark on the committed actions:

More than 70 days have now passed since the ruling was issued and your government has established no formal communication with the Kichwa people of Sarayaku in order to begin coordinating implementation of this ruling.

Nor has the state taken any steps to implement the necessary legislative and administrative measures to guarantee the effective right to prior consultation. The Collective Rights Committee (in which the opposition has a majority) has already submitted a bill of law to the Assembly but this has been put on hold (...) consultation processes are being conducted with the indigenous peoples in our own regions regarding a new oil round, in the context of a regulation that came into force prior to the ruling, without the involvement of the indigenous communities and which fails to respect the human rights standards indicated by the Inter-American Court.[13]

Added to these tensions and disagreements over the government's mining policy was the government's decision, made public on 10 November 2012, to convene the 11th Round of Oil Tenders, which establishes concessions in 16 blocks of the Centre South, in the provinces of Pastaza and Morona Santiago, for the exploration and development of crude oil. This will affect more than three million hectares belonging to the Pastaza Kichwa, the Waorani, Sapara, Andoas, Shiwiar, Achuar and Shuar ancestral territories. Initially, the round will be open to international companies for blocks 70, 71, 72, 73, 77, 22, 29, 79, 80, 81, 83, 84 and 87. The intention is to operate the blocks by means of a consortium with the Ecuadorian state company. Blocks 28, 78 and 86 will not be included in this round of negotiations as they will be handed over directly to the state company, Petroamazonas.

It is anticipated that the oil will be transported via a pipeline yet to be constructed, which will link into the "North Peruvian Oil Pipeline" on the border, via block 86. The Ecuadorian Ministry of Hydrocarbons and PetroPerú signed an agreement in this regard on 8 August 2012 to "promote and facilitate the transport of oil". According to the government authorities, the state is hoping for between 1,000 and 1,200 million dollars of investment.

One critical point has been the questionable process of free, prior and informed consultation anticipated in the Constitution. According to Wilson Pástor, Minister for Non-Renewable Resources, "The government postponed the round precisely in order to complete a consultation process with the communities. We have signed agreements with some of them establishing the social investments that the companies operating the blocks will make, although there has been resistance in other cases." [14]

For Franco Viteri, President of the Confederation of Indigenous Nationalities of the Amazon (CONFENIAE): "The consultation has not been free, because the

presence of state officials has been imposed on the indigenous territories, against the will of the peoples and nationalities; it has not been informed because the communities have not been provided with real and accurate data on the activity's environmental and social impacts, only propaganda and an attempt to divide the families and communities."[15]

Subsequently, the Confederation of Indigenous Nationalities of Ecuador (CONAIE) announced that it would ask the UN and the International Labour Organization (ILO) to observe the prior consultation process being conducted by the government in the Amazonian communities with regard to the opening up of new oil fields.

Finally, it can be concluded from this brief overview that the right to free, prior and informed consultation is barely the tip of the iceberg in Ecuador. It is, however, a gauge by which the practical perspective of the state bodies thus far with regard to their constitutional mandates can be gauged. These have ended up limiting - if not completely ignoring - the fundamental principles enshrined in Ecuador's plurinational and intercultural constitution, including the active and horizontal participation of those parties who are interested in and potentially affected by public policy formulation and decision-making with regard to the integrity of their territorial and collective rights. ❍

Notes and references

1 ECLAC, "Panorama Social de América Latina 2012", Santiago de Chile: Economic Commission for Latin America and the Caribbean. ECLAC. 2012. Available at: www.eclac.org/publicaciones/.../PanoramaSocial2012DocI-Rev.pdf. It can also be found at CEPALSTAT. (www.websie.eclac.cl/sisgen/ConsultaIntegrada.asp

2 Personal interview, 13 March 2012.

3 Ana María Larrea, "Modo de Desarrollo, Organización Territorial y Cambio Constituyente en Ecuador", Quito: Senplades, 2012. Cf. Larrea, Carlos et.al. "Atlas de Desigualdades Sociales", Quito: Senplades, Ceplaes, Uasb, 2012. Sección 5: Desigualdad en la tenencia de la tierra en Ecuador a inicios del siglo XXI. Cf. Subsecretariat of Lands, Ministry of Agriculture, Cattle Rearing, Fish Farming and Fisheries MAGAP, Available at: http://www.agricultura.gob.ec/legalizacion-de-tierras-ancestrales/

4 Personal interview, Quito, 7 April 2012.

5 ECSA, owned by the China Railway Construction Corporation, the fourth largest construction company in the world, and Tongling Nonferrous Metals Group Holdings Co., Ltd, the sixth largest producer of copper on the planet. Cf. http://english.crcc.cn/ and http://www.tnmg.com.cn/english/

6 It has been estimated that some 27,000 tonnes of mineral will be excavated each day during the initial phase. The mineral reserves and daily volumes mined give an estimated useful life of around 20 years. The excavation of the mine, which is an open pit mine, will cover an area of 115

ha. after 15 years of operations, and it will have an estimated depth of 264 metres. Various tonnes of ore-containing rock will be excavated from this mine. For more information: Cf. http://ecuacorriente.expat-blog.net/

7 BBC News "Ecuador indigenous protesters march against mining", 8 March 2012. Available from http://www.bbc.co.uk/news/world-latin-america-17306228 . Also at:
Équateur: La Marche pour la vie dit "non" à l'industrie minière à grande échelle, in Global Voices, 16 March 2012. Available at http://fr.globalvoicesonline.org/2012/03/16/101990/

8 CONAIE, Letter to the Ecuadorian People, 19 March 2012. Available at: http://www.conaie.org/component/content/article/1-ultimas-noticias/498--carta-al-pueblo-ecuatoriano%20

9 "Ecuador: Delfín Tenesaca: Gobierno ecuatoriano insiste en deslegitimar la Marcha Plurinacional", 22 March 2012. Available from the Agencia Intercultural de Noticias Indígenas de Bolivia at: http://www.aininoticias.org/2012/03/ecuador-delfin-tenesaca-gobierno-ecuatoriano-insiste-en-deslegitimar-la-marcha-plurinacional/

10 Cf "Al menos 2 mil indígenas de Ecuador protestan contra la gran minería. "Fracaso" y "contrarrevolucionaria", la marcha opositora: Rafael Correa". In Diario La Jornada, Mexico, 23 March 2012. Cf. at http://www.jornada.unam.mx/2012/03/23/mundo/035n1mun Also at AFP, "Ecuador Indians march to protest Correa's land policies", 7 March 2012. Available at: http://www.google.com/hostednews/afp/article/ALeqM5issdLTmEu4HMMx3JzvKbfl2l8FCg?docId=CNG.7feae09de7d4c3d75379bfb3430d933.461

11 Cf. Inter-American Court of Human Rights. "Kichwa de Sarayaku Indigenous People vs. Ecuador". Ruling of 27 June 2012 (Merits and Reparations). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_245_esp.pdf

12 "El Gobierno pagará reparación económica al pueblo Sarayaku por los daños causados en la administración de Lucio Gutiérrez", 26 July 2012. Agencia Andes. Available at: http://http://www.andes.info.ec/pol%c3%adtica/4587.htm

13 "Carta Abierta que dirige el Pueblo Kichwa de Sarayaku al Presidente del Ecuador", Sarayaku, 13 September 2012. Available at: http://sarayaku.org/?p=1250

14 Ministry of Non-Renewable Resources: "Ronda petrolera del sur oriente garantiza remuneración razonable a las empresas", available at: http://www.comunicacion.gob.ec/ronda-petrolera-del-sur-oriente-garantiza-remuneracion-razonable-a-las-empresas/

15 Cf. INREDH, "Indígenas Amazónicos se oponen XI Ronda Petrolera", 28 November 2012. Cf. at http://www.inredh.org/index.php?option=com_content&view=article&id=544:indigenas-amazonicos-de-oponen-xi-ronda-petrolera&catid=73:ddhh-ecuador . Can also be found in: Indigenous Protests Grow as Ecuador Auctions Amazon Oil Blocks. Upside Down World. Covering Activism and Politics in Latin America. Available at: http://upsidedownworld.org/main/ecuador-archives-49/3994-indigenous-protests-grow-as-ecuador-auctions-amazon-oil-blocks

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PERU

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

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

While the Peruvian economy has been in constant growth for a number of years the problems facing indigenous peoples have, in fact, escalated because of the economic model being followed, a model based on the extraction of primary products - most of which are found on indigenous territories. In 2012, mining concessions accounted for 20.3% of Peruvian territory and an estimated 49.63% of peasant community territories. In the Amazon almost 60 per cent of the area (47 million hectares) is now given over to hydrocarbon concessions. Meanwhile, the scourge of informal mining is also eating away at the national territory, causing social and environmental damage.

Contrary to state propaganda ample sources of information refute the suggestion that investment in mining will result in regional development.[3] Mining re-

gions have some of the highest rates of chronic child malnutrition in the country: Huancavelica (46.4%), Cajamarca (29.9%), Huánuco (28.8%), Apurímac (31.3%) and Ayacucho (28.1%).[4]

2012 ended with a toll of 24 civilians dead and 649 people – civilians, police officers and soldiers – injured as a result of 227 social conflicts, 148 of which are socio-environmental by nature.[5] Ollanta Humala's government has, like its predecessors, responded to social protest by brutally suppressing it and criminalising the social leaders. Following the deaths of four civilians in Celendín, Cajamarca on 3 July, Human Rights Watch urged the government to avoid the unlawful use of lethal force in quelling social protests. The National Human Rights Coordinating Body (CNDDHH) launched the campaign "Not one death more" and called on the Constitutional Court to declare Legislative Decree 1095, in effect since September 2010, unconstitutional. This decree "unlawfully extends the intervention of the Armed Forces beyond a state of emergency".

The "2012 Alternative Report" on compliance with ILO Convention 169 noted a lack of consistency in government policy. In its first year in office, the government approved the Law on Prior Consultation and authorised "pro-consultation discussions" but was, in contrast, also "encouraging the extractive industries without any consultation of the people",[6] thus obfuscating its initial progressive image.

A public institutional presence for indigenous peoples

2012 saw the abolition of the National Institute for Andean, Amazonian and Afro-Peruvian Peoples' Development (Indepa), the duties of which have now been partially absorbed by the Vice-Ministry of Interculturality, attached to the Ministry of Culture. On 3 October, the government created a Working Group on Institutions to formulate public policies on indigenous peoples before 12 February 2013.[7] At the time of writing this article, however, no substantive agreements had been reached regarding an institutional presence for indigenous peoples, an issue that is constrained by the legal framework of the Organic Law on the Executive Power, which limits the existence of decentralised public bodies at ministerial level.

In what was the first pronouncement of a national jurisdictional body on the issue of indigenous self-determination, the Constitutional Court ruled in favour of the native community Tres Islas de Madre de Dios, recognising its right to au-

1. The Conga Mine 2. Cordillera del Cóndor/Condor Mountains

tonomy, self-government and self-determination within its own territory. The International Institute on Law and Society (IILS) has published a video on this case.[8]

Breakthroughs and setbacks in the consultation process

The main national indigenous organisations, grouped within the Unity Pact, rejected the regulations aimed at governing the Law on Prior Consultation, which

introduced content that had neither been presented to them nor discussed with them. One of the most controversial issues arising from these regulations is that of when the consultation should take place: before or after a concession has been granted. Controversially, Iván Lanegra, Vice-Minister for Interculturality, maintained that each sector should decide when indigenous peoples were to be consulted, either before or after the contract was signed, and that the consultation would only be valid for projects approved since April 2012.[9] The CNDDH's working group on indigenous peoples produced a technical report on the regulations in which it noted a lack of legitimacy in the process due to a failure to respect agreements, texts being introduced without consultation and controversial clauses included that do not comply with national and international standards for indigenous rights.[10]

In Congress, the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology agreed not to discuss any initiative affecting indigenous peoples until the regulations governing prior consultation of legislative measures had been produced. To this end, Congresswoman Verónika Mendoza submitted a draft legislative resolution[11] aimed at defining a legal framework that would enable current and future legislative bills relating to indigenous rights to be put out to consultation.

Conga: the emblematic case of 2012

The Conga mining project was the most serious conflict arising during the year and one that had significant social, political and economic repercussions. Francisco Durand explains that the Yanacocha company had to remove its main officials and create a human rights unit; the main investor, Newmont Mining, underwent a social and environmental restructuring; and divisions were fuelled within the mining union due to its association with "bad mining". Most significant, however, was the fact that President Ollanta Humala and his government "were stained by the conflict, having identified themselves closely with the mine and the eradication of four lakes".[12]

The scope of the project was described in *The Indigenous World 2012*. The North American hydrologist and geochemist, Robert E. Morán, produced a report on the Conga environmental impact assessment (EIA) and concluded that this assessment provided neither measurements nor data of the necessary quality for

the regulatory bodies to be able to appropriately evaluate the project's impacts. "It is a badly produced and dishonest document (...) it does not provide the necessary technical information (...), and in many cases makes a mockery of the population and state regulatory bodies," he concludes.

Similar views can be found in a report from the Ministry of the Environment, which stresses two weaknesses of the EIA: its hydrogeological aspect and the economic assessment of the ecosystem. Added to this, the international expert witness brought in by the government did little to dispel doubts regarding the scarcity of water in Cajamarca and the disappearance of the four lakes. In order to promote the project, the expert "fails to emphasise the weaknesses of the EIA," suggests Morán.[13] Newmont Mining Corporation accepted the government's conditions resulting from the comments of the "international expert witness" but the government subsequently decided to suspend the Conga project midway through a survey by Ipsos-Apoyo after it revealed that four out of every five Cajamarcans were opposed to the mining project.

Water on the agenda

The struggle for water took on greater significance in 2012, amidst figures from the National Institute for Statistics suggesting that only 35.6% of the rural population have access to piped drinking water from the public network in their own homes. The National March for Water, which commenced on 1 February, was an important event which began initially in Cajamarca and was then replicated in Iquitos, Cusco, Arequipa, Puno, Tumbes, Chiclayo, La Libertad and Ancash. These marches had three basic demands: that the Peruvian Constitution should recognise the human right to water; that the basin headwaters, springs and sources of rivers should be declared intangible assets; and that a sustainable environmental policy should be established aimed at protecting natural resources and the environment.

Intercultural and bilingual education

In terms of indigenous education, the Ministry of Education's initiative to promote the production of the Strategic Plan for Bilingual Intercultural Education (EIB),

along with a proposed method of teaching EIB, an information system to ascertain how many bilingual intercultural schools and bilingual teachers there are, and the creation of a National EIB Commission to ensure dialogue between the state and indigenous peoples, is worthy of note.

Problems in the Coastal/Andes region

Challenges to the high concentration of agricultural land were revived last year with two legislative bills seeking to set maximum limits on land ownership. One proposed a maximum of 25,000 hectares throughout the whole country, the other proposed different limits in different areas: 10,000 in the coast, 5,000 in the Andes and 20,000 in the forests. The farmers' associations, however, demanded a revised proposal that should include the participation of the farmers themselves.

The "Secure Territories for Peru's Communities" campaign was launched in 2012 with the aim of reviving the communal land titling process, creating a legal framework to safeguard these lands and recognising and valuing the communities' contribution to the country. A report was produced on the state of rural communities.[14]

Following verification by the Ministry of Health and private companies, the government set up a round table in Espinar to discuss the Cusco population's complaints of contamination and damage to their health caused by the activities of the Tintaya mining company. The government had previously imposed a state of emergency and suppressed a provincial strike, during which two people tragically died. The population is demanding a solution to the contamination problem and a review of the framework agreement signed with the Xstrata company in 2003.

Antamina - "one of the ten largest mines in the world in terms of operating volume" according to its website – not only failed to comply with its contingency plan and flouted its safety regulations but also lied to community members and acted immorally and irresponsibly when a pipeline ruptured, spilling 45 tonnes of concentrate and causing some 300 people to suffer the symptoms of poisoning. The accident occurred on 25 July in the community of Santa Rosa, Cajacay district, Ancash region. In an effort to prevent the spillage from reaching the Fortaleza River, company employees called on the local people to help contain the

spillage, without providing appropriate protection and without warning the people of its toxic nature.

Problems in the Amazon

The Territorial Planning Platform (*Plataforma de Ordenamiento Territorial* - POT) states that around 16 hydrocarbon concessions are unlawfully superimposed on 12 protected natural areas in the Amazon. The projects are not, in most cases, following the appropriate land planning processes and this will result in negative impacts, forming hotspots for future conflicts. The Platform for Amazonian Indigenous Peoples United in Defence of their Territories (*Plataforma Pueblos Indígenas Amazónicos Unidos en Defensa de sus Territorios* - Puinamudt)[15] states that most of the hydrocarbon projects are superimposed on indigenous territories, and 18 of the 36 new plots that Perupetro will be putting out to tender in the coming months – according to an announcement made in September – are in the Loreto region. In June, a meeting of chiefs and leaders of the Awajún and Wampis peoples agreed to call for the cancellation of oil and mining concessions on their territories because they were being granted without consultation and were considered incompatible with their way of life.

In the Selva Central, indigenous organisations have denounced the state's indifference, corruption and abandonment with regard to the war on drugs, a problem that is of increasing concern in the area around Ciudad Constitución and which is expanding throughout the whole of the Pichis Valley. In a letter sent to the President of the Republic, the Regional Association of Indigenous Peoples, ARPI S.C. denounced the fact that communities were being threatened and forced to sow coca or facilitate secret landing strips. In the Cusco forests, bombing by the Army aimed at driving out the drugs traffickers has forced more than 100 indigenous Machiguenga to seek refuge in the town of Quillabamba, capital of La Convención province.

The Spanish company, Repsol, last year announced it had found an important source of natural gas, approximately 60,000 million cubic metres, in an area incorporating the Otishi National Park and Megantoni Sanctuary, in Junín and Cusco regions, inhabited by indigenous Machiguenga, Asháninka, Kakinte and Yine Yami peoples, along with indigenous peoples living in voluntary isolation.

In September, the Talisman Energy company from Canada announced that it was withdrawing from Peru and closing down its oil exploration activities in Datem del Marañón Province (Loreto), where it has worked since 2004, specifically in plots 64 and 101. Talisman has also been working in the Pastaza River Wetlands Complex, recognised by the Ramsar Convention as one of the most productive aquatic systems in the forest.

In January 2013, after four years, the Bagua Combined Superior Prosecutor's Office (*Fiscalía Superior Mixta*) called for sanctions, and even life imprisonment, for 53 leaders and demonstrators involved in the "Baguazo", as the conflict of 5 June 2009 has become known, which resulted in the deaths of 10 civilians, 23 police officers and the disappearance of Major Felipe Bazán.[16] Three indigenous individuals were charged – with no evidence – of murdering Major Bazán and have been in prison since 2009. Asterio Pujupat and Danny López are under house arrest in police houses in Bagua, far from their homes and without judgment having been passed, while Feliciano Kahuasa remains in prison despite the time limit for his detention having passed.

Indigenous organisations from the Pastaza, Marañón, Tigre and Corrientes basins have made known their "prior conditions" with regard to the tender and consultation process for the new Plot 192 (previously 1AB) concession. They want a consultation process to be conducted prior to the invitation to tender and not, as the government has stated, following this process but prior to signing the contract. Their first condition is that the environmental damage caused by 40 years of oil activity on what was Plot 1AB must be remedied. They are also calling for indemnification for the damages caused and compensation for the use of the community's lands.

The Amazonian indigenous umbrella organisation Aidesep (*Asociación Interétnica de Desarrollo de la Selva Peruana)* -,and three of its regional organisations: the Machiguenga Council of the Urubamba River (Comaru), the Native Federation of the Madre de Dios River and its Tributaries (Fenamad) and Aidesep's Regional Organisation in Ucayali (Orau) announced in 2012 that they were going to take the state to court over the expansion of Pluspetrol Corporation's Plot 88, located in the San Martín and Cusco regions, which is threatening the Kugapakori, Nahua and Nanti territorial reserves, among others.

In the stretch that passes through Puerto Esperanza, in Purús province, around Iñapari, in Madre de Dios, the "Construction of the Pucallpa–Cruzeiro do Sul Binational Highway" project has been denounced for the impact it will have on

uncontacted indigenous populations, the environment and biodiversity. On one side is the local parish priest of Purús, Miguel Piovesán, who has found an ally in the pro-Fujimori Congressman Carlos Tubino, by presenting a legal initiative favourable to the highway.

On the other is the Purús Federation of Native Communities, which has called the project the "highway of death" for its likely devastating effects. A group of indigenous and environmental organisations has produced a report[17] which warns of the serious danger the indigenous peoples in voluntary isolation will run if the highway is built through the Alto Purús National Park. Although the authorities have given the go-ahead for a third alternative route, through the Abujao River basin, the Regional Monitoring Group for Megaprojects in Ucayali (GRMMRU)[18] still considers this to be too close – some six kilometres away – to the Isconahua Territorial Reserve for indigenous people in isolation and very close to the Sierra del Divisor Reserve Zone. The group warns that such an infrastructure project will lead to increased migratory pressure, changes in land use, deforestation, the contamination of water sources and a loss of the biodiversity, habitats and cultural heritage of indigenous peoples.

At the same time, the image of Aidesep, the largest Amazonian indigenous organisation, was tarnished this year when its President, Alberto Pizango Chota, publicly admitted to having received US$ 73,000 from the Brazilian company Petrobras for the holding of 11 workshops "for the communities to freely express themselves" and for "Aidesep to provide advice on legal conflicts". The problem revolved around the seventh clause of the agreement, which Aidesep tried to justify as mere "formality". For the Spanish jurist, Bartolomé Clavero, however, this article "is tantamount to a relinquishment of rights by contractual means" because "it assumes a general negation of recourse to justice, either indigenous or state, and even the international jurisdictional bodies, if any conflict should arise, either directly or indirectly, from the indigenous side with regard to the agreement itself."

The Regional Coordinating Body of Indigenous Peoples of San Lorenzo, Corpi-SL, withdrew its support from Aidesep's national governing body for signing an agreement that "is basically aimed at ensuring that associated indigenous groups say nothing about the presence of Petrobras in plots 117, 110 and 58". Corpi-SL was particularly concerned because Petrobras holds the concession to Plot 110 which is, in part, superimposed on the Murunahua Territorial Reserve, inhabited by peoples in isolation, and the negotiations for which were conducted

by Aidesep in the 1990s. Similarly, Plot 58 affects the Kugapakori, Nahua and Nanti territorial reserves, where populations in initial contact are vulnerable to any devastating epidemic for lack of immunity to even common illnesses. Fenamad lamented the fact that the agreement between Alberto Pizango and Petrobras had not been made public so that "the spirit and the reason behind this cooperation could be explained to its grassroots members".

One hundred years on since British Consul Roger Casement produced a report into crimes in Putumayo for his government, a number of activities were held in Peru and Colombia to commemorate the tragic events that caused the massacre and exploitation of thousands of indigenous people during the rubber boom. Publication of the "Blue Book",[19] as Casement's report became known, and Mario Vargas Llosa's novel "The Dream of the Celt" both contributed to a period of reflection on an historical event that revealed the failings of the Peruvian state in relation to the Amazonian peoples "who even now, 100 years on, have been compensated in neither word nor deed", according to the anthropologist, Frederica Barclay. Servindi brought a number of articles on the issue together in a thematic report.[20] ❍

Notes and references

1 **Instituto Nacional de Estadística e Informatica (INEI), 2009:** Resultados definitivos de las comunidades indígenas. *National Census 2007*: XI on Population and VI on Housing, Lima, January 2009, p. 7

2 **Instituto Nacional de Estadistica e Informática (INEI), 2009:** Perú: resultados definitivos *National Census 2007*: XI on Population and VI on Housing, Lima, September 2008, Book 1, p. 563.

3 The economist Juan Diego Calisto from CooperAcción maintains, figures in hand, that mining has not brought about the development of those departments that have the greatest mining presence, such as Cajamarca, Ancash, Junín.

4 See document "Desnutrición crónica infantil cero en 2016" and the *Infobarómetro de la Primera Infancia*, an initiative of the Group to Promote Early Childhood Development (*Grupo Impulsor Desarrollo en la Primera Infancia*), headed by Fr. Gastón Garatea.

5 **Ombudsman:** *Reporte de Conflictos Sociales N° 106*

6 This report was produced for the sixth consecutive year by the indigenous organisations and civil associations coordinated by the Indigenous Peoples' Working Group of the National Coordinating Body for Human Rights. The report can be found at: http://servindi.org/pdf/InformeAlternativo2012.pdf

7 See minutes at: http://www.mcultura.gob.pe/grupo-de-trabajo-de-institucionalidad-en-materia-de-pueblos-indigenas

8 See note and video at: http://servindi.org/actualidad/74230

9 See articles in the daily newspaper Gestión: http://gestion.pe/2012/05/12/politica/ivan-lanegra-dependera-cada-sector-si-consulta-previa-antes-despues-firmar-contratos-2002448
10 See report at: http://es.scribd.com/doc/96188132/Informe-Tecnico-del-Reglamento-de-la-Ley-de-Consulta-Previa
11 The text can be accessed via the following link: http://clavero.derechosindigenas.org/wp-content/uploads/2012/05/PERU-ConsultaLegislativa.pdf
12 Francisco Durand: Conga y sus efectos, at: http://www.larepublica.pe/columnistas/tiro-al-blanco/conga-y-sus-efectos-14-01-2013
13 Robert Moran in "Once Comentarios sobre el Informe de los Peritos de Conga", at: http://www.actualidadambiental.pe/wp-content/uploads/2012/04/Informe-Moran-sobre-el-peritaje-al-EIA-de-Conga.pdf
14 The text can be accessed at: http://www.rightsandresources.org/documents/files/doc_5422.pdf
15 See image at: http://servindi.org/img/Puinamudt_Info2012.jpg
16 To find out more about the "Baguazo" and its consequences for Peru, see The Indigenous world 2010 and 2011.
17 "Puentes para la integración: Aportes desde la sociedad civil para la buena toma de decisiones sobre la conectividad de la provincia de Purús". Access the document at: http://awsassets.panda.org/downloads/documento_tecnico_conectividad_en_purus_1.pdf
18 See Servindi's informational note at: http://servindi.org/actualidad/75974
19 *Libro Azul Británico. Informes de Roger Casement y otras cartas sobre las atrocidades en el Putumayo*, published by IWGIA and CAAAP, January 2012. See: http://www.iwgia.org/publicaciones/buscar-publicaciones?publication_id=568
20 The report can be accessed at: http://servindi.org/pdf/Bol67_Putumayo.pdf

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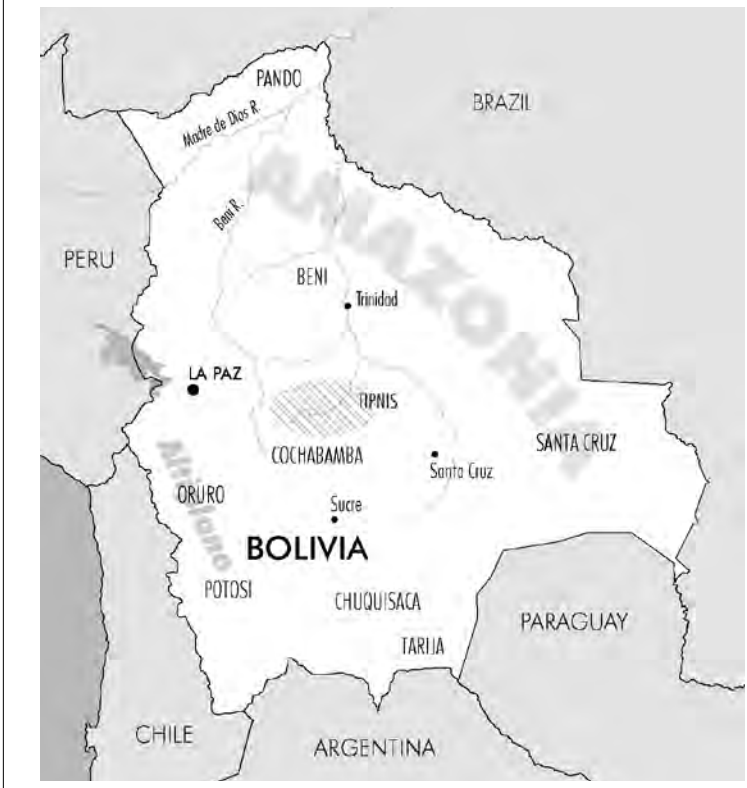
BOLIVIA

According to the 2001 national census, 62% of the Bolivian population is of indigenous origin. There are 36 recognised peoples, the most numerous being the Quechua (49.5%) and the Aymara (40.6%), who live in the western Andes; the Chiquitano (3.6%), Guarani (2.5%) and Mojeño (1.4%), along with the remaining 2.4%, form the 34 indigenous peoples living in the lowlands in the east of the country. Indigenous peoples have, to date, consolidated almost 20,000,000 ha of collective property under the concept of Native Community Lands (*Tierras Comunitarias de Origen* - TCO). With the approval of Decree Number 727/10, the TCOs took the constitutional name of Peasant Native Indigenous Territory (*Territorio Indígena Originario Campesino* - TIOC). Bolivia has been a signatory to ILO Convention Number 169 since 1991. The UN Declaration on the Rights of Indigenous Peoples was approved by Law No. 3760 of 7 November 2007.

Scarcely 90 days after the approval of Law Nº 180/11 banning the construction of the "Villa Tunari-San Ignacio de Mojos" highway through the Isiboro Sécure National Park and Indigenous Territory (TIPNIS), President Evo Morales decided to back down on this decision and, under the influence of some rather dubious social protests,[1] enacted Law Nº 222 on Consultation in TIPNIS. An analysis of the regulation shows that this law is aimed at getting the communities to accept the highway through their territory, applying a process that is in complete violation of their fundamental rights and which runs counter to the achievements gained via last year's 8th Indigenous March (see *The Indigenous World 2012*).

Indigenous rejection of Law Nº 222 was based on the following premises: a) the aim of the Law was to link the controversial issue of the intangibility of TIPNIS[2] with construction of the highway, such that by rejecting the intangibility of the area, the indigenous peoples would automatically have to accept the construction of the highway; b) it was called "prior" consultation while in fact the project had already been under regulatory development for nine years plus three years more of construction on the stretches entering the north and south of TIPNIS; c) it es-



tablished a "sphere of application" that included the settlement area located outside the indigenous territory, inhabited by 17,000 coca producers who form the main supporters of highway construction; d) it ruled out any involvement on the part of TIPNIS' representative organisations or traditional decision-making bodies, preventing them from representing their communities in the process; and e) it established a procedure that would be fully implemented by, and its outcomes defined and disseminated exclusively by, the Ministry of Public Works and the Ministry for the Environment.

Behind closed doors, the government had already drawn up a protocol redefining the objective of the consultation as 'to establish the best possible conditions for the

construction of the first ecological highway in Bolivia ...". In other words, the consultation was no longer one of *whether* the highway would be built or not but *how*.

Following approval of Law Nº 222, the government approved a support programme for the TIPNIS communities. This was funded with the aim of mobilising resources and reaching all corners of the territory with "gifts". These were handed out at ceremonies during which it was noted that the state of limbo in which these communities found themselves would come to an end if they accepted the highway, a project that would bring them progress and well-being. This campaign was supported by the Naval Forces and the Special Drugs Control Force (*Fuerza Especial de Lucha Contra el Narcotráfico* - FELCN), which established strict control of all rivers, preventing the sale of fuel for indigenous craft, the Church or other support institutions, and shielding the area from organisations and people opposed to the highway.

This about-turn in the TIPNIS conflict heralded a new era in relations between the government and the indigenous peoples of the lowlands. While the 7th and 8th Indigenous Marches had created tensions, it was though that these had been overcome by the different agreements and dialogue processes. This situation changed radically in 2012, however, and the "natural" alliance between indigenous peoples and the government was temporarily destroyed due to the developments in, and handling of, this new phase in the TIPNIS conflict.

The 9th Indigenous March

Promulgation of Law Nº 222 was the main catalyst behind the 9th Indigenous March, which set off from Trinidad on 27 April. The government sought, from the very start, to tone down the protest, trying to ensure that there was no repetition of the outcomes of the previous March. It worked with all regional bodies of the Indigenous Confederation of the Lowlands (CIDOB) to get them to sign "programme agreements" aimed at preventing them from supporting the demonstration. Ministers themselves visited even the most isolated communities to try and thwart the call to protest. They embarked on intense negotiations with leaders fundamental to the Confederation's current management team, creating public divisions and clashes between leaders.

Days before the march arrived in La Paz, a serious conflict arose between middle and lower ranking officers of the Bolivian police force and the govern-

ment over the officers' salary demands. The General HQ, only a few metres from the public authorities' offices in La Paz, was stormed by police officers' wives on the night of 22 June. In the days that followed, nearly all of the country's units were confined to barracks. The Police Disciplinary Tribunal building, which also houses the offices of the General Intelligence Department in La Paz, was stormed and plundered by a mob of low-ranking officers also protesting at the unfair punishments to which they were being subjected. A large number of the files and archives specifically relating to the cases against them were lost in the ensuing fire. The conflict was still continuing in the early hours of 27 June when the 9th March reached Urujara, on the outskirts of La Paz.

Faced with the possibility of both conflicts coordinating with each other, given the offer made by hundreds of police leaders to provide their support, a commitment not to suppress the protest and even a guaranteed entry into the Plaza Murillo, the ministers came out and said that the leaders of the march would be responsible for whatever the consequences might be. Refusing to be cowed by the government's threats, the March nonetheless held a democratic consultation and decided to wait until the police conflict had been resolved before entering the city. In order to prevent social unrest, the government meanwhile took the opportunity to convene its own sectors: miners and peasant farmers primarily, who embarked on a "counter march" in the city centre, only a short distance from the route to be taken by the Indigenous March.

On 27 June, the 9th March finally entered La Paz and was received (and protected) by tens of thousands of people as it passed along its route. It tried to reach the Plaza Murillo but was severely suppressed by the very same police force who, earlier that morning had resolved their own conflict favourably. After spending more than a week on the streets around the Plaza Murillo waiting in vain to be received by the government, the protesters began to return to their communities in order to organise their "Resistance" to the ongoing consultation process, which the government had temporarily suspended due to the conflict.

The OAS General Assembly in Cochabamba

The 42nd General Assembly of the Organisation of American States took place from 3 to 5 June in Tiquipaya, a town near Cochabamba. Some governments,

including those of Venezuela, Ecuador and Colombia, among others,[3] took this opportunity to make a forceful stand with regard to amending the statutes and regulations of the Inter-American Commission on Human Rights (IACHR), a process that has attracted strong criticism from human rights organisations. The only head of state present at the summit, apart from the host, Evo Morales, was Ecuador's President Rafael Correa. President Correa attacked the IACHR, accusing it of protecting dubious interests and demands that were undermining the economic development of the emerging Latin American nations, alluding to the socio-environmental conflicts arising with the indigenous peoples and other rural populations in relation to the high-impact extractive operations taking place on their territories, and with regard to some of which the Inter-American system had intervened favourably.

A commission from the 9th March was received by the OAS Secretary General, José Miguel Insulza, who heard the complaints regarding the TIPNIS case first hand. It was precisely such visibility of the protesting indigenous peoples at this meeting that fuelled the criticism of those governments who were promoting the process of strengthening/weakening[4] the Inter-American system. The immediate effect of this was a statement from the Secretary General announcing that no decisions would be taken that might harm the guarantees that the Inter-American system had offered for 30 years.

Constitutional Ruling No. 300/12

On 18 June, one week before the 9th March arrived in La Paz, the Plurinational Constitutional Court issued Ruling No. 300/12 with regard to two appeals for unconstitutionality brought against Law Nº 222 and Law Nº 180. The Court decided that the consultation was constitutional but that it was conditional upon prior agreement with regard to everything relating to the implementation protocol, which had to be agreed in advance with the legitimate representative organisations of TIPNIS. It also urged the Legislative Assembly, the Executive and the indigenous peoples to reach an agreement concerning mechanisms, timescales and procedures for the process.

None of this took place. The government did not accept this ruling and forged ahead regardless, commencing the consultation in the safe knowledge that it would validate its decision.

Seizure of CIDOB

As part of the strategy to prevent the 9th March from taking place, various ministers visited remote communities and towns in the east of the country offering to agree to a long-neglected set of demands provided these communities came out publicly against the leaders who had decided to organise the March. Leaders that refused to be subjected to such manipulation were ignored, removed from post or even found their organisations' offices taken over. The government claimed that, of the 13 regional bodies that make up CIDOB, 12 had signed programme agreements with them, and had agreed not to march. The government was thus able to claim, throughout the whole course of the 9th March, that those marching were unknown leaders with political aspirations linked to the right-wing opposition, this being one of the main arguments used to refuse the protestors' requests for dialogue. Once the march had come to an end, and concluding that this had been a political failure, a group of indigenous people met on 27 July in a closed assembly at which they removed CIDOB's current president from office and, at the end of the assembly, with the support of the police and state intelligence corps, they stormed and took over CIDOB's offices, where they remain to this day.

Indigenous resistance to the TIPNIS consultation

The leadership that returned from the 9th March established physical resistance to the consultation by setting up base at Gundonovia, a community in the far north-east of TIPNIS on the Isiboro River and connected to more than 20 communities along the banks of the river to the south, in the upper basin. Here, they set up the most solid road block of the resistance and took the extreme measure of fencing off the river to prevent boats from passing. This was not the only place where this occurred; this same extreme measure was taken by communities along the banks of the Ichoa and Tijamuchi rivers.

The consultation teams still managed to enter, however, although they were refused entry by at least 11 communities. One notable case was that of the Minister of the Presidency – the Head of Cabinet – who was thrown out of San Ramoncito community by indigenous youths who, having been provoked by this of-

ficial, attacked him physically and tore a door off the helicopter in which he was travelling.

With all the emerging conflicts, the government was forced to approve two laws extending the timescale for the consultation, which officially came to an end on 7 December in a ceremony in Trinidad-Beni surrounded by fierce protests from the indigenous organisations representing TIPNIS.

According to government information, 58 communities were visited in all, although it does not specify where they were located. It seems that at least 70% were in the settlement area, i.e. outside of the indigenous territory. Eleven communities decided not to permit the brigades to enter. These 58 communities apparently all agreed to the highway, subject to various conditions regarding its route, how the works would be conducted, and the search for an alternative route around the territory, etc. With these results, albeit preliminary and awaiting official acceptance by the Electoral Body in early 2013, the government completed its consultation process.

Visit of the Inter-institutional Commission to TIPNIS

The TIPNIS leadership, along with the Mojeño people's regional organisation – CPEMB - and CIDOB itself, decided to turn to the international – regional and universal – human rights protection mechanisms. One such mechanism is the UN Special Rapporteur on the rights of indigenous peoples, and they requested that he make an *in situ* visit. There was no question that this would be possible since Bolivia has, since 2009, offered an "open and permanent invitation"[5] to all UN rapporteurs. When the Rapporteur tried to coordinate his visit to TIPNIS with the Bolivian Embassy in Geneva, however, the diplomatic representation there refused him permission, considering the trip inappropriate and inconvenient and thus denying the fundamental guarantees that an "open and permanent invitation" offers with regard to a visit to the country on the part of a Rapporteur.

Faced with this situation and seeing what was going on in TIPNIS, his representatives approached the institutions that are the historic "guarantors" of human rights in Bolivia: the Catholic Church, the Permanent Human Rights Assembly and the Ombudsman,[6] and asked them to conduct a study into how the state was implementing the consultation process in the territory. An Inter-institutional Commission was thus established, which in the end did not include the Ombudsman

although the International Human Rights Federation (FIDH) did take part. In a preliminary report, they concluded that: a) the government's "consultation" process was not in line with the standards for prior consultation established in national and international regulations; b) the government consultation was preceded and accompanied by gifts, benefits and promises of development and services that undermined the criteria of "free" and in "good faith"; c) the rules and procedures of the indigenous communities and peoples of TIPNIS had not been respected; d) the consultation revolved around the dilemma of "intangibility or development", with intangibility being given to mean that none of TIPNIS' natural resources could be used for the indigenous families' survival; e) it did not comply with the condition of being "informed" because the environmental, social, economic and cultural impact studies for construction of the highway through TIPNIS were not made known; f) most of the communities visited had rejected the construction of the Villa Tunari - San Ignacio de Mojos highway through TIPNIS, to which they had been historically opposed since the 1990s, as illustrated by the 8th and 9th Indigenous Marches.

The Inter-institutional Commission visited 36 of the 58 communities living in TIPNIS: 30 opposed the construction of the "Villa Tunari-San Ignacio de Mojos" highway through their territory, three accepted the route as proposed by the government and a further three proposed a change to the route so that it would not pass through TIPNIS. Of the 36 visited, the state had conducted what it called "consultations" in 18 of them, while the government brigades had been unable to enter a further 17 due to opposition. Of the 18 that the state had visited, the community's decision was obtained without a consensus in 11 of them, and with such consensus in seven.

This clearly shows the extent of opposition to the TIPNIS highway project, along with the serious human rights violations that the inhabitants of TIPNIS have had to suffer.

Indigenous agenda taken up by CONAMAQ

After actively participating in the 9th March, the Andean peoples organised in CONAMAQ[7] came to form a key reference point in the follow-up to the indigenous agenda, given CIDOB's temporary incapacity. Along with its *ayllus* in the north of Potosí, CONAMAQ was a key player in the mining conflict in the Mallku Qhota

community, which is home to one of the richest mineral reserves in the world and which the South American Silver SAL mining company would like to get its hands on. For CONAMAQ, this thus became an emblematic case similar to that of TIPNIS. The conflict was resolved via an agreement with President Evo Morales, following the prolonged kidnapping of engineers from the company and deaths of community members and police in the clashes that preceded the final agreement.

Faced with CIDOB's weakened position in terms of playing a role in the discussions on the Law on Consultation, CONAMAQ was able to produce and propose a draft legislative bill that would guarantee the right to free, prior and informed consent with regard to legislative measures, activities, works or projects on their territories, and which was in line with national regulations and international standards, developed over more than 20 years of case law.

CONAMAQ also made its voice heard in the 2012 Population and Housing Census, denouncing the lack of political will on the part of the Ministry of Development Planning and the National Institute of Statistics (INE) to include the 36 native peoples in the census, a situation that led to formal complaints being made to bodies such as the UN Special Rapporteur on Racism.

The TIPNIS conflict can be seen as a clear reflection of the current relationship between the indigenous peoples and the national government. It shows how a government that is supposedly at the helm of a "Democratic and Cultural Revolution" can clash with an ally that has cooperated in building this process, turning it into its "number one enemy", and deviating from its own programmatic agenda, which is the 2009 Constitution. In addition, the indigenous organisations are facing a crisis: suffering from problems of leadership, positioning and even confusion as regards the true historic agenda and role they are attempting to play in this complex scenario, in the run-up to elections that will renew the mandates of all national, departmental and municipal authorities. ❍

Notes and references

1 Protest made up of indigenous groups who renounced the collective titles to their lands and coca settlers who demanded the cancellation of Law Nº 180 and the immediate construction of the highway through the centre of TIPNIS.

2 A concept which the government included in the draft bill of law that resulted in Law No. 180/11 on protection of TIPNIS.

3 The Bolivian government does not have a clear position on the so-called process of strengthening the IACHR, although it supported the initiative of the ALBA bloc countries (Cuba, Venezuela, Ecuador and Nicaragua).
4 Expression coined among organisations and professionals monitoring this process and which shows the real intentions of the IACHR reform.
5 Made known on the occasion of the Universal Periodic Review (UPR) before the United Nations in February 2010.
6 Between 2000 and 2003, these three institutions mediated between the Executive and the social movements in various conflicts of national and international consequence, such as the "Water War" in Cochabamba –April 2000– and the demonstrations that resulted in the resignation of President Sánchez de Lozada (the "Gas War") in 2003, among others.
7 National Council of Ayllus and Markas of Qollasuyu – Conamaq.

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BRAZIL

There are a total of 654 Indigenous Lands (TIs) in Brazil covering 115,499,953 hectares, or 13.56% of the national territory. Most are found in the Legal Amazon: 417 areas totalling 113,822,141 hectares. The remaining 1.39% of land is divided between the north-east, south-east, south and centre-west of the country.

The 2010 census gave a figure of 817,000 people identifying as indigenous, or 0.42% of the total Brazilian population, according to data provided by the Brazilian Institute for Geography and Statistics. In absolute terms, the Brazilian state with the greatest number of indigenous persons is Amazonas, with a population of around 168,000 individuals. In relative terms, the state with the greatest indigenous population is Roraima, where the indigenous peoples represent 11% of the total population.[1]

In terms of the legal framework affecting Brazil's indigenous peoples,[2] the country has signed the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

Threats to indigenous peoples

For Brazil, 2012 was marked by the UN Conference on Sustainable Development, known as Rio+20. A Peoples' Summit was held parallel to this event with the aim of reinforcing the struggle for the rights of the most vulnerable sectors of society and the global environmental crisis.

The *Tierra Libre* indigenous movement, which draws together indigenous organisations from across the country, decided to celebrate its annual meeting alongside the Peoples' Summit, to show its dissatisfaction with the actions being taken by the Brazilian government. Its complaints focused on the government's failure to support the indigenous and environmental cause, a condemnation of the

1. Belo Monte Hydro-Electric Project 2. Madeira River Hydro-Electric Complex

megaprojects outlined in the Action Plan for Growth (*Plan de Acción de Crecimiento* – PAC), violations of ILO Convention 169 and the arbitrary nature of the Environmental Code.

One of Brazil's most renowned environmental specialists, João Paulo Capobianco, considers that: "Brazil is swimming against the tide, it is dismantling its socio-environmental agenda. The government's total lack of commitment to this agenda can be seen in the absurd and spectacular example of the Forest Code".[3] In a recent publication, he indicates that "The Brazilian state is working on the basis of an ill-conceived and outdated development concept that views political

and socio-environmental rights as obstacles to be overcome in the name of economic growth and it is overseeing a weakening of legal and institutional guarantees".[4]

Forest Code

The Forest Code was presented as Temporary Measure No. 558 dated 5 January 2012. It excludes seven Conservation Units, covering a total of 91,308 hectares, and thus continues the current government's strategy for the socio-environmental sector: backtracking on the achievements of previous governments in order to ensure development at any price. This measure will remain in force until the issue is voted on in the National Congress.

The areas excluded are the following: Flora de Itaituba II, created in 1998 with 440,500 hectares, is situated in the municipalities of Itaituba and Trairao, in Pará, and is the worst affected, losing 28,453 hectares for the purposes of establishing the San Luiz do Tapajós Hydro-Electric Unit (UHE). The Tapajós Complex, for its part, comprises the Jatobá and Sao Luiz de Tapajós UHEs on the Tapajós River and the Cachoiera de Caí, Cachoeira dos Patos and Jamanxim UHEs, on the Jamanxim River, with a total estimated output of approximately 10,682 MW.

The region above is also the site of other planned hydro-electric plants such as the Chacorao UHE which, with an estimated output of 3,336 MW, is still awaiting the conclusion of the feasibility studies, to be published in July this year. This dam will flood a significant part of the Mundurucu Indigenous Land and will also have a direct impact on the Sai Cinza Indigenous Land and, possibly, on Pontal dos Apiakás and communities living in voluntary isolation. In a recent letter, the indigenous Munduruku, Apiaká and Kaiabi peoples denounced the lack of respect for environmental legislation and the failure to consult with those affected by this and other hydro-electric projects being promoted in the Tapajós River basin.[5]

Apart from affecting the indigenous lands of Pará and Tocantis (Sororó, Apinayé, Mãe Maria and Xambioá), the Santa Isabel hydro-electric plant, located on the lower reaches of the Araguia River, 162 km from its confluence with the Tocantis River, will have a direct impact on the Serra dos Martírios-Andorinhas State Park, the São Geraldo do Araguaia Environmental Protection Area (APA) and the Lago de Santa Isabel APA.

The Instituto Socioambiental (ISA) notes that virtually 90% of the indigenous lands affected by the PAC's energy projects are already facing other threats,

caused by the presence of loggers, miners, business ventures and invasions of varying kinds. At least five of these indigenous lands are home to indigenous communities living in voluntary isolation.[6]

In addition to the threat from hydro-electric projects, the indigenous population is faced with a large gold mining project in Volta Grande do Xingu. This is thought to be one of the largest projects of its kind in Brazil, and is being run by Belo Sul Mineração, the Brazilian subsidiary of Belo Sun Mining Corporation, a Canadian company belonging to Forbes & Manhattan Inc. The company is claiming lands along the same stretch of the Xingú River that will be drastically affected by the Belo Monte dam. The mine will be established less than 20 km from the dam and 16 km from the Arara da Vola Grande Indigenous Land. It will also affect the Arara, Trincheira Bacajá and Xicrin indigenous lands, not to mention the Ituna-Itatá indigenous people living in isolation, and the Juruna people in Paquicamba Indigenous Land.

The mining concession will be granted for a 12-year period, with an estimated 50 tonnes of gold being extracted during this time. It will be an open-pit mine involving investment of a little over one billion US dollars. This will create a major problem in that it will reduce the Xingú River's flow by 80%, leading to a considerable deterioration in the water quality. This will severely affect the availability of fish, which is the main source of food for the local population.

The Brazilian government has constantly and systematically ridden roughshod over the rights of the indigenous population when it comes to Belo Monte and other PAC ventures, to the extent that this could almost be considered a government strategy to wipe out Brazil's indigenous population altogether. To give just one example, the Belo Monte hydro-electric plant had its licence suspended for failing to comply with the Brazilian Constitution and ILO Convention 169. A decision of the Federal Supreme Court ruled that the work could be resumed, however, with the Court President arguing that "any delay in the work schedule would represent a threat to the national economy".[7]

Threat to suspend financial support to the OAS

The case of the Xingú River and the Belo Monte Hydro-Electric Complex was taken to the Inter-American Commission on Human Rights (IACHR), which on 1 April 2011 issued precautionary measures calling for action to be taken to protect

the affected communities. These included suspending the works on Belo Monte until consultations had been conducted with the indigenous peoples and ensuring that the rights of the peoples living in isolation were protected. Instead of complying with the IACHR's recommendations, however, Dilma Rousseff's government reacted arrogantly and aggressively, denying any irregularities in relation to the rights of the indigenous peoples of Xingú, withdrawing its candidate for IACHR Commissioner in 2012 and threatening to suspend the country's financial contributions to the Organisation of American States (OAS). By taking this stance, the federal government is trying to use bizarre arguments, claiming for instance that the indigenous communities of the Volta Grande do Xingú will not be "directly affected" despite all scientific evidence to the contrary.[8]

Approval of indigenous lands and new management bodies

On the eve of the Rio+20 Conference, President Dilma Rousseff signed the approval for almost 1 million hectares of Indigenous Lands, forming part of a package of "benefits" marking World Environment Day on 5 June. This related to seven Indigenous Lands, five of which are located in Amazonía, one in Pará and the other in Acre. Such approvals have otherwise been in decline since the launch of the Plan for Accelerated Growth, which began to be implemented during Lula's second term in office, and it is now increasingly difficult to obtain such titling.

The President also signed Decree 7747/2012 establishing the National Territorial and Environmental Management Policy for Indigenous Lands (PNGATI) and creating the Committee for Integrated Management of Healthcare and Food Security Measures for indigenous populations. These bodies are coordinated by the Executive Office of the President, and the committee includes members of the National Defence, FUNAI, the Ministry of Health (SESAI) and the Ministry of Social Development.[9]

This ambivalent attitude shows the arbitrary nature of the positions this government is taking in relation to the indigenous population. In the vast majority of cases there consultation, and the right to free, prior and informed consent is very rarely observed, despite being a stipulation of ILO Convention 169.

Severe limits on the approval and enjoyment of Indigenous Lands

Pursuing her goal of limiting the approval of new Indigenous Lands, on 16 July 2012, Dilma Rousseff signed Decree 303, which runs counter to all international indigenous policy and is in violation of the UN Declaration on the Rights of Indigenous Peoples and even the 1988 National Constitution itself.

This Decree among other things stipulates that "The safeguards for indigenous lands are to be interpreted (Art. 1º) and that the enjoyment of the wealth of the soil, rivers and lakes existing on indigenous lands (Art. 231, § 2º, of the Federal Constitution) may be reconsidered, as stipulated by Article 231-6º of the Constitution, provided it is of importance to the public interest, in the form considered by law (Art.1.I)." It also stipulates that the enjoyment of indigenous peoples of their lands shall not include exploitation of the water resources and energy potential (Art.1.II), exploration for or extraction of mineral wealth (Art.1.III), the exploitation of minerals (Art.1.IV), or be super-imposed over the interests of national defence or any public interest related to the exploitation of strategic energy sources or constructions necessary to the provisions of the country's public services in terms of infrastructure, health, education and communication, which shall be implemented regardless of any consultation with the indigenous communities involved or FUNAI. (Art. 1.V, VI, and VII).

The decree emphasises the government's clear intention to prevent the indigenous organisations from making any claims in favour of their rights; for example, Articles 2 and 3 of Decree 303 go as far as to question the validity of all the achievements so far with regard to the demarcation of Indigenous Lands, and Article 1.XVIII stipulates that "the expansion of an Indigenous Land that has already been demarcated shall be prohibited". Even lands that have already been demarcated can now be reviewed and adjusted.

The reality of the indigenous peoples of Mato Grosso do Sul

It is not only the PAC project areas that are facing threats to their land rights in relation to degree 303. Mato Grosso do Sul, for example, which has the second-largest indigenous population in the country, is suffering the most severe land

conflicts due to a clash of interests between agribusiness and the indigenous peoples.

Mato Grosso do Sul made the national news in 2012 both due to the number of murders committed there and the expropriation of the Guaraní people's lands. According to information from the Indigenist Missionary Council (CIMI), Mato Grosso do Sul holds the record for death threats and murders of indigenous leaders, with their systematic eviction from their traditional lands, not to mention the burden of a history of extreme violence. Between 2010 and 2011, this state alone suffered 66 indigenous murders, out of a total of 111 in the whole of Brazil.

The Guaraní and Aruak, particularly the children and young people, live in an extremely vulnerable condition. The extreme pressure on the land and the lack of life prospects has resulted in this region experiencing the highest youth suicide rate in the country's history. This is where the Dourados Reserve is to be found, the most populated in Brazil with 15,000 inhabitants living on 3,560 hectares, and no income-generating possibilities. "What you now see, unfortunately, is a population abandoned to its fate, as villages that should be modernised are not provided with basic sanitation; they suffer from a lack of medical/hospital care; they are not included in housing programmes and, in some cases such as Dourados, they even lack clean water to cover their most basic needs".[10]

Against such a backdrop, Decree 303 will provide further legal security for the non-indigenous "owners" who are occupying indigenous lands; they will no longer be obliged to return these, and will in addition have the possibility of extending their estates onto indigenous lands that have already been demarcated. The question will be how to prevent all-out conflict between the landowners and the indigenous peoples.

Proposed constitutional amendment

On 21 March 2012, the Constitution and Justice Commission (CCJ) of the Chamber of Deputies granted the admissibility of Proposed Constitutional Amendment 125/00. Its aim is to transfer responsibility for the demarcation and approval of indigenous lands and environmental conservation areas to the National Congress, something that is currently, according to the Federal Constitution, the Executive's responsibility.

The Brazilian Congress has a tradition of ruling against the indigenous peoples and in favour of agribusiness. PEC 215 signals rescue of national sovereignty;

> *(...) the aim of the proposed amendment is to ensure that the country can recover full sovereignty over the physical organisation of the national territory, which is currently shared with the international indigenist/environmental movement. Since the start of the indigenist/environmental onslaught, at the end of the 1980s, the Executive has shown itself to be rather susceptible to such external pressures, as we have seen with the demarcation of the Yanomami Reserve by Fernando Collor de Mello and the Raposa Serra do Sol Reserve by the governments of Fernando Henrique Cardoso and Luiz Inácio Lula da Silva, governments which also gave in to numerous interventions that were not conducive to large infrastructure projects.* [11]

According to the Indigenous Missionary Council (CIMI): "This situation did not get worse overnight. For the last 20 years, the strong agribusiness group in Congress, the economic power, has had no interest in issues of sustainability, and the socio-environmental costs of projects have not been included in the accounts of large works projects".[12]

The indigenous leaders of the Coordinating Body of Indigenous Peoples of Brazil (Apib), the Coordinating Body of Indigenous Peoples of the South Region (Arpinsul), the Coordinating Body of the Indigenous Peoples of Pantanal, in Mato Grosso do Sul (Arinpam), the Coordinating Body of Indigenous Organisations of the Brazilian Amazon (Coiab) and the Coordinating Body of Indigenous Peoples and Organisations of the East and North-East (Apoime) are denouncing the fact that Dilma Rousseff's government now insists on vetting all requests for recognition studies for indigenous lands from FUNAI's Working Group before they can be initiated.[13]

This measure clearly shows how much control the President will have over forthcoming demarcations, and it is likely that any study that could compromise the developmentalist goals of the PAC will be neutralised.

Conclusion

Given all of the above, we would have to agree with Capobianco's opinion, and would go even further in saying that we have stepped back 40 years into the past and are once more following the old ideology of the 1970s when Emilio G. Médici's military government built the Pan-American Highway under the slogan of "Security and Development". This is the Brazilian ambition, a military PAC. And it will herald one of the worst genocides, as yet incalculable, of the indigenous Amazonian population. ❍

Notes and references

1 See: http://www.vermelho.org.br/noticia.php?id_noticia=153663&id_secao=1
2 Source: the Socio-environmental Institute: www.socioambiental.com
3 "Ato reúne 2,5 mil pessoas em defesa das florestas na Cúpula dos Povos". www.socioambiental.org. 17/06/2012
4 Noticias socioambientais. www.socioambiental.org. 17/06/2012
5 http://reporterdaamazonia.blogspot.com.br/2012_01_01_archive.html
6 http://terramagazine.terra.com.br/blogdaamazonia/blog/2012/10/02/hidreletricas-e-estradas-financiadas-pelo-governo-ameacam-indigenas-na-amazonia-diz-estudo/.
7 "Aires Britto acata pedido da AGU e obras de Belo Monte são retomadas. www.socioambinetal.org.28/08/2012.
8 http://www.xinguvivo.org.br/2011/06/16/peticao-para-cidh-entenda-o-caso/
9 http://www.ecoagencia.com.br/?open
10 http://www.progresso.com.br/editorial/indios-desaldeados
11 http://www.alerta.inf.br/pec-215-sinaliza-resgate-da-soberania-nacional/
12 Noticias socioambientais. 17/06/2012. www.socioambiental.org. 17/06/2012
13 *Informe nr.1013:Organizações solicitam investigação contra Dilma por irregularidades na homologação de terras indígenas*.10/05/2012. Can be found at: http://www.cimi.org.br/site/pt-br/?system=news&action=read&id=6254

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PARAGUAY

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

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

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

Nationally, 2012 was punctuated by the *coup d'état* that overthrew President Fernando Lugo, in office since the 2008 elections, thus dividing the year into pre- and post-*coup* eras. Only months previously, the Paraguayan Indigenous Institute (INDI) – the state's implementing body for indigenist policy - had appointed one of the few national-level experts on indigenous rights (the lawyer, Oscar Ayala Amarilla) to head INDI, but he was also subsequently removed from office. This represented an enormous backwards step for indigenous rights.

Following Ayala Amarilla's appointment, the indigenous peoples, their organisations and partner human rights institutions had noted some progress in INDI's work, for example, an improved institutional structure, more streamlined procedures, conflict resolution and planning on the basis of indigenous participation and consultation. Following the *coup*, however, National Congress brought these processes to a halt, scuppering the limited progress that had been made. From this point on, there was a clear backtracking and lack of response from the new officials who took up posts in ministries dealing with indigenous issues. They did not continue the processes that had been put in place, nor did they give any consideration to the progressive nature of indigenous rights.

Despite the significant progress made (albeit due more to individual personalities in key posts than a defined national indigenous policy), the last government wavered between a tentative openness towards indigenous participation and the usual social welfare hand-outs.

Indigenous presence in the Plaza Uruguaya

Various indigenous families from a number of communities in the Eastern Region, evicted from their lands for different reasons, occupied the *Plaza Uruguaya* - a central square in Asunción - for six months in an effort to make their demands known. By the time an impending order to clear the square was implemented, at the end of 2011/beginning of 2012, INDI had already changed president, more long-standing cases were now being prioritised, and this body had begun to review the relevance of the claim of one of the groups occupying the square, which was requesting approx. 7,000 ha in San Pedro department, known as Union lands.

This case illustrates the acute problems facing many communities in the east of the country. Unable to recover the lands that used to form part of their traditional habitat – and which have been destroyed and polluted by soya crop chemicals or cleared for livestock rearing –, they are looking for other lands to buy so that they can have access to a small plot. This process is taking place under the ruthless dealings of the area's land owners and with the connivance of a state that has historically prioritised, and indeed continues to prioritise, private property. There was, and still is, strong political pressure to prioritise the purchase of these lands which, according to the state itself, will solve the problem in the short term. By succumbing to this pressure, it has again become clear that the state feels it more important to

maintain a good media image and ensure the support of the local strongmen (*caudillos*) than to seriously resolve the situation of indigenous communities.

Bows and arrows

The Kue Tuwy community of the Aché people is situated in Ygatimi, Canindeyú department. At the end of 2011, its inhabitants obtained 4,629 hectares of land by means of an expropriation law approved by National Congress. These lands were owned by the Ministry of the Environment (SEAM) and were already being occu-

pied by four communities of the Avá Guaraní people, who had been negotiating their return for two decades. This was a complex conflict in which both peoples identified these lands as their ancestral territory. In the end, the Avá Guaraní withdrew, claiming however that the expropriation law was unconstitutional. Despite the long-standing nature of this claim, Congress had approved a law without conducting any free, prior or informed consultation of all communities involved.

Months later, in the days following the 15 June massacre in Curuguaty, Canindeyú department,[2] the Aché community was invaded by peasant farmers. They settled on some 1,000 ha of Aché land, claiming that there was a surplus of state land that could be transferred to them. The Ministry of the Interior intervened, the land was measured and it was determined – as the indigenous people had already stated – that there was no surplus land and nor any question as to the property title. An eviction request was submitted but the indigenous community had already decided to take up arms, wage war and put pressure on the peasants until they withdraw via the state's intervention. The conflict is not fully resolved to this day. The peasant farmers have cleared part of the forest and it seems they are still in the area, albeit being closely monitored by the Aché.

Two steps forward two steps back. International cases

It should be noted that, quite apart from the fact that a legitimately-elected government was overthrown in the middle of the year, little progress was made in these cases either before or after June 2012. Most noteworthy, however, was the almost historic possibility that INDI might actually have sufficient budget for the land purchases. Notwithstanding this, two of the communities, *Sawhoyamaxa* and *Xákmok Kásek*, still did not get their land returned to them and, another, *Yakye Axa*, which has owned 11,312 hectares of land since the start of 2012, was unable to relocate there because of a complete lack of road access to the area. *Sawhoyamaxa* and *Yakye Axa,* communities of the Enxet Sur people, remain living along the edges of the Rafael Franco highway in Chaco, as they have done for decades. They are in a highly vulnerable position and not even the state can guarantee their survival.

Finally, at the start of this year, it looked as though the Inter-American Court of Human Rights' first ruling on an indigenous matter would finally be settled. The *Yakye Axa* – who have a 2005 ruling from the IACHR in their favour -, agreed to

be reallocated to other lands offered them by the state at the end of last year, as this appeared to be the only possible answer to their decades-long demand. Construction of the access road and thus their relocation was delayed, however, due to flooding in the area. Work only began in September, and even then very slowly, and so it has thus far been impossible for the community to move onto their new lands.

Sawhoyamaxa, whose land claims and current settlement are located in an area close to *Yakye Axa*, obtained a ruling from the IACHR in 2006. The time the government is taking to comply with this international ruling has now far outstripped the deadline stipulated in the ruling itself, and the community are still struggling to survive along the edges of the Raphael Franco highway. The lands they are claiming are owned by the Kansol S.A. and Roswell S.A. companies, both represented by Heribert Roedel. This latter, who is of German origin and facing accusations of fraud abroad, has more than 60,000 ha of land in the area, 14,404 ha of which belong to the *Sawhoyamaxa* community, who have adequately proven their cultural and ancestral links through the IACHR, links which are even recorded in the chronicles of the Anglican Church, published in their missionary review from a century earlier.[3] The State's negotiations with the owner began in earnest at the end of 2011, at a time when they were looking to spend the budgeted amount so that the money did not have to be returned and the new budget spent on other cases. INDI's involvement in the negotiations at the start of 2012 gave a boost to the process but this ground to a halt following the *coup d'état*.

The pivotal role of the *Sawhoyamaxa* community, with the support of the Coordinating Body of Leaders of the Bajo Chaco, should be noted, as should the actions of some national and international allies in terms of prompting the state to act. Various actions were instigated with the aim of putting pressure on the government, and two of these are particularly worthy of note. One was when the community denounced the felling of trees on their claimed lands, thus managing to get the clearing halted. The other, at the beginning of October, was when they blocked two main roads in the Chaco region, forcing the government to resume talks with the owner of the claimed lands.

Kelyenmagategma. Once the land for their resettlement had been purchased, a Friendly Settlement Agreement was signed in December 2011 aimed at completing the process begun years previously through the IACHR. In this agreement, the state affirmed its openness towards the community's claims which, in

addition, would guarantee them rights such as food, education, housing and health, and also agreed to promote development projects jointly with the community to ensure their food security and autonomy. Another important point in the agreement was the return of a specific 1,000 ha of land – of the original claim – that is sacred to the community. There has thus far been no progress on any of the points in this agreement.

Flooding and drought in the Chaco

There was some alarming flooding in the Chaco in the early part of the year, which demonstrated the lack of any minimum infrastructure or a regional plan that might be able to respond to the cyclical nature of this region's environment. Many indigenous communities were cut off for months on end. The extent to which this region suffers from a lack of access to basic services became patently clear for all to see.[4] Roads, communication, education and health services are all weak or non-existent.

After months of suffering from overflowing rivers and streams, the flooding was followed by a drought and a number of indigenous communities again found themselves without food and forced to drink contaminated water.

Forest peoples in voluntary isolation

Companies, foreign for the most part, have purchased large areas of land, forcing the declaration of the Ayoreo Totobiegosodie (tangible and intangible) Natural and Cultural Heritage Area,[5] precautionary measures and even falsifying their leaders' signatures – something that has been denounced and substantiated – in order to be able to continue to deforest the area and harass uncontacted groups. The excessive deforestation that is taking place in the Chaco is common knowledge, with thousands upon thousands of hectares being cleared every day for livestock production and logging, the main activities in this region, despite the existence of uncontacted indigenous groups in the area being well known.[6]

In January 2012, INDI, SEAM and the Office of the Public Prosecutor certified the presence of *Ayoreo Totobiegodofie* living in isolation in an area in the south of their territory, which overlaps with the properties of the River Plate SA and BBC

SA companies.[7] The Payipie IChadie Totobiegosodie Organisation (OPIT), which represents segments of this people, obtained precautionary measures from the Public Prosecutor's Office to safeguard this isolated group on the stated properties and, moreover, those on the lands of the *Yaguareté Pora* S.A. and Carlos Casado S.A. companies. A few months later, harassment began and the signatures of this people's leaders were falsified so that the companies could build roads and clear paths. This was denounced by OPIT, and INDI took the matter to the Public Prosecutor's Office. In August, cleared areas were noted and the Public Prosecutor attributed this solely to the owners of the machinery. However, at the start of October 2012, the same Public Prosecutor asked the courts to overrule the criminal complaint because of certified innovations on the part of Carlos Casado S.A. and Grupo San José S.A., both of Spanish origin. This only goes to show the power that large economic groups have in terms of influencing the state's decisions, to the detriment of the native inhabitants who, in this case, are being persecuted and decimated.

Sale of indigenous lands

In the middle of October, the Union of Native Ayoreo of Paraguay (UNAP) denounced the sale of lands on which families from the community known as Cuyabia, located 85 km to the north-west of Mariscal Estigarribia, Boquerón department, in the Paraguayan Chaco, were living. The Cuyabia lands were bought for the San Lázaro community of the Guaraní Ñandeva people in the 1980s. They are titled in the name of INDI, however, as this latter never transferred them. Some years back, within the Indigenous Land Regularisation Project (RTI) supported by the World Bank, a document was drawn up by which the San Lázaro community transferred 25,000 ha to the Ayoreo. In a note that can be found in the community file (Nº 1640/11), INDI states its support for the movement of Ayoreo families from Cuyabia community, the recognition of their leader (Resolution 757/11) and the cession of a part of the San Lázaro lands belonging to the Guaraní Ñandeva people to this community "to form part of the Ayoreo ancestral territory". The Guaraní Ñandeva, in turn, requested that other lands be acquired for them.

On 20 November, and following constant requests from the Cuyabia community and UNAP for the lands to be regularised and transferred into their name, the current president of INDI, Quesnel, transferred them into the name of a pri-

vate individual under Resolution Nº327/12. This resolution is said to be based on "current laws" given that, in principle, Article 64 of the National Constitution states that indigenous lands are "Inalienable, indivisible, non-transferable, imprescriptible, not capable of being used to guarantee contractual obligations or for leasing (...) The removal or transfer of their habitat is prohibited without their express consent" (repeating Art. 17 of Law 904/81); Law 904/81 creating INDI and listing its tasks does not list this power but it does note that of protecting, accompanying and supporting the claims of indigenous peoples.

"*Memory does not remember fear. It has become fear itself*"[8]

The *Pai Tavytera* Guaraní people continue to suffer violence, death and impunity without anybody taking any action. People seem oblivious to the fact that drug trafficking is rife along and across the borders and has imposed its own mafia-like logic, spreading terror in the area.

Towards the end of 2011, a small plane crashed into a Pai Tavytera community in Bella Vista Norte, Concepción department. It was apparently carrying money with which to buy drugs in Bolivia and, after the community had reported this matter, the money disappeared. Community members were tortured, seriously wounded and some even murdered by armed men entering the community in search of the booty. This news made the headlines for several weeks and, although the relevant complaints were made, no-one was brought to justice. The state is obviously well aware of what is going on in this area with regard to this indigenous people but has thus far taken no action whatsoever to protect them. It should be recalled that murders were denounced in Yvyraijá community in 2010 and these have yet to be investigated fully.

The state has not only denied these people access to their ancestral territories but also to enjoyment of their right to life, leaving them unprotected and without access to justice.

Backtracking. The principle of non-progression

Plans and programmes aimed at and organised with indigenous organisations were forgotten following the *coup d'état*. Ayala's brief administration managed to

finalise the files for 17 land cases, with their implementation planned for the second half of the year (subsequently halted by the new administration).

Yet again, a person has been appointed to head INDI who is neither suitable nor has the necessary experience of indigenous affairs. The social welfare rhetoric has returned with a vengeance and each of Quesnel's public presentations, as reported in the mass media, bear witness to an attitude of stigma and isolationism. Communities who had previously received permission to occupy lands because they were going to be returned to them once INDI had completed the purchase are now forgotten, as is the return of their land. This backsliding on agreements is not only endangering the lives of the communities but of INDI itself, as it is reneging on documents it has itself signed, misleading the owners of these lands and putting private individuals off selling their lands to the state for their return to indigenous peoples.

Since October, the Indigenous Health Directorate has no longer been operating independently and has become a programme without its own budget and unable to mainstream its policies into other areas. The Ñemity Pedagogic Centre/ Refuge for Coexistence was established in 2011, and it is currently home to 15 indigenous former street children and adolescents who are being rehabilitated with the support of educators by means of focused programmes, detoxification processes, skills development, capacity building, and help with their social and family reintegration. Within a protected environment, these children and adolescents receive psychological, social and medical care, adequate food, recreation, relaxation and games, remedial school classes and have their "Mbya Guaraní" culture reinforced. This programme for indigenous street children and adolescents is now being shut down. ❍

Notes and references

1 The indigenous household survey EHI 2008 - see: http://www.dgeec.gov.py of the Department for Statistics, Surveys and Census (DGECC) 2008.

2 Police officers and peasant farmers died in the massacre and it was the main reason why Congress initiated an impeachment process against President Lugo and removed him from office.

3 Despite the fact that Chapter V of the National Constitution itself recognises indigenous peoples as being prior to the formation and organisation of the State.

4 Particularly if they are not part of the circle of cooperatives that receive all services, even those which the State is committed to providing free of charge to the people, and especially indigenous people.

5 Under a resolution of the Ministry of Education and Culture in 2001, according to a *Grupo Ambiente y Territorio* (GAT) source on its webpage.
6 This has been denounced by the indigenous organisations linked to them, and by the civil society organisations supporting them, GAT and Iniciativa Amotocodie.
7 Information provided by the GAT, which supports this committee as conventional representatives along with the Ayoreo Totobiegosodie leaders.
8 **Roa Bastos,1974:** "Yo, el Supremo". Buenos Aires: Siglo XXI. p.9

Lorna Quiroga *is a sociologist and member of the field and research team of the Tierraviva institute for indigenous peoples of the Chaco. This article is very similar to one published in 2012 in the Human Rights Report of the Coordinating Body for Human Rights in Paraguay (Codehupy) 2012, by the same author. "Tendrá límites el retroceso en los derechos de los Pueblos Indígenas" (2012). Derechos Humanos en Paraguay 2012. Asunción, pp. 85-99.*

ARGENTINA

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

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

Cessation of indigenous land demarcation program

In mid-2012 the Auditor General's Office, an independent body of the comptroller of public administration, released a report based on data from the first half of last year, which revealed noticeable delays and failures in the implementation of the Agenda of Indigenous Community Land Survey by the National Institute for Indigenous Affairs (INAI).

This program was established and budgeted by the Law 26.160 in 2006 as a way to comply with Article 14.2 of Convention No. 169 of the International Labor Union (ILO), which requires the State to identify the lands which indigenous peoples traditionally have occupied. This law provided for a period of three years for the program, but the end of that period the work had not yet begun. In 2009, the project was extended until 2013 and new budget items were added.

However, as noted by the Auditor General, although the state agency responsible for the land survey has spent most of the resources, the results have been minimal. In their international reports Argentina has avoided giving precise figures and instead mentions that the project is nearly 40% executed; however, these claims are disputed by official data. Taking into account the report of the Auditor and the responses of the INAI, until the end of 2012 – six years after the start of the program – only 200 territorial demarcations had been made out of an estimated total of 1,600 indigenous communities' claims, which is to say 12.5% of the total. The situation is even more serious as it becomes apparent that the most troubled provinces with higher rates of repression and disregard for the rights of indigenous peoples are where land demarcation has hardly been done. Sixty-five percent of indigenous communities are located in the provinces of Salta, Jujuy, Formosa, Chaco, and Neuquén, all of which are negatively mentioned in the observations of international human rights bodies. In these provinces the official demarcation of land has only been completed in 4% of the communities.

Despite these poor results, the INAI has spent about 80% of the budget for the program, and almost half of these resources have had an uncertain fate, as noted by the Auditor General in the investigation of anomalous agreements and the lack of justification.

The flip side of this virtual paralysis in the identification and demarcation of indigenous lands is the high level of conflict and repression suffered by many communities. Although Law 26.160 and its extension imposed a moratorium on evictions, the practice of the majority of judges has been to avoid the application of this rule and they have ordered the evacuation of traditional lands, as was found by the Special Rapporteur James Anaya. In other cases, it has been the violence of landowners or provincial governments causing the relocation of communities. More than ten indigenous have died in recent years as a result of these acts of violence, mostly in the province of Formosa where the State fails to comply with an injunction requested by the Inter-American Commission on Human Rights in order to protect the lives and physical integrity of the members of the

indigenous community Potae Napocna Navogoh Qom, "La Primavera," against possible threats, assault or harassment by members of the police, the armed forces, or other state agents (MC 404/10).

The lack of State action in the demarcation and protection of indigenous lands has also led to serious conflicts in the province of Neuquen, where the official survey program has not yet started running and communities of the central zone

do not have any guarantees of the recognition their lands against the intrusion of oil companies supported by the local government; these companies violently burst into indigenous territories for exploration or drilling without any prior consultation. Similar situations can be found in the provinces of Salta and Jujuy where the activities of logging and mining companies ignore traditional indigenous ownership rights and the right control of their natural resources. Clashes with landowners and their private security guards have resulted in indigenous deaths in the provinces of Santiago del Estero and Tucumán, as well as in serious delays in state recognition of communal land ownership.

New legislative measures

For much of 2012 the indigenous movement was focused on internal reflection and taking a position regarding a new initiative of the president of the republic: the incorporation of indigenous communal property in the Civil and Commercial Codes' national unification project.

On June 8, the Executive Branch sent the Senate a bill to amend the Code, which immediately constituted a congressional special commission composed of representatives of both legislative chambers to rule within 90 days on the content of the Code. It should be noted that this document was prepared without consultation with the authorities of the towns and communities; it contains multiple restrictions of the constitutional right to own land and the exercise of self-determination; it ignores the collective nature of the subject and the special relationship indigenous peoples maintain with the land and its resources; and, despite the demands of indigenous organizations to participate in the Congress to express their opinions, they were not heard at the public hearings held in Congress.

The project proposes to incorporate indigenous communal property into the text of the Civil Code in the form of a new property right[2] and establishes the registered indigenous communities as title holders as legal persons with private rights.[3]

Moreover, the proposal for reform presents itself just months before the expiration of the Emergency Law on Indigenous Communal Property (26.160), passed in 2006, which was to expire in 2010 but was extended until December 2013 by law number 26.554. This law, which suspends the legal eviction from ancestral territories and decrees that a survey be conducted [with regard to evictions], was

not respected in practice. Many communities have already been evicted and the survey was conducted only in a few provinces, partly due to the resistance of the provincial governments to obey the law but, above all, by the powerlessness and passivity of the national government to execute laws through the National Institute of Indigenous Affairs (*Instituto Nacional de Asuntos Indigenas INAI*) – , which is the executive body of the Law.

The Center for Legal and Social Studies (CELS), the Observatory of Human Rights of Indigenous Peoples (ODHPI), the Lawyers Association on Indigenous Rights (AADI), the Group of Legal Support for Land Rights (GAJAT), academics from public universities, the National Team of the Pastoral Aboriginal (ENDEPA), human rights organisms such as the Permanent Assembly for Human Rights (APDH), the Peace and Justice Service (SERPAJ), Mothers of Plaza de Mayo Founders' line, and NGOs, among others, pressured the Bicameral Commission in support of indigenous claims of the unconstitutionality of the project and its contradiction with international treaties. They noted the inconsistency between the right to private property (real right) and communal ownership, public ignorance of the legal status of [indigenous] communities, the subordination of title granting of indigenous territories to the imposition of alien organizational forms and compliance requirements that are not part of their lifestyles. They claimed that indigenous peoples have the rights to consultation and participation in the process of discussion and development of proposals for reform, and that without it, the rule that is developed will be null.

Position of the Indigenous Movement

On August 28, the Plurinational Indigenous Council, composed of various indigenous peoples' organizations, held a press conference in the entrance to the National Senate where the Bicameral Commission was meeting. The intention was to make its position public and ask to be heard by the Commission. However, the authorities of INAI had anticipated this maneuver, and they presented the reform project in the legislature on behalf of indigenous peoples across the country who supported the reform bill. The Council leaders made a serious complaint during the press conference: that the Institute had falsified indigenous participation through "devices created for this purpose: the ENOTPO (National Meeting of Indigenous Territorial Organizations) and Indigenous Participation Council

(CPI)." But it was later learned that CPI members were unaware of the document and, therefore, had not given their endorsement (Plurinational Indian Council of Argentina, Indian Press Conference," Called to prevent abuse of power the new Civil Code," August 28, 2012).

The document, "Contributions from the Plurinational Council to the reform of Indigenous Communal Property in the Civil Code," presents the main objections to the reform: lack of consultation, speaking only of land and not of territory, requiring ownership of rural and not urban land, confusing the indigenous legal personhood with that granted to a football club or a commercial company, speaking only of communities and peoples rather than referring to the right of consultation in relation to the exploitation of natural resources and without prior information. After establishing their dissent, they asked that they dismiss the inclusion of this issue in the project and begin a process of consultation and participation of indigenous people and communities in order to develop a Special Law on Communal Property and the Right to Consultation.[4]

The official blog[5] of the National Meeting of Indigenous Territorial Organizations (ENOTPO) presented itself as a "space for meeting and articulation" that brings together more than 26 indigenous peoples. Like the Plurinational Council, this organisation was born in the year of the bicentennial celebrations of Argentina, during which the people led a march to the capital to make their presence visible in the national society and present their demands to the president. Some of its leaders are INAI officials and, therefore, maintain the distinct political position of the Council. From this position of "purposeful space," they expressed their agreement with the initiative launched by the national government to reform the Civil Code.[6] The inclusion of indigenous land rights in the Code is "an historic opportunity to repair and restore rights." It is an opportunity to "break the individualist paradigm of Western law" so we can incorporate patterns of native peoples themselves. Essentially, in relation to the underlying issue, INAI believes that "indigenous communal property is a real, autonomous right of a collective character, stemming from the constitution and whose regime is public policy." The rights holder is the people (*el pueblo*), through the community. Regarding types of communal property, the constitution establishes: a) Recognition by the national or provincial government of communal ancestral possession; b) by occupying possession (ie: possession for more than twenty years); c) acts between the living and tradition; d) of the decision of the last will. Regarding the "exploitation of natural resources by the State, which impacts indigenous lands and territories, [it]

is subject to the right to participation and an appropriate consultation process with indigenous peoples [...] through their representative institutions." It defines participation as "to march forward sequentially, by moments or stages, toward a final purpose."

"First are the oil, mining, and soy, then the indigenous peoples"

This phrase expressed by the traditional leader (*Amauta*) Mrs. Paz Argentina Quiroga of the Huarpe people summarizes the current constraints on access to ownership of territories. The federal government tries to silence the indigenous demands with the expansion of state subsidies granted to indigenous individuals (mothers of seven children, widows, the disabled, and a number of programs and welfare schemes). In May 2010, the Argentinean President spoke before the indigenous peoples' delegation from the Grand March of Indigenous Peoples and affirmed that in case of the discovery of oil or other resources found on indigenous lands, the government would give priority to the exploitation of these resources and not to the recognition of indigenous ownership. In Argentina, as in other countries in the region, the current government presents itself as progressive and confronting the neoliberal model, but rather than abandon dependence on extraction, it promotes it. The indigenous areas are licensed (*concesionadas*) to entrepreneurs who clear the land in order to plant soy, carry out mining, as well as oil, exploration and exploitation across the country. In the Chaco region of Argentina the plundering of primary forests has not been stopped. Something similar is happening in the northeast, in the region inhabited by the Guarani people, where very little native vegetation remains: instead eucalyptus and pine trees are being planted as well as yerba mate, tea, and corn. The use of pesticides on these plantations causes malformations in the population. In the region of Cuyo, mining exploitation has been authorized without the extraction being taxed. In the Northwest, more specifically in the Puna Jujeña, there is exploration for and exploitation of lithium, with no respect for the rights of communities to be consulted. In Patagonia oil exploitation is advancing constantly. Across the country the negative effects of the new extractive practices (loss of natural areas, pollution, displacement of communities, killings, etc.) have increased. Given the social conflict, the national government has increased its strategy to control protest through welfare programs that are used so that the communities will "accept" the inevita-

ble: the fragmentation of the unity of their organizations between those who see it as positive to at least be compensated for the destruction brought by extraction and those who believe that it is a death sentence, not only in terms of survival, but worse, an attempt to break their political objectives.

"Not one more indigenous death by this model"

In November, there was a Summit of Indigenous Organizations in Argentina in Buenos Aires. Traditional authorities and representatives of organizations and original nations met for two days to "debate and define steps to continue in front of the politics of exclusion faced by the indigenous peoples of Argentina."[7] At the conclusion of the summit, they issued a statement where they strongly denounced the State authorities and made various demands. They highlighted the point that the most urgent issue is to counteract the model "of progress that is based on destruction and death" that destroys the most essential thing, water, and undermines the basis of the right of peoples to their own cultural, which is the territory. They also harshly criticized what they see as an "attack" on food sovereignty and the intention of including their support for the reform of the Civil Code, without their views having been taken into account. They pointed out that the Forest Act (which should control the massive deforestation of the country) and the Emergency Law Community Property had not been implemented. Finally, the document denounces the government meddling in the internal life of organizations, stating in the conclusion, however, that the Summit participants have confidence that "the Indigenous actions will require impunity for those who govern in favor of entrepreneurs and multinational oil, mining, and soy bean interests."

Important Statement of the Inter-American Commission on Human Rights

On March 27, confirming what was said above regarding the legal uncertainty of indigenous peoples living in Argentina, the Inter-American Commission on Human Rights (IACHR) issued a merits report on the case 12094 of the Lhaka Honhat indigenous organisation versus the Argentine state. In this report, the Commission states that the State has violated indigenous peoples' rights to the use

and enjoyment of their right to land ownership and it recommends that Argentina addresses this human rights violation. In this regard, it said that the State must identify, demarcate, and give titles for 400,000 hectares of land traditionally used by over fifty communities living in lots 55 and 14 in the province of Salta. Almost a year after the issuance of the Fund Report, the recommendations remain unfulfilled. ❍

Notes and references

1 **Instituto Nacional de Estadística y Censos (INDEC), 2004:** *Resultados de la Encuesta Complementaria de Pueblos Indígenas* —ECPI— surveyed in 2004. http://www.indec.mecon.ar/webcenso/ECPI/index_ecpi.asp

2 "Real rights are: a) domain, b) condominium; c) indigenous communal property; d) horizontal property; e) joint estates; f) timeshares; g) private cemetery; h) surface; i) usufruct j) use; k) room;, l) servitude; m) mortgage; n) antichresis; n) garment" (AADI, CELS, GAJAT, ODHPI, letter to the President of the Bicameral Commission, August 21, 2012) Available www.cels.org.ar.

3 "Private legal persons are: a) societies; b) civil associations; c) simple associations; d) foundations; e) mutuals [funds]; f) cooperatives; g) consortiums of horizontal property; h) indigenous communities" (AADI, CELS, GAJAT, ODHPI, Ob.cit.).

4 The complete document can be accessed at: http://ccycn.congreso.gov.ar/ponencias/cordoba/pdf/047_ROQUE_ALDO_GOMEZ.pd

5 http://enotpo.blogspot.com.ar/2012_08_01_archive.html

6 The complete document can be accessed at: http://enotpo.blogspot.com.ar/2012/09/posicionamiento-y-propuestas-de-las.html

7 Source: *Mapuexpress/MCZ* http://www.albatv.org/Consejo-Plurinacional-Indigena-a.html

Report prepared by the ***Observatory of Human Rights of Indigenous Peoples, ODHIP****, of the Province of Neuquén, and by* ***Morita Carrasco****, anthropologist. Morita works at the University of Buenos Aires, where she teaches and researches issues concerning the rights of indigenous peoples and their relationship with the state. She is currently carrying out investigations with regard to the link between the state's criminal justice system and indigenous peoples.*

CHILE

In Chile, the indigenous population self-identifies as belonging to or descending from some of the nine indigenous peoples recognized by Chilean law[1], reaching a population of 1,369,563 people and representing 8% of the total population of the country[2]. The indigenous population is composed of the following peoples: the inhabitants of the Andean valleys and high plains in the north are the Aymara (1%), the Lickanantay (0.14%), the Quechua (0.07%), the Colla (0.06%), and the Diaguita (0.06%); the Rapa Nui, who are from the Polynesian island *Te Pitt o Te Henua* (Easter Island) (0.03%); the Mapuche (6.97%) who inhabit the moderate and rainy southern Wallmapu; and the Kawashkar (0.01%) and Yamana (0.01%) who occupy the Patagonian Austral channels.

The Chilean Political Constitution of 1980, which dates back to the dictatorship, does not recognize indigenous peoples or their rights. Indigenous rights are regulated by law No. 19.253 (*Ley Indígena)* passed in 1993 about the "promotion, protection, and development of the indigenous peoples," and is a law that is not consistent with the standards in international law with regard to the rights of indigenous peoples. Another instrument that recognizes and regulates the exercising of rights by Chilean indigenous peoples is Law No. 20.249, which "creates coastal maritime spaces of original peoples," and was promulgated in 2008, although up until the present day has met with various institutional barriers to its implementation. Furthermore, the International Labor Union (ILO) Convention 169 is in force since its ratification by the Chilean state in 2008. The convention came into force in September 2009.

The right to consultation

The right of indigenous peoples to prior consultation in all administrative and/or legal measures that affect them is the "cornerstone" for the exercise of the rest of the rights enshrined in ILO Convention 169 and in the UN Declaration on the Rights of Indigenous Peoples.

During 2011, the government began a polemical consultation process that incorporated different themes related to indigenous peoples in the same consultation. This initiative was rejected by many indigenous organizations that also demanded the abolishment of DS No. 124 of the Ministry of Planning and Coop-

eration (MIDEPLAN), which has unsatisfactorily regulated the consultation procedure since 2009. Given this, in September 2011 the government decided to suspend the planned consultation process and to instead concentrate on the definition of the consultation mechanism, a task that was entrusted to a commission formed within the National Council of the National Corporation for Indigenous Development (CONADI), promising that there would be no consultations carried out until they had resolved the procedural issues.

Despite this commitment, on May 28, 2012 the Council of Ministers for Sustainability approved a new version of the regulations for Environmental Impact Assessment (EIA), which was a part of the institutional consultation that had been suspended in September 2011. The new version contains rules about the "consultation" of indigenous peoples for investment projects submitted to an EIA, but these imply that the indigenous peoples will only have information disseminated to them, rather than any real consultation taking place. Faced with this terrible news, many indigenous peoples' organizations have made allegations questioning the regulation, asserting that they had not been properly consulted and that it contains rules that are not in line with international standards.

Moreover, on August 8, the Government submitted a proposal for New Regulations of Consultation to the council of CONADI so that they could be distributed to indigenous peoples in order to initiate a consultation process on the proposal. This proposal is far from the international standard of the right to consultation and presents situations that seriously threaten the rights of indigenous peoples.[3]

Following this trend, the legislative process of the new "Law on Fisheries and Aquaculture" has been carried out without the completion of a consultation process with indigenous peoples, despite them being directly affected by this new law determining fishing quotas on aquatic resources. It ignores the territorial rights of indigenous peoples living on the coast of the country and the fact that they have used these resources since time immemorial, as recognized by Law 20.249.

With regard to the investment projects on indigenous territories approved without consultation of indigenous peoples, they have generated legal processes through which the affected indigenous communities have challenged the administrative decision authorizing the investments, demanding that the right to consultation be guaranteed. As a result, the courts, with advances and setbacks, have annulled some projects until there is consultation with the affected indigenous peoples, providing that a mechanism for consultation be generated in accordance

with the standards set out in ILO Convention 169. Among these cases are those of the waste transfer plant of Lanco,[4] the case of the master plan of San Pedro de Atacama,[5] the case of mining in Paguanta,[6] the case of a wind farm in Chiloé,[7] and the case of mining in El Morro[8].

Investment projects on Mapuche territory

The Mapuche's territory is located in the south of Chile, covering the regions of Bio Bio, Araucanía, Los Ríos, and Los Lagos. The impacts of the forestry industry are mainly concentrated in the province of Malleco, where the monoculture of eucalyptus and radiata pine has been introduced on territories that have been claimed by the Mapuche. In 2012, forestry company Celulosa Arauco continued with its proposal to construct a pipeline to the sea to remove contaminants from its waste plant in Valdivia, affecting Mapuche-Lafkenche communities in the Los Rios region. Having achieved the respective environmental authorization, the company is currently seeking to establish maritime concessions for the pipeline's construction. This is a situation that collides directly with the interests and rights of the Mapuche-Lafkenche inhabiting the territory.

Meanwhile in the mountainous area, hydroelectric projects threatening Mapuche communities have proliferated. The Endesa company's Neltume project in the community of Panguipulli (Los Ríos Region) is located in the middle of a territory that has historically been inhabited by Juan Quintumán, Inalafken, and Valeriano Cayicul communities. The project is threatening to flood the main culturally significant site of this territory, as well as seriously affecting local production activities and endangering the ecosystem. The company is also moving forward with salmon farming projects in mountain valleys south of the Bío Bío, most of them in rivers that are part of the current and ancestral habitat of Mapuche communities, polluting waterways and affecting their material and cultural survival. There has been no consultation regarding these projects thus far, despite this being necessitated by ILO Convention 169, as these projects affect the right to habitat expressed in the Convention the same reason these projects are rejected by the communities.

Added to this is the threat posed to indigenous peoples by the granting of various geothermal energy source concessions located in or near Mapuche communities.

The criminalization of indigenous peoples' social protest

During 2012, three legal processes under the Terrorism Act have remained active, through which there are currently 24 indigenous persons charged. In August there was a trial against eight Mapuche individuals charged with terrorist offenses in the case called "Quino Toll." They were acquitted,[9] showing the inconsistency of the State's use of this Act, which is employed as a mechanism to suppress the defendants' right to due process and promote the investigation process that, ultimately, results in a form of criminalization.

The year 2012 has also seen a change in the State's prosecution strategy, using the concept of "police officer homicide" outlined in the Code of Military Justice, which provides very strong penalties when the victim is a police officer compared with homicide of a civilian, and applying it in cases where a police officer has been injured, not killed. Through the use of this standard, on August 13, the Court of Oral Criminal Trial in the Angol Penitentiary for example sentenced two youths of the Wente Winkul Mapu Mapuche community, Daniel Montoya and Paulino Levipan Levinao Coyan, with 10 years and one day in prison for the alleged attempted murder of police officer, through a process in which there was no reliable evidence that proved the offense. The decision was overturned in part by the Second Criminal Chamber of the Supreme Court on October 24, which decreed that there must be a new trial for the charged Daniel Montoya, evidencing a situation of violation of due process. The Court also ordered that the alleged offense of Paulino Levipan be reduced to the abuse of a police officer, resulting in a decreased penalty to three years in prison, while allowing the sentence to be completed on probation. This decision was rendered after the defendants went on a hunger strike demanding respect of due process in all cases.

Impunity for the crimes committed against Mapuches

On August 16, 2012, the Military Court aquitted a leading police officer of his five-year prison sentence for shooting young Mapuche Jaime Mendoza Collio, in 2009. Jaime Mendoza Collio was killed by a shot in the back by the police officer on August 12, 2009, during the occupation of the Fundo Santa Alicia, which was being reclaimed by Mapuche communities as part of their ancestral territory.

In reversing the judgment of the Second Military Court of Valdivia, the Military Court decided to acquit the accused because it estimated that he had shot the fatal bullets in self-defense. This was all based on an inconsistent and capricious argument of the Military Tribunal with regard to the evidence presented during the trial, explicitly dismissing sufficient proof of the altering of evidence in the crime scene by police officers.

This ruling confirms the situation of impunity for crimes committed by police officers in the context of land disputes involving Mapuche communities.

Andean peoples' rights to natural resources

In the territory of the Andean peoples of northern Chile (Aymara, Lickanantay, Quechua, Colla, and Diaguita) the development boom of the mining industry continues, extending to all indigenous territories and, in addition to the subsurface extraction of mineral resources, brings with it an associated demand for water and energy resources. This situation has resulted in serious environmental conflicts particularly regarding water resources. Mining threatens the very existence of indigenous communities, including their traditional productive activities and their presence in territorial spaces where, after the drying up or loss of water sources, it becomes impossible for them to continue with their economic strategies, both traditional (agriculture) as well as those currently part of their development priorities (tourism), or to practice their social and cultural rights. The State ignores the irrefutable fact that the disputed waters are essential to ensure the indigenous development project and its continuation by future generations.

The most emblematic conflicts during 2012 are:

- The Los Pumas Mining Project in the Lluta river basin in the Arica and Parinacot region that threatens the integrity of the Aymara and Ribereñas communities located around this aquifer and whose productive vocation is agriculture;
- The Polloquere Geothermal Project in the Salar de Surire, in the same region, that threatens the salt ecosystem that is part of the nature reserve Las Vicuñas as well as the water rights and the territory of the indigenous community of Surire;

- The Paguanta Mining Project, which puts the watershed of the Tarapaca stream at risk and, consequentially, normal access to water resources, compromising the flow and quality of water in the territory inhabited by a large number of indigenous Aymara in the Tarapacá region;
- The Morro and Pascua Lama Mining Project in the territory of the Diaguita de Huascoaltinos community in the Atacama Region that imposes a large-scale mining model, which makes pursuing agricultural activities unviable that have the indigenous communities have been carrying out since time immemorial as well as also compromising indigenous land rights, leading to the displacement of Huascoaltinos farmers (natives of the high mountains).

The approval of these projects has resulted in the violation of fundamental indigenous rights and therefore lawsuits before the courts. Significantly, the courts in Chile have spoken in favor of recognizing the right of indigenous consultation (Paguanta Project case[10]) and also of indigenous property rights and the particularities that manifest as a result of the collective dimensions of these rights (Morro Project case[11]). As a result of these actions, the Court has decreed that the approval of these projects be suspended until the correction of legal violations involving the ignorance of such rights, demanding that they be guaranteed in accordance with the standards imposed by ILO Convention 169.

The Rights of the Rapa Nui people (Easter Island)

The island of Rapa Nui is located in Polynesia, 3,800 km from the South American coast. The Rapa Nui people signed a voluntary agreement with the State of Chile in 1888 in which, according to the Rapa Nui version, reserved their ownership right of their ancestral lands. The Chilean State, in contravention of this agreement, proceeded to register the lands of the island on behalf of the Treasury, arguing, in accordance with Article 590 of the Civil Code, that these lands were lacking owners.

This registration has been recently validated by the Supreme Court in a ruling on an action in which a Rapa Nui family tried to reclaim ancestral lands that the Chilean government had transferred to non-Rapa Nui individuals in the 1980s. In its decision, the Supreme Court gave preference to the private property of third

parties and not to the Rapa Nui family's claim of the Rapa Nui's ancestral communal property.[12]

Today, more than 70% of the territory of the island remains state property and there is no participation of the Rapa Nui people in the island's administration.

Notwithstanding the fact that on several occasions the Rapa Nui have mobilized to reclaim their lands there was not an adequate response by the Chilean state to afford the Rapa Nui their internationally recognized rights. This is evident in the actions of the Chilean state characterized by: 1) strong police repression[13]; 2) the continuity of the already tired formula consisting of the transfer of small land-holdings to individuals, so that in addition to not resolving the underlying conflict, it has generated a series of internal disputes in the Rapa Nui community; and 3) the implementation of a development plan without consultation with the Rapa Nui people.

The Rapa Nui people also demand the establishment of an immigration statute intended to control the population of the island so that it does not exceed its carrying capacity, which is an important question for the extremely fragile ecosystem.

In 2009, in order to comply with the demand for the establishment of immigration control, the Chilean government realized that it would first be required to constitutionally establish the power to restrict the free movement into Rapa Nui territory, and thus proposed to modify the Constitution accordingly.[14]

The Administration conducted a consultation process in order to seem to recognize the sovereignty of the Rapa Nui people before sending the reform bill to Congress. However, once the project entered Congress, in September 2011, the president used his constitutional powers, without reference to other reasons and without consultation with the people of Rapa Nui, to formulate a substitute constitutional reform project, substantially modifying the text of the draft. This text, approved by Congress in January 2012, does not establish a restriction of the right of freedom of movement, but rather a regulation of the exercise of this right, eliminating references to environmental protection and sustainable development in Rapa Nui. This implies a clear violation of the expressed will of the people and their right to prior consultation and has been one of the main obstacles that prevented the establishment of regulated immigration control throughout 2012.[15] ❍

Notes and references

1 Indigenous Law (*Ley Indígena)* Nº 19.253 of 1993.
2 2 2 CASEN poll database 2011. Statistical projection of the Citizens' Watch team.
3 Article 5, Proposal of New Law of Consultation (*Propuesta de Nueva Normativa de Consulta*).
4 Corte Suprema, causa Rol N² : 6062 – 2010.
5 Corte Suprema, causa Rol N² : 258 – 2011.
6 Corte Suprema, causa Rol N² : 11.040 – 2011.
7 Corte Suprema, causa Rol N² :10.090 – 2011.
8 Corte Suprema, causa Rol N² : 2.211 – 2012.
9 The 2 minors charged with the same offense were separated and the case was dismissed after the prosecution was left out of the case.
10 Sentence from 30 March 2012, Supreme Court, Causa Rol 11.040 – 2011.
11 Sentence from 17 February 2012 from the Appellate Court of Antofagasta, causa Rol 181-2011, all parts approved by the Suprmem Court in causa Rol 2211-2012.
12 Supreme Court Sentence, 25 May 2012, en causa rol N² 9.431-2011, autos "Diana Eliana Hito Hito contra Sociedad Hotelera Interamericana S.A."
13 *The Indigenous World 2011* Copenhagen: IWGIA
14 Article 126 , Political Constitution of the Republic of Chile.
15 For more information on the situation of Rapa Nui, see "*The rights of Rapa Nui Easter Island: International Mission Report*," IWGIA and Observatorio Ciudadano, 2012, available at http:// www.iwgia.org/publicaciones/buscar- publications? publication_id = 598

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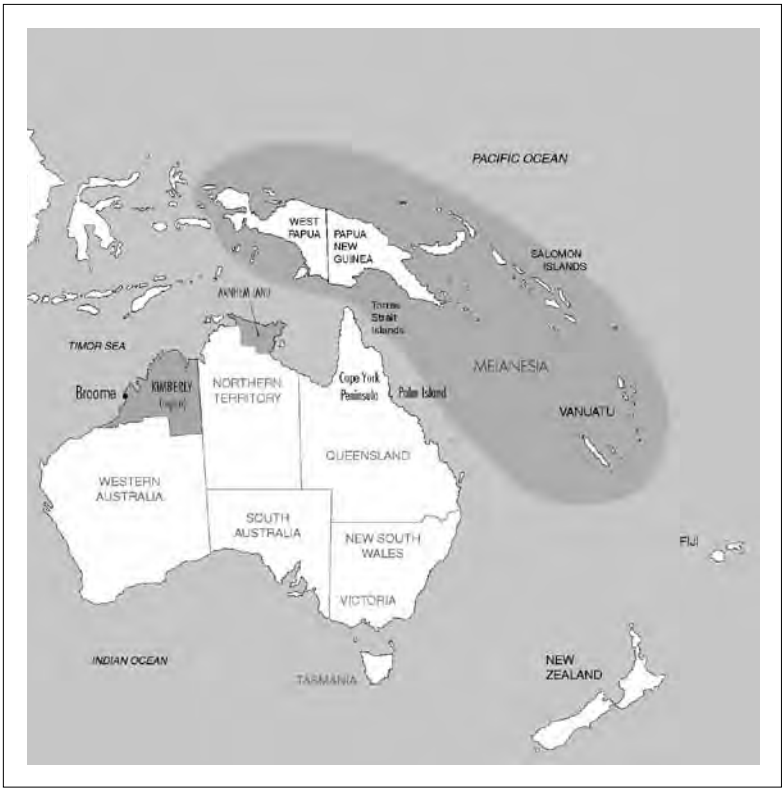
THE PACIFIC

AUSTRALIA

Indigenous peoples hold a long and complex connection with the Australian landscape, including marine and coastal areas. Some estimates maintain that this relationship has endured for at least 40,000 years.[1] At colonisation in 1788, there may have been 1.5 million people in Australia.[2] In June 2006, Indigenous peoples made up 2.5% of the Australian population, or 520,000 individuals.[3] In 1788 Indigenous peoples lived in all parts of Australia. Today the majority live in regional centres (43%) or cities (32%), although some still live on traditional lands. Despite recent improvements, the health status of indigenous Australians remains below that of other Australians. Rates of infant mortality amongst indigenous Australians remain unacceptably high at 10-15%, and life expectancy for indigenous Australians (59 for males and 65 for females) is 17 years less than that of others. The 1975 Racial Discrimination Act has proven a key law for Aborigines, but was overridden without demur by the previous Howard government in 2007 when introducing the Northern Territory Emergency Intervention (see *The Indigenous World, 2008).* States and Territories also have legislative power on rights issues, including Indigenous rights, where they choose to use them and where these do not conflict with national laws. Australia has not ratified ILO Convention 169 but, although it voted against the UN Declaration on the Rights of Indigenous Peoples in 2007, it went on to endorse the UNDRIP in 2009.

The most important news may be the October 2012 election of Australia as a member of the United Nations Security Council for two years beginning in January 2013. Following the defeat of the Anglocentric Howard government in 2007, the Labor governments of Kevin Rudd and Julia Gillard have taken on an active multilateralist role.

Despite opposition, the new UN role is encouraging more people and institutions to think internationally. Now may be a good time for international friends of



Indigenous peoples to reach out and encourage Australian awareness of international conventions and standards in Indigenous rights and greater adherence to them.

Closer to home

Many Australian individuals and organisations are active in overseas development, aid, relief work, and human rights. Much moral energy is directed to Indigenous peoples of the Pacific and elsewhere, in part because Australia's regressive politics, policies, and media can be left at home. The fundamental Pacific debate here may be between those building on island traditions and strengths,

and government encouragement of nation-state building along conventional Western lines.

Within Australia the debate continues on whether or how to recognise Indigenous peoples in the Constitution. A consensus of politicians, indigenous leaders, academics, and commentators of all stripes favours delay because of limited public understanding. As National Congress of Australia's First Peoples' Les Malezer says:

> *We will continue to work with political parties and Parliamentarians… to better inform Australians about this important transformation. Congress calls for leadership and vision so that all Australians support the fundamental need for these reforms. The Constitution must prohibit racial discrimination, and recognise and protect the culture, languages and identity of the First Peoples.*[4]

Indigenous Internationalism and land management

Indigenous Internationalism continued to develop within Australia and beyond in 2012. Indigenous rangers from Central and Northern Australia travelled to Canada in 2012 to launch a global network for Indigenous People and Local Communities Land and Sea Managers, and share their skills and experiences in conservation and land management with Canadian first peoples.

The initiative has been organised with the assistance of the Pew Trust, and seeks to strengthen international Indigenous land management networks.[5] The network provides opportunities for the transfer of knowledge and experiences in the area of Indigenous Land Management from Australia to other countries, and reflects a broader global movement towards Indigenous Internationalism and, 'capacity building'.

Daniel Oades, one of three Indigenous rangers to visit Canadian first nations chiefs, highlighted the practical applications of this knowledge:

> *Working with my mob, the Bardi Kawi on the Dampier Peninsula, we've utilised a lot of the traditional knowledge that was around hunting dugong and we actually turned that around into using it for the knowledge of where the species would be at that time of year to satellite tag those animals.*[6]

Information sharing operates across many subjects and themes including animal tagging and identification, traditional burning methods, infrastructure management and day-to-day ranger operations.

The exchange also provides a platform for the sharing and examination of broader issues and strategies between Australian Aboriginal people and other first nations people around the world. Such developments are important for ongoing learning and collaboration, as well as the examination of broader models and strategies that seek to empower Indigenous peoples' capacity to manage traditional estates.

Boyer lectures

The annual national Boyer radio lectures in late 2012 featured Aboriginal scholar and activist Marcia Langton setting out a complete conceptual history of Australia centred on economic expansion and its impact on Indigenous peoples.[7] She sees the extractive and energy industries as the key to much of Australia's future and lists many difficult recent achievements by Indigenous peoples in developing ties, finding jobs, and protecting traditional assets with them. This practical partnership will replace dreams of self-determination in shaping Indigenous futures, she believes. Her Boyer book, to be released in early 2013, should provoke debate.

Remote Focus

A scathing and accurate book on Northern Australia's Indigenous situation, *Beyond Humbug,* by Dillon and Westbury, apparently stirred many people, not least with its talk of the North as 'a failed state'.[8] Later came a 'prospectus' from a mixed academic and corporate group based in Alice Springs calling for a Remote Focus under the auspices of a research network, Desert Knowledge Australia. In 2012 this group published its proposals as *Fixing the hole in Australia's Heartland.*[9] In very large lettering the executive summary tells us *'The governance of remote Australia should not be cast as an "Aboriginal Issue" – it is about ineffective government arrangements, disengagement and national indifference.'* So, having begun the process with Aboriginal issues, our group of national notables and experts replicates the founding of modern Australia in 1788 by denying Indig-

enous peoples as a base for political or national identity.[10] We do not doubt our authors and experts here; all countries have their national tics, from Canada's 'national unity' to America's Old South's 'peculiar institution'.

The Remote Focus group may be very clear about national sovereignty in the 'Heartland', but so were the people who drew straight lines across Australia and Canada and Africa in former times, with little reference to local cultures and boundaries. The group might have recommended, e.g., a Constitutional commitment to more equal distribution of services and facilities within states and territories.

Essential new reference book

Indigenous Australia for Dummies is not for 'dummies' at all but a paperback reference book by Aboriginal law professor Larissa Behrendt.[11] The book covers past and present, political history, and all manner of issues, activities, personalities, etc. Given the author's expertise, sections on rights and political issues are invaluable. Of self-determination she writes,

> *The Indigenous Australian interpretation includes concepts such as representative government and democracy, the recognition of cultural distinctiveness and notions of the freedom of the individual, which are embodied in liberalism. These claims seek a new relationship with the Australian state, with increased self-government and autonomy for Indigenous peoples, though not the creation of a new country.'*(p.381)

Looking ahead

The conservative section of the former Howard government is expected to win national elections in 2013 under new leader Tony Abbott. While some Indigenous leaders convinced themselves that these conservatives are good friends during the Howard years when political alternatives seemed unlikely, the election may only reinforce existing assimilationist thinking. Without major socio-economic improvements in remote areas, other issues will lack public attention. ❍

Notes and references

1 Many Aboriginal people maintain that they were created when distinct Creator Beings formed the land at the beginning of time (often termed "the Dreaming"). It is now widely accepted among archaeologists that the earliest undisputed age for the occupation of Australia by human beings is 40,000 to 50,000 years ago. **O'Connell J.F. and Allen F.J., 1998**: When did humans first arrive in greater Australia and why is it important to know? *Evolutionary Anthropology*, 6:132–146.

2 The actual numbers are highly disputed because of the difficulty in estimating a population so very much changed by colonisation. Numbers range from 300,000 to 1.5 million, the latter being widely accepted nowadays. **Butlin, N., 1993:** *Economics and the Dreamtime*. Cambridge, Cambridge University Press; **Reynolds, H. 2001:** *An indelible stain? The question of genocide in Australia's history.* Ringwood Victoria, Penguin**; Gray, A., 2001:** Indigenous Australian: Demographic and Social History in J. Jupp (ed.) *The Australian People: an Encyclopaedia of the nation, its people and their origins.* Cambridge:Cambridge University Press, pp.88-93.

3 **Australian Bureau of Statistics, 2007:** *Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006*. Available from http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/377284127F903297CA25733700241AC0/$File/47050_2006.pdf Accessed 29 Jan 2009

4 Congress press release, 28-11-2012, http://nationalcongress.com.au/positive-step-by-parliament-but-substantive-reform-remains-the-prize/ (Australia's national Indigenous representative body)

5 http://www.pewtrusts.org/news_room_detail.aspx?id=85899426035

6 http://www.sbs.com.au/news/article/1706353/Indigenous-land-and-sea-management-network-launched

7 http://www.abc.net.au/radionational/programs/boyerlectures/2012-boyer-lectures/4305696

8 *Beyond Humbug: transforming government engagement with Indigenous Australia,* Seaview Press, Adelaide, 2007

9 http://www.desertknowledge.com.au/Files/Fixing-the-hole-in-Australia-s-Heartland.aspx

10 Such valuable work groups can sometimes change national policy, as in Canada after the Northern report of the late Gordon Robertson and others

11 Wiley Publishing Australia, Brisbane, 2012, internationally available through Amazon, including Kindle.

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AOTEAROA (NEW ZEALAND)

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

The Treaty of Waitangi (hereafter "The Treaty") was signed between the British and Māori in 1840. There are two versions of the Treaty, an English-language version and a Māori-language version. The Māori version granted a right of governance to the British, promised that Māori would retain sovereignty over their lands, resources and other treasures and conferred the rights of British citizens on Māori. The Treaty has, however, limited legal status; accordingly, protection of Māori rights is largely dependent upon political will and ad hoc recognition of the Treaty.

New Zealand endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010 (see *The Indigenous World 2011*). New Zealand has not ratified ILO Convention 169.

Māori water rights under threat

In 2012, the Government pushed forward with plans to partially privatize several state-owned enterprises (see *The Indigenous World* 2012) – including four power companies – without providing adequate protection or provision for Māori rights in the water resources used by the companies. Article 2 of the Treaty of Waitangi affirms the right of Māori to exercise *tino rangatiratanga* (sovereignty) over their lands, resources and other treasures, which includes their freshwater resources. The Treaty's principles are afforded some protection in the legislation governing New Zealand's state-owned enterprises.[2] However, the legislative amendments enacted to give effect to the partial privatization, through the Public

Finance (Mixed Ownership Model) Amendment Act 2012 and the State-Owned Enterprises Amendment Act 2012, fail to adequately protect those principles. While, after intensive lobbying by Māori, section 45Q of the Public Finance (Mixed Ownership Model) Amendment Act 2012 provides that "[n]othing in this Part shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi", it also provides that "[f]or the avoidance of doubt" that Treaty provision "does not apply to persons other than the Crown". With reduced control over the companies, there is concern that the Crown will not be in a position to ensure adequate recognition of Māori interests in freshwater by the companies in accordance with the principles of the Treaty.[3]

The impact of the proposed partial privatization on Māori interests in freshwater has been the subject of inquiry. At the instigation of the New Zealand Māori Council, the Waitangi Tribunal held an urgent hearing into the matter in July. The Tribunal found that Māori have residuary proprietary interests in particular water bodies, including commercial interests, that were guaranteed in the Treaty and that these interests will be prejudiced if the Government moves ahead with plans not to recognize or compensate for the usurpation of those rights. The Tribunal raised the possibility that shares in the companies, "in conjunction with shareholders' agreements and revamped company constitutions could, if properly crafted," provide "a meaningful form of rights recognition" for Māori but that this would

only be available prior to the partial privatization. It recommended that the sale of shares in the companies be delayed while an accommodation is reached with Māori and "that the Crown urgently convene a national hui [meeting], in conjunction with iwi [tribal] leaders, the New Zealand Māori Council, and the parties who asserted an interest in this claim, to determine a way forward." [4] In October, in defiance of the Tribunal's recommendations, the Government announced its intention to proceed with preparations for the sale of one of the companies.[5] Days later, it announced a share offer programme for some *iwi* that was a thinly veiled attempt to cause division amongst Māori and mute opposition to the sales.[6]

In response, the New Zealand Māori Council and others instituted a judicial review action against the Government in the High Court. The claim concerned decisions the Government was proposing to undertake (such as offering shares for sale), and steps it had taken (such as an inadequate consultation process on the sale), in relation to the proposed partial privatization of Mighty River Power: the first of the state-owned companies the Government intends to partially privatize. The Council argued that the Government would be acting inconsistently with the principles of the Treaty if it undertook the specified decisions and that it had acted inconsistently with the Treaty principles in taking the steps outlined in the claim. In December 2012, the High Court found that none of the Government decisions forming the subject of the claim were reviewable by the courts. Further, it found that even if the decisions were reviewable, the Council's claims would not succeed as, amongst other reasons, taking the decisions would be consistent with the principles of the Treaty. The decision also included a finding that the consultations with Māori regarding protection of the Treaty principles were adequate.[7] As one prominent New Zealand non-governmental organization observed, the Court's decision was "[r]ather a contrast" to the findings of the Waitangi Tribunal, which is the specialist body charged with considering whether Government actions or omissions are in breach of the Treaty.[8] The Council is appealing the High Court decision. Its appeal will be heard by the Supreme Court, New Zealand's highest court, early in 2013.[9]

Proposed TPPA impacts Māori rights

The insecurity of Māori rights under the Treaty is of particular concern in the context of the current negotiations over the Trans-Pacific Partnership Agreement

(TPPA), a proposed free trade agreement between 11 Pacific-rim and Asian countries, including New Zealand, the United States of America and Australia. The negotiations are being conducted in secret, with only state delegates and 600 representatives of predominantly corporate interests privy to the detail regarding its terms. In addition to raising concerns over the secrecy of the negotiations, critics have expressed fears that the agreement may: grant increased powers to foreign investors, including by permitting them to take legal action against the New Zealand government in private overseas tribunals for regulatory changes that impact their profitability; allow corporations to interfere with government policies regarding the environment, food safety and labour rights; and affect access to affordable medicines. These concerns are based on a text leaked regarding the agreement in 2012.[10] The proposed content of the TPPA raises particular concerns for Māori and the guarantees under the Treaty, especially regarding the protection of their rights to their lands and natural resources, traditional knowledge, cultural heritage and the environment. It also raises concerns regarding the access of Māori to affordable healthcare, given that Māori remain overrepresented in negative health statistics. One prominent Māori activist has described the TPPA as "the most significant attack on not only Māori rights but also the economic sovereignty of all citizens."[11] Following the latest negotiations in Auckland in December, talks on the TPPA are scheduled to continue in 2013.[12]

Government failing Kōhanga

In October 2012, the Waitangi Tribunal released its pre-publication version of *Matua Rautia – Report on the kōhanga Reo Claim.* The report looks into an urgent claim filed by Te kōhanga Reo National Trust regarding alleged Crown breaches of the Treaty in relation to kōhanga reo (language nests or early childhood Māori language immersion centres). One of the central allegations was that "the Crown had effectively assimilated the kōhanga reo movement into its early childhood education regime", with the effect of "stifling its vital role in saving and promoting the Māori language." [13]

The Tribunal's findings included that the Crown's early childhood education system – especially its funding formula, quality measures and regulatory regime - breached the Treaty's principles of partnership and equity. It did so by failing "to adequately sustain the specific needs of k[2] hanga reo as an environment for lan-

guage transmission and wh² nau development", It found that k² hanga reo was suffering "significant prejudice" as a result. The Tribunal's recommendations included that the Crown make a formal acknowledgement and apology for the Treaty breaches; appoint an interim independent advisor to rebuild the relationship between the Trust and government agencies; and, that kōhanga reo receive urgent additional capital funding.[14] The decision lends weight to the Tribunal's earlier findings regarding the dire state of te reo Māori (the Māori language) and the need for urgent steps to be taken if it is to survive (see *The Indigenous World 2010*). It is unclear at this stage what steps, if any, the Government will take to implement the Tribunal's important but non-binding recommendations.

International criticism of Māori rights

Two international human rights bodies – the Committee on the Elimination of Discrimination Against Women and the Committee on Economic, Social and Cultural Rights – raised concerns regarding the human rights situation of Māori in 2012, including: the overrepresentation of Māori women in the criminal justice system and as victims of violence; the increased dropout rate for Māori girls in the education system; high rates of teenage pregnancy among Māori women; the disproportionate impact of new social security legislation on Māori women; the lack of sufficient protection for Māori rights to their lands, territories, waters, maritime areas and other resources and the failure to consistently obtain the free, prior and informed consent of Māori before exploiting those resources; the continuing disadvantage of Māori in the enjoyment of economic, social and cultural rights; and, the high rates of tobacco consumption amongst Māori. The accompanying recommendations included that the Government implement recommendations made by the Waitangi Tribunal on these matters.[15]

"Terror" accuseds' harsh sentences

Four Māori rights activists initially apprehended on the basis of alleged terrorist offences, including leading Ngāi Tūhoe activist Tame Iti (see *The Indigenous World 2012, 2010* and *2009*), were ultimately convicted of firearms and weapons offences early in 2012. Two, including Tame Iti, received lengthy two-and-a-half

year prison sentences. Many prominent Māori ridiculed the harsh sentences as a way of justifying the much criticised discriminatory operation that led to their arrest.[16]

Positive developments, including settlement progress

On a more positive note, 2012 saw significant progress in the settlement of Māori claims regarding historical Treaty breaches, although well-documented issues with the process remain.[17] Two groups signed Agreements in Principle or an equivalent agreement,[18] three agreed that their deeds of settlement were ready for presentation to their members for ratification,[19] 12 signed deeds of settlement with the Crown[20] and 11 had the legislation giving effect to their settlements enacted.[21] Significantly, after at times fraught negotiations (see *The Indigenous World 2012* and *2011*), in September, Ngāi Tūhoe *iwi* accepted the Crown's offer to settle their historical claims and work is now underway to agree a deed of settlement.[22] The Government has confirmed that, once the Ngāi Tūhoe deed is signed, relativity clauses in the Treaty settlements of two other *iwi*, Ngāi Tahu and Tainui, will be triggered. The relativity clauses provide that once the cost of all other settlements reach New Zealand $1 billion, Ngāi Tahu and Tainui will receive top-up payments to ensure that the value of their settlements each remain at 17 per cent of the total settlement value.[23]

Additional positive developments for Māori in 2012 included the continuation of the *iwi*-led discussion on constitutional transformation and the public release of the Government-led constitutional review's engagement strategy (for background information on both constitutional discussions see *The Indigenous World* 2011).[24] This strategy professes that it "will ensure that iwi and Māori are key participants" in the review process.[25] Further, Petrobras has abandoned its *iwi*-opposed petroleum prospecting licences over the Raukumara basin (see *The Indigenous World 2012*).[26]

Conclusion

In Aotearoa in 2012, positive developments, including Treaty settlement progress, were outweighed by a regressive Government stance towards Māori inter-

ests in water, TPPA negotiations that may further erode Māori Treaty rights, the identification of persisting and wide-ranging Māori rights concerns by domestic and international bodies and the harsh treatment of two of the Urewera "terror" accused. ❍

Notes and references

1 Most of the population statistics cited here are based on the *New Zealand Census 2006* (the next Census will be held in 2013).
2 State-Owned Enterprises Act 1986, s 9 and see also ss 27A and 27B.
3 See, for e.g., Carwyn Jones "Submission to the Finance and Expenditure Committee on the Mixed Ownership Model Bill" 24 April 2012 available at www.parliament.nz (last accessed 6 January 2013).
4 Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* 2012, 1.1.1, Appendix VII.
5 John Key "PM announces next steps for Mighty River sale" 15 October 2012 available at http://www.beehive.govt.nz/release/pm-announces-next-steps-mighty-river-sale (last accessed 9 January 2013).
6 Bill English and Christopher Finlayson "Iwi participation in Government share offers" 17 October, 2012 available at http://www.beehive.govt.nz/release/iwi-participation-government-share-offers (last accessed 9 January 2013).
7 *The New Zealand Māori Council v Attorney-General* [2012] NZHC 3338 [342]-[345].
8 Peace Movement Aotearoa *NGO information for the 82nd session of the Committee on the Elimination of Racial Discrimination, February 2013* (2013) available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/PeaceMovementAotearoa_NewZealand_CERD82.pdf (last accessed 22 February 2013) [62].
9 Blair Cunningham "Supreme Court to hear Maori Council water-rights appeal" 18 December 2012 available at http://www.nbr.co.nz/article/supreme-court-hear-maori-council-water-rights-appeal-bc-134120 (last accessed 9 January 2013).
10 Al Jazeera English "Inside Story Americas - Will the Pacific trade deal protect workers?" 5 December 2012.
11 Mike Smith cited in It's Our Future *TPPA It's (Not) Our Future* 2012 available at http://www.itsourfuture.org.nz/wp-content/uploads/2012/09/TPPA-Booklet-1.pdf (last accessed 9 January 2013), 31.
12 Office of the United States Trade Representative http://www.ustr.gov/tpp (last accessed 9 January 2013).
13 Waitangi Tribunal "Report Released on the Kōhanga Reo Claim" 18 October 2012 available at http://www.waitangi-tribunal.govt.nz/ (last accessed 6 January 2013).
14 Ibid.
15 *Concluding observations of the Committee on the Elimination of Discrimination against Women* 27 July 2012 Un Doc CEDAW/C/NZL/CO/7 at [14], [15], [23], [24(c)], [29], [30], [33], [34(d)], [35]; *Concluding observations of the Committee on Economic, Social and Cultural Rights* 31 May 2012 UN Doc E/C.12/NZL/CO/3 at [11], [12], [18], [25], [26].

16 See, for e.g., 3 News "Maori MPs criticise Urewera judge" 25 May 2012 available at http://www.3news.co.nz/Maori-MPs-criticise-Urewera-judge/tabid/1607/articleID/255530/Default.aspx (last accessed 9 January 2013).
17 See, for e.g., James Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum: The Situation of Maori People in New Zealand* 31 May 2011, UN Doc A/HRC/18/35/Add.4.
18 Ngāti Hineuru, Whanganui Iwi regarding the Whanganui River.
19 Ngāti Pukenga, Tauranga Moana Iwi Collective and Ngāti Rangiteaorere.
20 Te Ātiawa o Te Waka-a-Māui, Ngāti Kōata, Ngāti Koroki Kahukura, Ngāti Rangiwewehi, Tapuika, Ngāti Toa Rangatira, Ngāi Takoto, Te Rarawa, Tamaki Makaurau Collective, Ngāti Ranginui, Raukawa and Te Aupōuri.
21 Ngāti Whātua Ōrakei, Ngāti Whātua o Kaipara, Ngāti Makino, Maraeroa A and B Blocks, Ngāi Tāmanuhiri, Rongawhakaata, Ngāti Manawa, Ngāti Whare, Ngā Wai o Maniapoto, Ngāti Porou and Ngāti Pahauwera. For information on the settlement process and settlements reached in 2012, see the Office of Treaty Settlements website available at http://www.ots.govt.nz/ (last accessed 6 January 2013).
22 Christopher Finlayson "Crown Offer Accepted by Ng²i Tuhoe Settlement Negotiators" 11 September 2012 available at http://www.beehive.govt.nz/release/crown-offer-accepted-ngai-tuhoe-settlement-negotiators (last accessed 9 January 2013).
23 Tracy Watkins "Tribes due to receive 'top ups'" available at www.stuff.co.nz/national/politics/7662193/Tribes-due-to-receive-top-ups (last accessed 6 January 2013).
24 Constitutional Advisory Panel *Engagement Strategy for the Consideration of Constitutional Issues* (2012); Peace Movement Aotearoa "Constitutional issues review/Constitutional transformation" available at
http://www.converge.org.nz/pma/cons10.htm (last accessed 9 January 2013).
25 Constitutional Advisory Panel *Engagement Strategy for the Consideration of Constitutional Issues* (2012) 9.
26 Andrea Vance et al "Petrobras hands back NZ licences" 4 December 2012 available at http://www.stuff.co.nz/business/industries/8033049/Petrobras-hands-back-NZ-licences (last accessed 9 January 2013).

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TUVALU

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

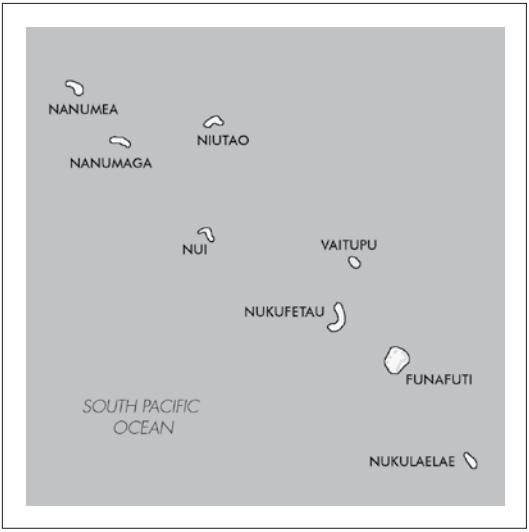
Tuvalu is a constitutional monarchy. The parliament (*Te Fale o Palamene*) consists of 15 members that are popularly elected every four years from eight constituencies. There are no formal political parties.

Subsistence farming and fishing are the primary economic activities. Fishing licences to foreign vessels also provide an important revenue source. Approximately 10 % of the male workforce is employed as seafarers in the commercial shipping industry, providing households with overseas remittances.

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

Freedom of religion

On the first January 2012, the Tuvalu Religious Organisations Restrictions Act 2010 became enforceable. The Act states that its purpose is to 'restrict the spread of beliefs and practices by religious organisations and associations of persons in a manner which undermines the traditional authority of the *Falekaupule* (council of indigenous chiefs) and the traditional values of island communities'. It stipulates that no religious organisation can be established without the approval of the Falekaupule.



Under the Tuvalu Religious Organisations Restrictions Act, all religious organisations are required to register with the Falekaupule on the island in which they are operating or intend to operate. The council of indigenous chiefs of an island can reject an application for registration 'if it is satisfied that the spread of beliefs and practices by the religious organisation or association may directly threaten the values and culture of the island community' (Section 4(3)). In this case, a church will not be allowed to hold public services on the applicable island, although the Falekaupule has no power to restrict the way people practice religion in their homes. Many existing churches in Tuvalu with well-established communities in the capital, Funafuti, had their applications for registration refused by the Falekaupule of Funafuti during 2012.

Religious organisations are significant in Tuvaluan society and the Constitution of Tuvalu enshrines the principle of freedom of religion (Section 23). The Constitution also states in the Preamble that 'the life and the laws of Tuvalu should … be based on respect for human dignity, and on the acceptance of Tuvaluan values and culture, and on respect for them.' Section 29(4) of the Constitution states that 'it may be necessary in certain circumstances to regulate or place some restrictions on the exercise of … rights, if their exercise (a) may be divisive, unsettling or offensive to the people; or (b) may directly threaten Tuvaluan values or culture.' There is therefore a constitutional tension between freedom of religion and the practice of indigenous values and culture. The vast majority of the population are both indigenous and a member of a Christian church, with about 90 per cent of the population belonging to the Ekalesia Kelisiano o Tuvalu (Tuvalu National Church). It is the smaller Christian churches, rather than the Ekalesia Kelisiano o Tuvalu, with which various Falekaupule have a history of conflict. The Falekaupule are often concerned that

minority religious organisations keep their members away from island gatherings and discourage them from performing community obligations. In particular, the Falekaupule of Nanumaga and the Brethren Church had a lengthy dispute over that Church's right to practice on Nanumaga island. The ensuing court case[1] prompted the government to enact the legislation authorising the Falekaupule to decide which religious groups were allowed to practice their faiths in public areas. Despite the significance of the issue, the resulting Tuvalu Religious Organisations Restrictions Act was passed without a public consultation process.

The Act declares in Section 4(6) that the decision of the Falekaupule on the application for registration by a religious organisation is final and cannot be questioned in any court of law. While this section seems to be a risk to the separation of powers between government and judiciary, no challenge to the legality of the Act has yet been raised in the Tuvalu courts. Meanwhile, the churches in Funafuti which had their applications for registration refused during 2012 remain in limbo as to their future. These include the long-established Seventh Day Adventist and Catholic churches.

Tuvaluan culture on the world stage

Contestation over religion did nothing to dampen cooperation among indigenous groups to prepare for and host a visit by the Duke and Duchess of Cambridge in September, as part of Queen Elizabeth's Diamond Jubilee celebrations. The royal visitors were welcomed with displays of material culture and performance from each of Tuvalu's eight indigenous communities. The Duke and Duchess of Cambridge were robed in *titi-tao* (grass dresses) and *fou* (floral garlands), and participated in the *faatele* (percussion, song and dance). The moment was televised around the world, giving unprecedented exposure to the rich indigenous culture of Tuvalu. ❍

Notes and references

1 Teonea v Pule o Kaupule of Nanumaga [2009] TVCA 2.

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NEW CALEDONIA

New Caledonia is an archipelago of 19.103 km2 in the South Pacific (twice the size of Corsica) 400km long and 42km large. Apart from Grande-Terre, it is comprised of the Belep Islands to the north, the Loyalty islands (Ouvéa, Lifou, Tiga, Maré) to the east, the Île des Pins to the southeast and the atoll of the Chersterfield Islands. Grande-Terre is very rugged, with a central mountain range with peaks reaching well above 1.600m.

New Caledonia's population totals 245.580 inhabitants (2009) broken down into Kanak (40%), Europeans, mainly French (29,2%), Wallisians and Futunians (8,7%), Polynesians (3,8%) and residents of other origins. Almost half of the population is under 30 years of age.[1]

New Caledonia is under French rule, but is currently in a decolonisation phase, triggered by the Treaty of Matignon-Oudinot in 1988 and reaffirmed by the Treaty of Nouméa in 1998. These treaties provide for a referendum to be organised between 2014 and 2019, which will define the future of the country, and the progressive transfer of state's competences to New Caledonia. These agreements are the fruit of a nationalist struggle that started in the 1970s and was based on the anteriority of the Kanak and the acknowledgement that the Kanak people and culture were indigenous and that the Kanak could organise themselves. The Treaty of Matignon-Oudinot divided the country into three provinces (North, South and Islands), created an agency in charge of rural and land development (ADRAF), an agency that would develop the Kanak culture (ADCK), and new institutions based on "la coutume" such as the Customary Council later to become the Customary Senate (1998), the customary areas and their respective councils. These were reaffirmed by the Treaty of Nouméa which furthermore recognizes the anteriority of the Kanak people in New Caledonia, making it a pillar in the construction of a "common destiny" with the other ethnic groups of the Territory.

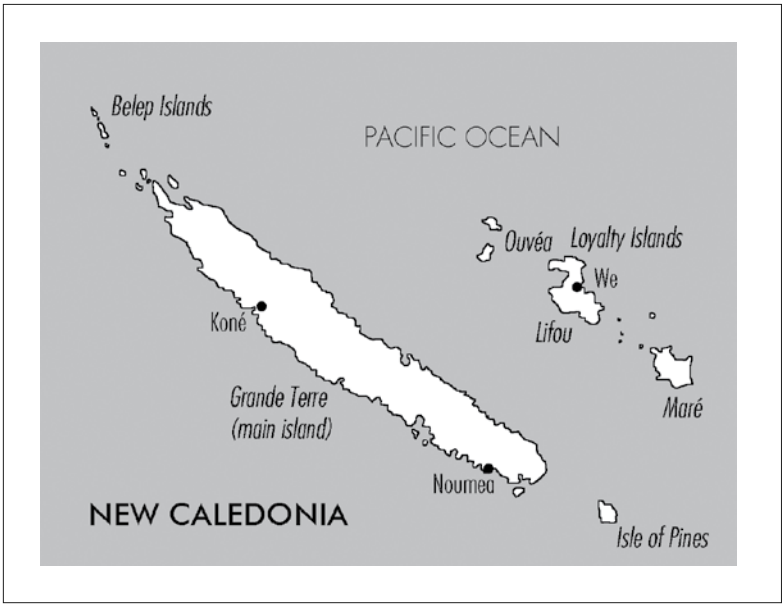
The application of indigenous peoples' rights in New Caledonia

France's response to the OHCHR questionnaire on indigenous peoples' rights

In the beginning of 2012, France gave its response to the UN High Commissioner on Human Rights' (OHCHR) questionnaire regarding the monitoring of the UN Human Rights Council Resolution 18/8 "Rights of Indigenous Peoples" on best practices in matters of policies and strategies to achieve the objectives of the UN Declaration of the Rights of Indigenous Peoples (UNDRIP).[2] France reiterated its response to the 2011 report of the UN Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, on the situation of the Kanak in New Caledonia: The Nouméa Treaty stands as an example, just as does the responsibility of the local political bodies in the organization of the consultation of the Caledonian population on the outcome of the treaty. According to the French point of view,[3] the Treaty of Noumea contains all the advances in relation to indigenous peoples' rights regarding languages and culture through the establishment of the Kanak Languages Academy, as well as regarding land, territories and resources, through the restitution of land.

- It is also through the Treaty of Nouméa that France considers that it is implementing UNDRIP, whether it has to do with:
- The acknowledgement of the prejudices endured by the indigenous populations during the colonisation.
- The restitution of lands.
- The adoption of statuary laws allowing "the Kanak's full participation in decision making" and
- The "mechanisms of mandatory consultation of local authorities", including the consultation of the Senate on "questions regarding signs of identity, customary civil status and land management".
- The acknowledgment of Kanak identity and of the place held by customs and indigenous peoples' cultural heritage through the establishment of the Tjibaou Cultural Centre.

To see the Treaty of Nouméa as an example of the application of indigenous peoples' rights may, however, seem paradoxical due to France's republican tradition, which is here reaffirmed. Thus, if the Treaty of Nouméa is being enhanced,



it is because it already introduces an exemption to the principle of the Republic's indivisibility by including another people alongside the French people.

Commitments made by Congress, regarding the implementation of UNDRIP

In March 2012, Nidoish Naisseline, the paramount chief of the Guahma à Maré district, filed a request with Congress asking that the UNDRIP be applied in New Caledonia. In August, Congress[4] replied positively to this request, thus positioning the UNDRIP under the hierarchical scope of the Treaty of Nouméa and of the French Constitution.[5] Since the UNDRIP is not itself legally binding, this subordination underlines, above all, the zones of incompatibility between collective and individual rights. A working group has been set up since to focus on the local applications and implications of the Declaration. Several lines of thought emerged from this focusing, in particular on the legal pluralism in New Caledonia, and were fuelled furthermore by the visit in August 14, 2012, of a mission from the Melanesian Spearhead Group (MSG).[6]

This visit generated several observations concerning the decolonisation process. A report by the Customary Senate of New Caledonia on August 26 on the situation of the Kanak gives a brief presentation of the important issues, which, according to the Senate, must find a solution in order for the decolonization process to proceed. Underlining the importance of timing and political will for the implementation of the decolonisation process, and noting the delays in the transfer of competences, the Senate tries to show that the track record of the Treaty of Noumea is rather poor not only regarding training, but also regarding natural resources and the situation of the customary authorities. According to the Senate, the political will has not been "translated into clear objectives that would allow the implementation of true public policies serving the objective of decolonisation". The Senate suggests measures be taken to ensure training in leadership management, land tenure and land development, emphasising the need for the State to continue financing the land reform, as well as the need to establish a customary cadastre and a registry of the lands pertaining to clans and chiefdoms, that includes natural resource operations, requesting at the same time that "the principle of free, prior and informed consent by the chiefdoms be applied to all mining operations and to all of the lands". The Senate also requests a moratorium on granting any new mining titles. With regards to mining taxes, the Senate has, since 2008, been requesting that a mining tax be established to finance the Kanak Identity Funds whose "objective is to finance the needs of the customary authorities, the development of the customary lands and a fund for future generations." Within the area of Kanak and Pacific languages and cultures, the audiovisual and the protection of traditional knowledge and the Kanak people's material and intangible heritage, a recently submitted bill of law has been rejected by the French State. The customary Senate has thus called for the provision of "programmes on public decolonisation policies from 2013 to 2019." [7]

The case of the Mwâ Kâ huts

The main headlines in 2012 concerned the huts on Mwâ Kâ square. To celebrate the September 24, the anniversary of France's colonisation of New Caledonia in 1853, the 150-years Committee[8] wanted to put up nine huts representing the customary areas at the foot of the Mwâ Kâ pole, the symbol of all the country's communities.[9] According to the Committee, the hut project aimed at giving the image of

a "tribe in the city". Four months after submitting the proposal, on September 20, the town hall gave its authorisation for a limited period of time and respecting specific security measures. The following Monday, when the huts were due to be dismantled, a group of people comprised of members from each of the eight customary areas and calling themselves "a tribe in the city", started a petition to keep the huts permanently,[10] thus proposing an addendum to the agreement with the Town hall. Having collected more than 10.000 signatures, the petition constituted a strong argument to negotiate the suspension of the town hall's decision.

When new discussions were opened between the Town hall, the government and the 150-years Committee, it was considered moving the village to Nouville or to the waterfront, on Quai Ferry. After ten days of discussion, the solution was carried out by the 150-years Committee, starting by moving the hut from the Djubea-Kapone area. The differences between the collective "a tribe in the city" and the 150-years Committee resurfaced, and the members of the collective, wanting to express their disagreement with the decision, consolidated the foundations of the huts, thus going against the customary Senate's wishes, who demanded that the customary word be respected. Since the customary senators were unable to stop the collective, it was finally the Town Hall that took the decision after a month and a half of semi-dialogue and tension about the project: the huts were destroyed by a bulldozer on the morning of November 13. The collective then set up camp at the foot of Mwâ Kâ with a few tents and a large *fare*.[11] By the end of 2012, the members of the collective were still occupying Mwâ Kâ square and being threatened with expulsion, without, however, closing the door to further negotiations or losing sight of carrying out their project. ❍

Notes and references

1 Insee Census 2009, http://www.isee.nc/population/population.html
2 http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Declaration/France.pdf
3 It should be underlined that the themes of non-discrimination and equality are barely touched upon if at all, France only stating that indigenous populations can send their complaints to the (French) « high authority in the struggle against discrimination and equality (HALDE). »
4 http://www.congres.nc/?p=1469
5 « Au nom du peuple premier », *Les Nouvelles Calédoniennes*, 28 August 2012.
6 Created in 1988, the MSG is a sub-regional organisation, grouping the Fidjian islands, Papua New Guinea, the Solomon islands, Vanuatu and the New Caledonian FLNKS (Kanak National Socialist Liberation Front).

7 Report from the customary Senate of New Caledonia on the state of the situation of the Kanak peoples, the indigenous peoples of Kanaky New Caledonia http://madoy-nakupress.blogspot.com/2012/08/rapport-du-senat-coutumier-de-la.html
8 Association formed in 2003 on the occasion of the 150th anniversay of France taking possession of New Caledonia.
9 The Mwâ Kâ was created by the Kanak to commemorate the anniversary of the Annexation of the archipelago by France in 1853 and to represent the common destiny of all the ethnic groups of the Caledonian archipelago.
10 « Où caser les cases ?», *Les Nouvelles Calédoniennes*, 28 September 2012.
11 Type of house built with plant materials.

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EAST &
SOUTH EAST ASIA

JAPAN

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

Okinawans, or Ryūkyūans, live in the Ryūkyū Islands, which now make up Japan's present-day Okinawa prefecture. They comprise several indigenous language groups with distinct cultural traits. Japan forcibly annexed the Ryūkyūs in 1879 but later relinquished the islands to the US in exchange for its own independence after World War Two. In 1972, the islands were reincorporated into the Japanese state but the US military remained. Currently, 75% of all US forces in Japan are located in Okinawa prefecture, a mere 0.6% of Japan's territory. 50,000 US military personnel, their dependents and civilian contractors occupy 34 military installations on Okinawa Island, the largest and most populated of the archipelago. The island is home to 1.1 million of the 1.3 million people living throughout the Ryūkyūs. Although there has been some migration of ethnic Japanese to the islands, the population is largely indigenous Ryūky[2] ans.

In 2007, Japan voted in favour of the UN Declaration on the Rights of Indigenous Peoples, but it has still not ratified ILO Convention 169.

The Ainu

Birth of the Ainu Party

Major events impacting on the Ainu community in 2012 included the launch of the first official Ainu political party, Ainu Minzoku-tō, in December 2011,

which fielded its first candidate in parliamentary elections in December 2012. According to its website, the Ainu Party aims to achieve a society rooted in "multicultural and multi-ethnic coexistence where Ainu rights are recognized and guaranteed". Shimazaki Naomi, Acting Representative and Women's Section Head of the Ainu Party, ran for a Lower House seat as an independent.[2] While the recovery of Ainu rights formed the central pillar of Shimazaki's campaign, her platform also included support for alternatives to nuclear energy and opposition to the restart of Japan's nuclear reactors, as well as opposition to Japan joining the Trans-Pacific Partnership trade agreement and to the proposed consumption tax increase. Elaborating her campaign pledges at a press conference, Shimazaki said she intended to work towards the realization of a society founded on "equal opportunities for future generations", and lambasted majority politicians who defend their political party while abandoning the future of Japan.

Although Shimazaki's bid was unsuccessful – she came fourth after the Japan Communist Party candidate – she told supporters she was pleased with their collective efforts in this first-time challenge. As Shimazaki was required to run as an independent rather than list her affiliation with the Ainu Party because of the political outsider status of the party (see endnote 2 on Japan's electoral system), observers suggest that she was disadvantaged among Ainu and *wajin* [3] supporters of Ainu indigenous rights, many of whom were unaware that an Ainu representative was on the ballot. Shimazaki is the fifth Ainu candidate to stand in a parliamentary election, following the unsuccessful bids of Narita Tokuhei (1984), Kayano Shiro (1998) and Tahara Kaori (2007). Kayano Shigeru, who served in the House of Councillors from 1994-1998, is the only public Ainu figure to have been elected to serve in the National Diet in Japanese history. Special allocation of Diet seats for Ainu representatives has been a central demand of Ainu rights campaigns since the 1980s but this is frequently rejected as infringing on the Japanese Constitution.

Medical research and the problem of Ainu ancestral remains

The second major Ainu development in 2012 involved collections of Ainu ancestral remains. Some 1,574 Ainu remains were excavated from burial sites across Hokkaido, Sakhalin and the Kuriles for medical and physical anthropological research between the 1870s and the 1960s, and are now held in former imperial universities across Japan, with more than 1,000 held by Hokkaido University. In 2012, three Hokkaido Ainu elders filed a lawsuit against Hokkaido University de-

manding the return of ancestral remains and burial heirlooms. During the 1980s, negotiations between the Ainu Association of Hokkaido and Hokkaido University brought about the repatriation of some 35 remains and the construction of an on-site ossuary for the rest. Many descendants, however, were never notified that they might petition for the return of ancestral remains, nor did the university provide any indemnity to cover re-burial rites. Many bereaved families thus felt that the university's expressed remorse was disingenuous. In 2011, Hokkaido University released redacted documents to surviving descendants but the question of heirlooms buried together with their ancestors remained unaddressed. Enraged at the university's failure to return ancestral remains, recognize the "excavation" of ancestral burial sites as grave robbery or issue a proper apology, in September 2012 three descendants sued the university, citing violation of their religious freedom guaranteed under Article 20 of the Constitution. One of the most shocking developments in this case was the re-release of previously redacted documents in early 2013, revealing that the ancestors of Ogawa Ryūkichi, plaintiff and long-time campaigner for ancestral return, had been excavated a mere seven years after burial. Deliberate blacking out of this critical fact in earlier disclosures suggests that Hokkaido University acted strategically to camouflage the facts and to protect itself from further legal action. Hearings were proceeding at the time of writing.

The Okinawans

2012 began with a delegation of elected officials and activists from Okinawa traveling to Washington, DC to meet with US officials regarding the problems Okinawans face due to US military presence in their territory. Their visit highlights Okinawans' frustration over their constrained ability to effect change through institutional channels within Japan, given the Japanese government's deference to US military policies. Two issues in particular formed the focus of their meetings with US officials. The first was the long-promised closure of the US Marine Corps' Futenma Air Station, which the US and Japanese governments agreed to in 1996 because of its location in the center of densely-populated Ginowan City. The second was halting the construction of a massive new military complex at Okinawa's Cape Henoko, which has met with tremendous popular and official opposition. The two issues are related, and their seeming intractability has, to date, flummoxed three US presidents and 11 Japanese prime ministers.

Developments over the past year point to American impatience with, and yet confidence in, the Japanese government's ability to compel Okinawans to accept the new base. At the same time, fierce opposition from activists, the general population and elected officials highlights the determination of the majority of Okinawans. Other developments, including crimes committed by US service members and other health and safety effects of the bases, shed light on the broader reasons why this struggle has dominated Okinawan politics for 17 years. [4]

Recent developments

In February 2012, the two governments agreed to move ahead with the transfer of 9,000 Marines (with 4,700 and 2,700 redeploying to the indigenous territories of Guam and Hawaii, respectively). Although de-linking the Marines' transfer from the Henoko project seemed to facilitate what the majority of Okinawans want—a reduction of US forces in their territory—there is concern that separating the two issues will likely mean further delays in closing Futenma. Despite increasing calls from some high-ranking US Senators to abandon the Henoko plan and unabated opposition within Okinawa, the Obama Administration reaffirmed the basic agreement, making the closure of Futenma conditional on the completion of the new base at Henoko. In February, news stories revealed interference by Defense Ministry officials in the Ginowan mayoral election, in which the anti-base candidate lost to the candidate seen as more amenable to Tokyo's efforts to sway local opinion.

Keeping the aging Futenma in operation highlights the willingness of both governments to subject residents of Ginowan to the hazards associated with the base. At levels that consistently exceed 100 decibels, aircraft noise in Ginowan has been shown to cause stress-related illnesses, insomnia and high blood pressure. Teachers report having to stop class lectures and wait for aircraft to pass. In March, more than 3,000 Ginowan residents filed a suit against the Japanese government to stop noise pollution around Futenma. The lawsuit follows a similar action in 2011 taken by over 22,000 residents living around Kadena Air Base, elsewhere in Okinawa.

Adding to the proven danger of helicopter training over the densely-populated city was the Pentagon's October deployment of its crash-prone MV-22 Osprey aircraft to Futenma. Tens of thousands of Okinawans rallied to protest at the deployment, blocking access to Futenma for days. Despite this, the Pentagon announced that it would deploy 24 MV-22s to Futenma by 2014.

By year's end, the Pentagon's lack of progress in reducing the number of US troops in Okinawa added to public anger, as crimes committed by military personnel continued. These included sexual assaults in August, rape in October and a gang rape in November. Other criminal behavior, such as trespass, vandalism, drink driving and bodily injury, led US military commanders to institute a number of curfews and then an all-out ban on Marines' off-base drinking.

In December, the national government submitted an amended environmental report regarding the Henoko project to the Okinawa Prefectural government. Ultimately, Okinawa's governor must sign off on construction permits. The current governor rejected last year's initial report in which Tokyo concluded that the new base would cause no significant damage to the marine environment at Henoko. A public review process is set to begin in early 2013. ❍

Notes and references

1 Population figures taken from the 2006 Survey of Ainu Livelihood conducted by Hokkaido prefectural government in cooperation with the Ainu Association (Hokkaido Government, Environment and Lifestyle Section. 2007. *Hokkaido Ainu Survey on Livelihood Report*, Accessed 20 March 2011, http://www.pref.hokkaido.lg.jp/file.jsp?id=56318). Many with Ainu ancestry do not publicly identify as Ainu due to discrimination and stigma in Japanese society. Ainu observers estimate the actual population of those with Ainu ancestry to be between 100-300,000.

2 As a newly-established party, the Ainu Party was unable to field candidates under the single member district system (*shōsenkyoku*) because they do not hold the requisite minimum of five seats in the Japanese Diet. As such, Shimazaki was required to run as an independent and the ballot did not list her as representing the Ainu Party.

3 *Wajin* is a name used for the dominant ethnic group in Japan. It was coined to distinguish them from minority ethnic groups who live in the peripheral areas.

4 For more on the background to the current crisis around the US bases, see *The Indigenous World 2012* and earlier issues.

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CHINA

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

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

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

In June 2012, China organized a large-scale event to celebrate the "harmonious living" and diversity of its ethnic minority peoples. Held in the capital Beijing, the month-long "National Arts and Cultural Performance Festival of Ethnic Minority Peoples" was lauded by the PRC government as one of the highlights of the year.

The event's opening ceremony on June 12 was a grand showpiece entitled "A Glorious Era for the Chinese Nation", involving a total of 1,700 dancers and stage performers of ethnic minority art troupes from many regions around China. Stressing that China's 56 ethnic groups all live in harmony and prosperity, the show presented the audience with the idea of China as a strong power and a peaceful nation, one that allows the ethnic minority peoples under its protection to enjoy growth, development and social stability. The story off stage, however, is quite different.

Economic development and its impact

From the perspective of economic standards, progress has been made, and with noticeable results. The Chinese government is continually implementing infrastructure, education, poverty alleviation and community development programs, mostly in the hinterland regions. Through these efforts, ethnic minority peoples

have seen a rise in their income levels and improvements in living standards. On the other hand, the emphasis on economic development and infrastructure construction has caused damage to the region's natural environment. Most of the derived economic benefits and revenue generation go to government agencies and businesses, while it is largely the ethnic minorities who have to bear the consequences, including the destruction of traditional community landscapes and the hastened disappearance of ethnic cultures.

The adverse effects of this development model can, for example, be seen in Yunnan Province which, by the government's estimate, holds 70 per cent of China's total potential hydroelectric resources. Many regions of Yunnan Province have been suffering from persistent drought conditions for more than three years now, including during the first half of 2012.

According to one summary report by the Yunnan Provincial Government, the persistent drought led to severe water shortages for a total of 7.9 million inhabitants and 1.64 million livestock animals.[1] The affected area covered a total of 16 cities and prefectures, and 125 counties. At the peak of the drought (February-March 2012), 413 small-scale water dams, along with 273 small to medium rivers in Yunnan, had totally dried up. A number of cities and towns had to implement rotational district shutdowns of the water supply and other strict measures on water usage, and the drought badly affected several sectors of the local economy, with the closure of manufacturing factories and mining operations.[2]

According to official government figures, the drought had already led to a direct economic loss of over RMB 10 billion for Yunnan Province by the peak of the drought in March.[3] To deal with the disaster, the PRC central government repeatedly dispatched working units and scientific teams to Yunnan from the departments in charge of water resources, agriculture and forestry. The central government announced that they had spent a total of RMB 424 million on supporting funds for combating the disaster and for drought relief programs.

The prolonged drought in Yunnan is in stark contrast to the image of a province with green mountains and rich in water resources. Yunnan has three major Asian river systems flowing through its territory: Jinsha River (upstream of the Yangtze), Lancang River (upstream of the Mekong), and Nu River (upstream of the Salween). So far, the government has built 5,514 hydroelectric dams on these major rivers, and other water courses in the province. Of these dam projects, 39 are classified as "major hydroelectric power stations", and are either already in operation or under construction.[4] It is thus quite a major turn of events for the

province with such a favorable geography and abundant natural resources to experience such prolonged drought. Scientists said it could be due to the nature's changing climate pattern, with a warming of the climate and more weather extremes, but man-made factors were also undoubtedly to blame.

In terms of the drought disaster in Yunnan, Chinese researchers have pointed to four significant economic activities that may, in recent times, have exacerbated the water shortage situation in the province.

1. **Anti-hail measures** – over the past two decades, districts with tobacco leaf and other high-value crops have been shooting anti-hail rockets (packed with silver iodine pellets) into approaching rain clouds during harvest time to prevent hail damage. This has led to a dispersal of clouds and reduced precipitation.
2. **Mining** – unchecked mining operations and mineral excavation activities in the province have placed high demands on the water supply. Many companies have drilled into deeper substratum to tap into underground water, resulting in the depletion and drying up of the water table.
3. **Deforestation** – forest cover in Yunnan has been receding for several decades, due to logging for timber. In recent years, deforestation has accelerated due to the massive clear-cutting that has been taking place for large-scale commercial rubber and eucalyptus plantations. This is highly destructive to the forest biodiversity and the natural environment.
4. **Hydroelectric dams** – to meet energy demands, state utility companies have been allowed to build more hydroelectric dams in ecologically sensitive areas and in fragile geological settings. However, the utility companies often have improper management methods, which lead to problems of water depletion, flooding and landslides in the surrounding areas.

Disaster-induced migration

When environmental destruction or disaster happens, it is the local people who suffer. And, in most cases, the local populations are ethnic minority peoples. During the first months of 2012, the prolonged drought in China's southwest provinces led to dried-up rivers and streams and dams without water. Farmers had to give up cultivating their fields; with no income and no subsistence crops, many

adults from ethnic minority groups had to leave their villages to become migrant workers, taking on jobs in more developed areas and urban centers.

Out-migration has become a serious problem for ethnic minorities as it leads to the gradual erosion of their traditions. Over time, the loss will be irreplaceable. This will have serious detrimental effects on the preservation of ethnic minority cultures and languages.

Political oppression

When it comes to politics among ethnic minority peoples, those who play by the rules can rise through the ranks in government jobs and local district offices, and become representatives at national congress meetings. For those who do not follow the rules and attempt to resist government policies, the Chinese state has always used military force to suppress any dissent. It is the Communist Party of China's (CPC) iron-clad decision to maintain stability and social order.

Reports of Tibetan protests and suicide by self-immolation have received much international attention. In 2012, there were also riots and clashes between Uighurs and Han Chinese in Kashgar, Xinjiang Uighur Autonomous Region, along with protests by ethnic Mongolians in Inner Mongolian Region, and other cases of human rights violations.

While gaining wide international news coverage, these incidents have been silenced within China, including in ethnic minority areas. Inside China, much of the reporting on these ethnic minority issues and their protests has largely disappeared from the state media, and from most local news. It seems the ethnic minority peoples have had their voices silenced, have lost their freedom of expression and the right of access to the media. They are lost under the guise of the protection and benevolence of the great Chinese motherland.

The ethnic identity issue

As a result of the changing economic and political conditions, ethnic minority issues and conflicts have become major problems for the PRC government. Zhu Weiqun, Vice-Minister of the United Front Work Department of the CPC Central Committee and Beijing's main contact with the Dalai Lama, has been sounding

out his ideas over the past year with regard to dealing with ethnic minority issues. He has suggested taking the ethnic group classification off the national identification card. He has also suggested not adding any more autonomous districts for ethnic minority people, and promoting a mixing of ethnic group students in schools.[5]

Zhu's ideas are a major departure from past government policies. He says the current education structure and government administrative programs have placed undue emphasis on ethnic peoples' identity, and this has weakened their identification with the Chinese state and undermined their sense of belonging within the Chinese national family. He believes that it is not conducive to the cohesion and unity of all Chinese ethnic peoples, and will lead to disharmony and separation of ethnic groups from the state.

These viewpoints, as stated by Zhu, have already generated heated debate and disagreement in academic circles over the concepts and recognition of "Minzu" ("ethnic people") and "Zuqun" ("people group"). Those who favor the concept and recognition of the more openly inclusive term "Zuqun" believe it is more important to assimilate. Those opposing this say that, by dropping the concept of "Minzu", the Chinese government will erase all ethnic peoples' research, programs and policies since the founding of modern China in 1949, and will lose its claim to be the motherland of all 56 ethnic groups in China.

Conclusion

Besides the discussion on ethnic identity, most official announcements regarding indigenous peoples in China in 2012 remained focused on economic development and infrastructure construction in ethnic minority regions. In the 12th Five-Year National Plan, adopted in 2011, the main focus is on the administration and implementation of programs to raise standards of living, improve income levels and open up ethnic minority regions. In terms of these government policy announcements, outsiders receive only promotional news on how the CPC is helping the ethnic minority peoples to live in harmony and enjoy economic growth, and rarely are they able to see the reality of their current living conditions. The perspectives from the inside reveal a far different picture, one of discontent, economic disparity and eroding culture in ethnic communities. ❍

Notes and references

1 Summary Report (Yunnan Government) http://green.sohu.com/20121227/n361810216.shtml
2 *Xinjin News* (city-government and state-controlled newspaper): "Drought in Yunnan: 273 rivers in province dried up". Dec. 27, 2012.
3 *China News Agency* (official PRC state news organ), March 26, 2012: http://www.chinanews.com/gn/2012/03-26/3773159.shtml
4 Of these major dams, 15 are on the Lacang River (the largest of them under construction is the Nuozadu Dam with a production capacity of 5,850 MW), and 12 are on the Jinsha River (the largest of them under construction is the Xiluodu Dam with a production capacity of 13,860 MW). For the others, two are on the Red River (which flows downstream to Vietnam), six are on the Lixian River, along with one major hydroelectric dam being planned for the Nu River.
5 T*he Study Times* (a newspaper of the Communist Party of China's central training school), Feb. 13, 2012. www.studytimes.com.cn 2222222222222

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TAIWAN[1]

The officially recognized indigenous population of Taiwan numbers 526,148 people (2012), or 2.25% of the total population. Fourteen indigenous peoples are officially recognized. In addition, there are at least nine Ping Pu ("plains or lowland") indigenous peoples who are denied official recognition.[2] Most of Taiwan's indigenous peoples originally lived in the central mountains, on the east coast and in the south. However, nearly half of the indigenous population has migrated to live in urban areas.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and very little political or economic influence. The Council of Indigenous Peoples (CIP) is the state agency responsible for indigenous peoples. A number of national laws protect their rights, including the Constitutional Amendments (2000) on indigenous representation in the Legislative Assembly, protection of language and culture, and political participation; the Indigenous Peoples' Basic Act (2005), the Education Act for Indigenous Peoples (2004), the Status Act for Indigenous Peoples (2001), the Regulations regarding Recognition of Indigenous Peoples (2002), and the Name Act (2003), which allows indigenous peoples to register their original names in Chinese characters and to annotate them in Romanized script. Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of laws guaranteeing the rights of indigenous peoples, have stymied progress towards self-governance.

Since Taiwan is not a member of the United Nations it has not been able to vote on the UN Declaration on the Rights of Indigenous Peoples, nor to consider ratifying ILO Convention 169.

No progress on indigenous autonomy

In terms of the promised autonomy for indigenous peoples, 2012 was another year of delays and waiting. The promise was made by the current president of Taiwan, Ma Ying-jeou, when he was elected to office in his first term in 2008. Ma agreed to the draft bill already tabled by political parties, and promised to start indigenous autonomy programs on a trial basis in one or two regions. However, the passing of the bill by the legislature has been delayed. The long deliberations in the legislature are due both to the demands being made by indigenous peoples and the unclear responsibilities of government agencies. Some of the demands exceed the mandates of single government agencies, and these agencies are unable to coordinate or reach an agreement. Problems have also arisen over the different interpretations of legislators and local councillors as to the scope of and implementing mechanism for "indigenous autonomy". The bill is thus still stuck in the government and legislative process.

Miramar Resort dispute in Taitung

In Taitung County, on the east coast of Taiwan, the ongoing dispute over a tourism development project was much in the public news in 2012. The Taitung County Government originally gave the go-ahead to the Miramar Resort project in 2004. It was to be a joint BOT (build-operate-and-transfer) project between the county government and a business consortium.

The project is located on a stretch of coastal land which the local indigenous Amis community claim belongs to them. They have joined forces with environmental groups in a series of protest actions over the past eight years, including the submission of lawsuits. In September, Taiwan's Supreme Administrative Court ordered a halt to the construction of the project. However, the Taitung County Government found reasons for not executing the court order and allowed the developer to continue the construction work. In the latest Environmental Impact Assessment (EIA) meeting in December, the Miramar Resort was given conditional approval.

This decision sparked angry protests and a clash between different interest groups outside the meeting premises. Protestors said the assessment procedure and EIA meeting were illegal, and that the project would be a disaster for

the area's marine and coastal environment. Local tourism representatives and business associations, on the other hand, endorsed the project's approval for the boost it would give to tourism and the jobs that would be created in the nearby towns.

The protesters will continue to seek court action to invalidate the construction permit. The land claimed for the resort development is part of their traditional territory, and local indigenous residents have demanded application of Taiwan's Indigenous Basic Law in the assessment and approval procedure. Following the EIA approval, senior officials from the Council of Indigenous Peoples (CIP) went to meet the head of Taitung County Government to request application of the Indigenous Basic Law and to negotiate with the local residents but no agreement was reached.

Tainan city government leads efforts for Siraya and Ping Pu recognition

For the lowland indigenous peoples (Ping Pu) of Taiwan, 2012 was another year of disappointment and growing anger at the government's denial of their status as indigenous peoples.

The culmination of the past year's efforts came when Greater Tainan City Commissioner William (Ching-te) Lai led the Siraya people of southern Taiwan to the capital Taipei in December for a series of high-profile events to demand "indigenous people's" status for the Siraya. He and the indigenous Siraya organizations submitted official petitions to the CIP and Ministry of the Interior, demanding their recognition as an indigenous people.

William Lai and his Greater Tainan Government have already recognized the Siraya as an indigenous people within Tainan's political administration. However, CIP and the central government are still refusing to do so. Their lawsuit, aimed at restoring their original indigenous status (which was removed in the 1950s under the KMT regime's household registration procedure) was not successful in Taiwan's Administrative High Court in 2011 (See *The Indigenous World 2012*). Ping Pu rights activists, however, claim that it was clearly a "political decision", as the judges only cited the narrow interpretations of the central government to make an unjustified ruling that denied aspects of Taiwanese history and the rights of the Ping Pu groups.

An academic conference was held in conjunction with the campaign in December at which the Ping Pu peoples' right to their indigenous status was discussed within the framework of the Siraya people's identity, history, culture and land development, along with the implications of their lawsuits over the past decades.

Austronesian Forum

According to certain scientific researches,[3] Taiwan is said to be the likely original homeland for the dispersal of the Austronesian peoples in pre-historic times. The Taiwanese government thus organizes the Austronesian Forum each year to promote Taiwan's special significance. Launched for the first time in 2002 by government agencies, the forum gathers researchers and experts on indigenous issues

together, along with indigenous leaders from Taiwan and abroad. This year's Forum, held in Taipei in November, included guests from Indonesia, New Zealand, Fiji, Australia, Spain, the Netherlands, and China, with topics ranging from indigenous culture, tourism, industry, literature, and arts.

Lanyu Island radioactive waste storage

Reports of suspected radioactivity leakage led the indigenous Tao people of Lanyu Island to lodge complaints against the authorities during the year. In separate incidents in 2012, safety issues with regard to storage drums from nuclear power plants were raised by opposition legislator, Cheng Li-chun. She showed photographs to the media of damaged storage drums and workers handling them without proper protective gear, and not following safety rules. Two of the workers were Tao people, the native residents of the island.

The agency responsible, the Atomic Energy Council (AEC), invited specialists and two Japanese researchers to conduct radioactivity tests on the island. Results from the Japanese researchers' detection instruments indicated abnormally high levels of radioactivity at the island's Langtao Village.

AEC officials told the media that the high readings were due to the fact that electromagnetic emissions from local mobile phone signal stations had interfered with the instruments used by the Japanese researchers. The Tao villagers, who have long opposed and protested at the storage of nuclear waste on their island, however, said they did not believe the explanation given by AEC, and pointed out the fact that their population was suffering from increased incidents of tumors and other illnesses, most likely due to exposure to the leaked radioactive materials.

Victory over Asia Cement Corp

According to the law, indigenous people's landholdings cannot be transferred or sold to non-indigenous persons. However, due to enticement and bribery, many transactions still occur. In 2012, after many years of litigation in the courts, the indigenous communities of Hualien County's Siuling Township won a judgment against the Asia Cement Corp. The communities had fought a long battle against the illegal transfer of landholdings and title deeds to Asia Cement, who used to

run limestone quarrying operations and a cement production factory in the area. According to the judgment, the cement company bribed the officials responsible for land administration in Siuling's District Office to produce false documentation and forge the signatures of the residents, resulting in the company illegally amassing large landholdings in the area. ❍

Notes and references

1 The currently ruling Kuomintang (KMT) party uses "Republic of China". The Peoples Republic of China does not recognize the existence and political independence of Taiwan or "Republic of China". Throughout this article, Taiwan is therefore solely used to refer to a geographical region, without taking any position regarding the political status of the island.

2 The officially recognized groups are: the Amis (also known as Pangcah), Atayal (also called Tayal), Paiwan, Bunun, Puyuma (also called Pinuyumayan), Tsou, Rukai, Saisiyat, Sediq (also called Seediq), Yamei (also called Tao), Thao, Kavalan, Truku, and Sakizaya. The nine non-recognized Ping Pu groups are: the Ketagalan, Taokas, Pazeh, Kahabu, Papora, Babuza, Hoanya, Siraya and Makatao.

3 See for example: **Bellwood, Peter, July 1991:** "The Austronesian Dispersal and the Origin of Languages". *Scientific American* 265 (1): 88–93, and **Bellwood, P & Dizon, E., 2008:** 'Austronesian Cultural origins: out of Taiwan, via the Batanes Islands, and onwards to Western Polynesia', in Alicia Sanchez-Mazas, Roger Blench, Malcolm D. Ross, Ilia Peiros and Marie Lin (ed.), *Past Human Migrations in East Asia: Matching archaeology, linguistics and genetics*, Routledge, Taylor & Francis Group: Great Britain, pp. 23-39.

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PHILIPPINES

The Philippine national census in 2010 included an ethnicity variable, which could have given a more accurate projection of the percentage of indigenous peoples among the Philippine population of 92.34 million. However, no data on this variable had been released as of the end of 2012. The country's indigenous population thus continues to be estimated at between 10 and 20%. The indigenous groups in the northern mountains of Luzon (Cordillera) are collectively called Igorot while the groups on the southern island of Mindanao are collectively called Lumad. There are smaller groups collectively known as Mangyan in the central islands as well as even smaller, more scattered, groups in the central islands and Luzon.

Indigenous peoples in the Philippines generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities or political representation. They are the people with the least education and the least meaningful political representation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can mainly be found in their areas, making them continuously vulnerable to development aggression.

In 2012 Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA), commemorated the 15th year since its promulgation. While the law has been lauded for its support for respect for indigenous peoples' cultural integrity, right to their lands and right to self-directed development of these lands, more substantial implementation of the law is still being sought, apart from there being some fundamental criticism of the law itself. The Philippines voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples; the government has not yet ratified the ILO Convention 169.[1]

The Consultative Group on Indigenous Peoples (CGIP), formed by representatives of indigenous federations and communities and their support groups, formulated a national Indigenous Peoples' Consensus Policy Agenda in early

2011. The Policy Agenda contains themes and action points that have become a major basis for civil society's assessment of what the government has achieved thus far to improve the situation of indigenous peoples in the Philippines. This was especially relevant last year because 2012 marked the 15th year since the passing of the Indigenous Peoples' Rights Act (IPRA). The five themes are: (1) respect for IPs' right to self-determination, IPRA and the National Commission on Indigenous Peoples (NCIP);[2] (2) delivery of basic social services; (3) protection from development aggression; (4) human rights violations and militarization; and (5) recognition of the role of indigenous peoples in the peace process.[3]

Respect for right to self-determination and protection from development aggression

The year started with the publication of a government policy regarding the titling of indigenous peoples' traditional lands, referred to as ancestral domains in the Philippines. On January 25, Joint Administrative Order 01 (JAO1) was signed by the NCIP, Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR) and Land Registration Authority (LRA). JAO1 aims to provide joint mechanisms for the settlement of conflicts arising from different tenurial instruments issued or managed by the four government agencies for indigenous lands. It also ordered the suspension of any titling activities where conflicts exist. The order was criticized by indigenous rights advocates for being another obstacle to the legal recognition of indigenous peoples' ownership of their territories as mandated by the IPRA, as joint agreements for these kinds of conflicts were not considered to favor indigenous peoples. What lends support to this criticism is the fact that in 2012 the NCIP approved only two Certificates of Ancestral Domain Titles (CADTs), even though the NCIP clarified that this was because it wanted to ensure that better titling procedures were in place before proceeding with more such approvals.

The slowdown in CADT recognition was one more impetus to continue the efforts for stronger recognition of Indigenous and Community Conserved Areas (ICCA), the abbreviated term used to refer to areas conserved in a voluntary way by indigenous and local communities through their customary laws and other effective means. Civil society advocacy teamed up with a DENR project for this. In March 2012, the first national conference on ICCAs in the Philippines culminated

in the signing of the Manila Declaration that called for the implementation of action plans for the speedy recognition of ICCAs. Apart from forming additional tenurial security for indigenous territories, formal ICCA recognition could also be a way of resolving the tension between the concept of government-managed Protected Areas and that of allowing community-based indigenous methods of environment protection. The Memorandum of Agreement between the NCIP and the

DENR's Protected Areas and Wildlife Bureau (PAWB) is expected to be signed in early 2013 in order to strengthen the partnership aimed at recognizing the crucial role of indigenous peoples in biodiversity conservation.[4]

Indigenous peoples' right to self-determination is strengthened under the law, with the requirement that projects can enter ancestral domains only after the affected communities have granted their Free and Prior Informed Consent (FPIC). The 2002 and 2006 NCIP guidelines for processing FPICs had been opposed by both indigenous peoples and companies with large development projects – the latter complaining that the guidelines were too strict and therefore anti-development, while the indigenous people declared that their provisions were not in keeping with traditional ways of securing consent. The latest revision, which came out in early 2012 (NCIP Administrative Order 3 of 2012), was seen by some as relatively more favorable to indigenous peoples although the same complaints as before are still made about this version.

In early 2012, the NCIP issued other guidelines relevant to indigenous peoples' self-determination: Administrative Order (AO) 1 or guidelines for research of and documentation into customary laws; AO2 or guidelines on the confirmation of indigenous political structures and the registration of indigenous peoples' organizations; and AO4 or the revised omnibus rules for titling of indigenous peoples' territories.

Meanwhile, the Office of the President published Executive Order No. 79 "Institutionalizing and Implementing Reforms in the Philippine Mining Sector, Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources". There are gains for indigenous peoples, particularly with regard to specifying which areas are no-go zones for mining, but its implementing rules and regulations still need to be promulgated and indigenous stakeholders still need to be vigilant as to its implementation.[5]

Delivery of basic social services

There were some positive developments regarding indigenous peoples' rights to basic social services on three important fronts – health, education and social protection.

By the year end, the Department of Health (DOH) and NCIP had drafted a Joint Memorandum Circular (JMC) that would form the basis on which the DOH would oversee local governments' provision of indigenous-appropriate health services. It is expected that the formal signing of this JMC will take place in early 2013.[6]

In 2012, the Department of Education continued to implement the project "Philippines Response to Indigenous Peoples' and Muslim Education (PRIME) Program", launched in 2011. It aims to improve access to and the quality of education for disadvantaged indigenous and Muslim communities in the Philippines. Significant gains include increased participation of community stakeholders in education planning, as well as increased capacity in decision-making for educational benefits. The year saw initiatives to build an indigenous education network and to conduct a baseline survey as a basis for the Department's implementation of indigenous peoples' education programs.[7]

The Department of Social Welfare and Development (DSWD) for its part recognized the weaknesses in its implementation of the conditional cash transfer program for the poor that had resulted in either the inadequate identification of indigenous beneficiaries or a wrong understanding on the part of indigenous peoples as to what the program was and how it worked. In response, the DSWD has taken steps to address these weaknesses, which had resulted in a temporary halt in support to indigenous beneficiaries. It is, however, hoped that the number of indigenous beneficiaries will significantly increase next year.

Human rights violations and militarization

On 4 September 2012, Jordan Manda was killed while on his way to school with his father. While any death is tragic, this particular murder brought out a national outpouring of outrage and sympathy, for the victim was a 12-year-old boy, and the intended target was his father, a Subanen leader embroiled in a struggle against mining on his ancestral domain. This occurrence highlighted the fact that, of the 132 extra-judicial killings (EJKs) since the current President Benigno Aquino III took office in 2010, 31 or 24% of these have been indigenous. Taking into account that indigenous peoples constitute far less than one quarter of the Philippine population, these are very dire numbers indeed. Yet, as of 2012, not a single prosecution had been reported. In 2012 alone, 12 indigenous people were killed, the majority of them community leaders from the southern island of Mindanao actively opposing development projects threatening their ancestral domains. Of these 12 killed, two were women (one was pregnant) and four were children.[8]

Indigenous rights advocates claim that the government is not only turning a blind eye to these killings but also encouraging more human rights violations by

promoting investments to projects that are destructive of the environment, as well as tolerating military officials that have allegedly committed human rights abuses. A project of the Armed Forces of the Philippines (AFP) which commenced in 2010 is geared toward "achieving peace rather than defeating the enemy" by promoting a "paradigm shift" through the opening of venues for dialogue and active engagement of, partnership with and oversight of various stakeholders, including civil society. Still, genuine peace and development remain elusive goals if the growing number of human rights violations is anything to go by.

Recognition of the role of indigenous peoples in the peace process

The Bangsamoro Framework Agreement signed by the Government of the Philippines and the Moro Islamic Liberation Front (MILF) on 15 October 2012 aims to resolve a longstanding war and pervasive conflicts in the communities of the Mindanao region by creating a new autonomous region to be called Bangsamoro (solidarity of the Muslim people). The existing Autonomous Region for Muslim Mindanao (ARMM) has apparently not solved the problems of corruption, poverty and war. The Framework Agreement document outlines the agreements on the administration of the new autonomous region, including the extent of powers, revenues and scope of its territory.

Indigenous rights advocates consider the Framework Agreement to be a positive step toward peace and development in Mindanao, reflecting the national and international instruments that recognize the rights of indigenous peoples. Indigenous peoples' rights to freedom of choice, to equal opportunity and non-discrimination, to establish cultural and religious associations, to freedom from religious, ethnic and sectarian harassment, and to customary rights and traditions will be taken into consideration in the establishment of the Bangsamoro justice system. The Office of the Presidential Adviser on the Peace Process (OPAPP) also states that there will be indigenous representation in the transitional committee that will draft the Bangsamoro Basic law.[9]

There are, however, worries that indigenous peoples' concerns may be lost under a Muslim-led government, and that the signing of the Framework Agreement will be used as proof of peace in order to encourage more investments in projects that could be detrimental to indigenous territories and human rights. In-

digenous peoples are reminded to remain vigilant about their inclusion in genuine consultation and implementation of the agreement.[10]

Concluding remarks – prospects for the coming year

There appears to have been a rich harvest of indigenous peoples-related policies in 2012, most of them considered to have real potential for upholding indigenous peoples' rights and improving their situation. In-depth consideration of these policies by the indigenous peoples themselves, especially at community level, is seen as an urgent need so that they can raise criticisms or push for their full and proper implementation.

In February 2013, the terms of six out of seven NCIP Commissioners were either coming to an end or to be renewed (one Commissioner's term could not be renewed as it was his second and last term). Sentiments have been mixed – frustration that the NCIP would not make a difference whoever was appointed; desire for changes in the leadership on the part of those with agendas that conflict with indigenous peoples' interests and those who believe that some good can come out of a new set of commissioners; or the view that the six should continue as commissioners because at least people already know how they work (or do not work, depending on your point of view).

Local elections will take place in May 2013, including choosing representatives to the Congress and Senate. As in 2010, indigenous political parties have indicated that they will participate in this electoral exercise. There are indications that they have learned from past elections and are attempting to consolidate so that the potential votes for the small indigenous sector (in terms of voters) will have more impact. Towards the end of the year, indigenous peoples advocates were stepping up education campaigns for stronger indigenous participation in the electoral exercise, and for more votes for candidates with indigenous-sensitive platforms.

Consultations in the Philippines on the Post-2015 Agenda regarding the Millennium Development Goals (MDGs) started in the latter part of 2012, and indigenous peoples' participation here was encouraged. The Indigenous Peoples' Consensus Policy Agenda has been incorporated into the draft paper of civil society organizations (CSO), presented to the government consultations on the National Post-2015 Development Agenda and Action Plan. The Post-2015 CSO national committee is also working with the UN Millennium Campaign and the UN

Civil Society Advisory Committee, and indigenous peoples' concerns are targeted to be included. ❍

Notes and references

1 Data in this section are taken from: http://www.census.gov.ph, accessed 22 April 2013; and Sabino Padilla, Jr., 2000, *Katutubong Mamamayan*. Manila/Copenhagen: International Work Group for Indigenous Affairs (IWGIA).

2 NCIP is the government agency mandated to oversee the IPRA's implementation.

3 See CGIP, *Our common ground: 2010 indigenous peoples policy agenda*, 2011; CGIP, "Assessment Matrix of the IP Agenda – Ways Forward", 9 October 2012; and IWGIA yearbooks for 2011 and 2012. Much of the data and analysis on the agenda points came up during the CGIP assessment, which took place from 8-9 October 2012, on how much the policy agenda had been acted upon since its national presentation in 2011.

4 The project is the New Conservation Areas of the Philippines Project (NewCAPP) under the PAWB. See http://www.undp.org.ph/?link=21&id=141&act=press_release_listing, accessed 22 April 2013; http://www.newcapp.org/cgi-bin/news/details.php?id=298&catid=97 accessed 22 April 2013; and IWGIA Yearbook 2012.

5 "PHL gives global mining forum a rundown of EO 79", http://www.gmanetwork.com/news/story/279211/economy/agricultureandmining/phl-gives-global-mining-forum-a-rundown-of-eo-79, accessed 23 April 2013.

6 Through its Bureau on Local Health Development, the DOH constituted an Indigenous Peoples Health Core Team, which is working on this JMC. Data on this was garnered through AnthroWatch's being a member of this Team.

7 http://www.ausaid.gov.au/Publications/Pages/prime-progress-report-jan-june-2012.aspx, accessed 22 April 2013.

8 http://globalnation.inquirer.net/59239/churches-slam-inaction-on-human-rights, accessed 5 April 2013; http://www.humanrightsphilippines.net/wpsite/wp-content/uploads/2012/11/URGENT-APPEAL_Stop-the-Killings-of-Indigenous-Peoples-in-the-Philippines.pdf and http://www.awid.org/Library/Defending-Ancestral-Lands-Indigenous-Women-Human-Rights-Defenders-in-the-Philippines), accessed 5 April 2013.

9 See http://opapp.gov.ph/media/video-post/indigenous-peoples-and-framework-agreement-bangsamoro, accessed 5 April 2013; http://www.opapp.gov.ph/sites/default/files/Framework%20Agreement%20on%20the%20Bangsamoro.pdf accessed 5 April 2013; and http://www.philstar.com/nation/2012/12/30/891313/framework-agreement-milf-protects-indigenous-people-ferrer, accessed 5 April 2013.

10 See http://www.guardian.co.uk/world/2013/feb/13/mindanao-peace-process-time-limit-philippines, accessed 5 April 2013; and http://www.aippnet.org/home/daily-sharing/978-philippines-indigenous-peoples-welcome-positive-development-in-signing-of-gph-milf-framework-but-remain-cautious, accessed 5 April 2013.

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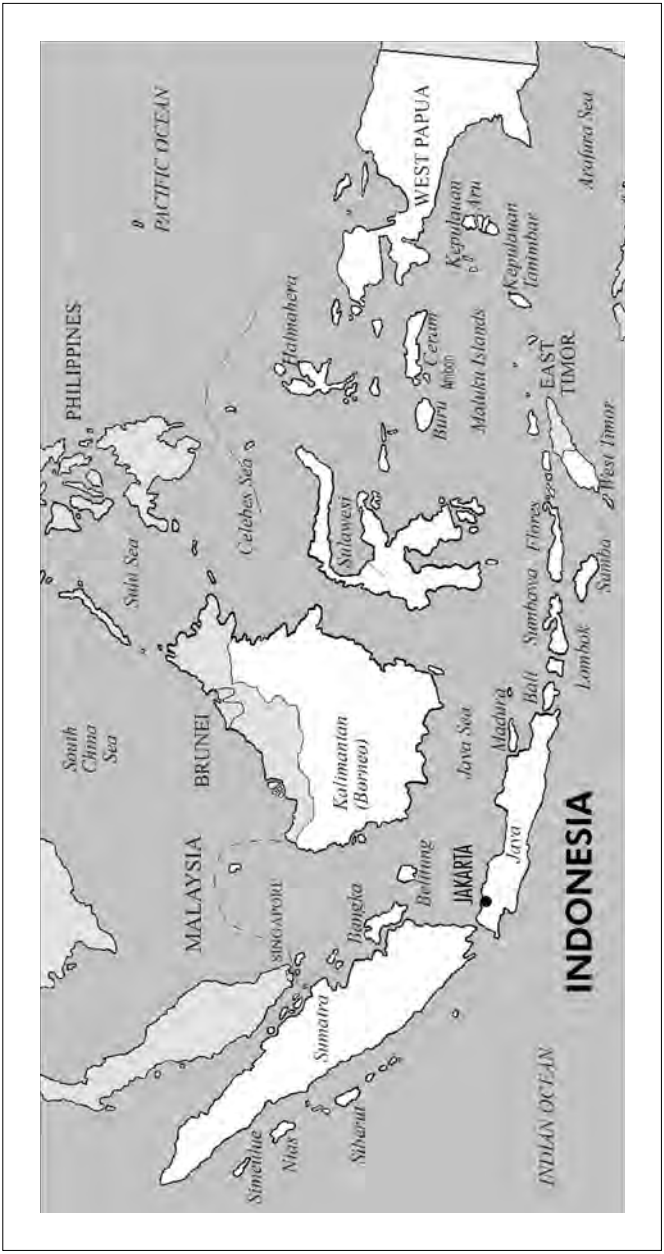
INDONESIA

Indonesia has a population of around 220 million. The government recognizes 365 ethnic and sub-ethnic groups as *komunitas adat terpencil* (geographically-isolated customary law communities). They number about 1.1 million. However, many more peoples consider themselves, or are considered by others, as indigenous. Recent Acts use the term *masyarakat adat* to refer to indigenous peoples. The national indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN), estimates that the number of indigenous peoples in Indonesia amounts to between 50 and 70 million people.

The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is an implicit recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, such as Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights and MPR Decree No X/2001 on Agrarian Reform. Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment clearly use the term *Masyarakat Adat* and use the working definition of AMAN. Government officials, however, argue that the concept of indigenous peoples is not applicable, as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for special treatment by groups identifying themselves as indigenous. Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples, but has still not ratified ILO Convention169.

Development of laws and policies

2011 ended with good prospects for the future struggle for indigenous peoples' rights in Indonesia when the draft Act on the Recognition and Protection of Indigenous Peoples' Rights was accepted by the House of Representatives' Legisla-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PHILIPPINES
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WEST PAPUA
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Kepulauan Tanimbar
Ceram
Buru
Maluku Islands
EAST TIMOR
West Timor
Arafura Sea
South China Sea
BRUNEI
Sulawesi
Kalimantan (Borneo)
MALAYSIA
SINGAPORE
Java Sea
Flores
Sumbawa
Lombok
Sumba
Bali
Madura
Belitung
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INDONESIA

tion Body (BALEG) for inclusion in the 2012 National Legislation Program (see *The Indigenous World 2012*). The process in Parliament was, however, very slow and conducted behind closed doors. It is obvious that BALEG has a different perception from that of the indigenous peoples' movement with regard to several key points of the bill.

The original title of the bill was "Recognition and Protection of Indigenous Peoples' Rights Act" but BALEG changed this to "Recognition and Protection of the Customary Law Communities' Rights". The original title did not use the word "customary law" because indigenous peoples' rights do not relate solely to legal aspects. The words "customary law" in BALEG's draft obviously not only establish the term as deeply rooted in the Indonesian legal system but also means that indigenous peoples will be recognized as such only if they practice customary law.

The draft issued by BALEG on September 2012 also removed significant parts of the original draft, such as the right to self-identification of indigenous peoples. BALEG's version mentions that the identification of indigenous peoples is to be done by the government, which is contrary to the right of indigenous peoples to self-identification.

In the first quarter of 2012, AMAN proposed a judicial review of Act No. 41/1999 on Forestry to the Constitutional Court, which has the legal authority to nullify Acts proven to violate or contradict the 1945 Constitution (UUD 1945). During the three-month trial, AMAN proposed that the Constitutional Court nullify several articles of the Forestry Act because they are perceived as socially harmful to the life and welfare of indigenous peoples and against the 1945 Constitution. The Constitutional Court has yet to issue a decision on the judicial review proposal.

Legal developments also took place at provincial and district levels. In 2012, Malinau regency, in Kalimantan Timur province, successfully issued a local regulation on indigenous peoples' rights by adopting the District Regulation on the Recognition and Protection of the Rights of Malinau's Indigenous Peoples. The regulation includes almost all rights inherent in the UNDRIP, including the right to Free, Prior and Informed Consent. The regulation is now under examination by the Ministry of Home Affairs to ensure that it does not contradict any national regulations and policies. If the regulation passes the Ministry's examination, indigenous peoples will be able to use it to assert their rights and also as a tool to re-assess the land concessions and prevent further agrarian conflicts.

In 2012, during the Universal Periodic Review of Indonesia by the UN Human Rights Council, the Government of Indonesia denied the existence and rights of its indigenous peoples. This is surprising, as it contradicts the general sentiment and policy development at the national and local level. In 2012, implementation of the Memorandum of Understanding (MoU) between AMAN and the National Land Agency, signed in 2011 and aimed at ensuring justice and legal certainty for indigenous peoples over their land, territories and resources (see *The Indigenous World 2012*), was halted when the Indonesian President replaced the head of this agency. The new head seems to consider the MoU outside of the agency's priorities. The MoU thus remains on paper only.

Aggression against indigenous peoples

Violence and criminalization continue to occur against indigenous peoples in many parts of Indonesia. This proves that the favorable policy developments remain purely symbolic and are being ignored by policy makers and other actors, especially those extracting natural resources from the indigenous communities. The following are examples of the violence against and criminalization of indigenous peoples in 2012.

Burning of houses belonging to the indigenous people of Pekasa, Sumbawa
In mid-2012, the government of Sumbawa burned down at least 50 houses of the Pekasa community. The village of the Pekasa is their ancestral domain, which they have inhabited for several decades. However, the government claimed that the village was situated in a protected forest area. The burning was done on the argument that the government intended to clear the protected forest of any human activities that might harm it. However, the real story is different. The government of Sumbawa has issued a license to an HPH (forest concession) company and a mining company so that they can operate on the Pekasa's ancestral domain and the people of Pekasa therefore needed to be driven off their land.

Aside from burning the houses, the government of Sumbawa arrested Datuk/Chief of Pekasa Edi Kuswanto for allegedly entering a protected area. The police then prosecuted Datuk Pekasa in the Sumbawa Court. The trial was peculiar. The Ministry of Forestry's decree ruling that the area was protected was never given

in evidence by the General Attorney. Nevertheless, the judges sentenced Datuk Pekasa to one year and six months' imprisonment as well as fining him one hundred million rupiah. Datuk Pekasa did not accept the decision and appealed to the Nusa Tenggara Barat High Court in Mataram.

Felling of benzoin forest owned by the indigenous people of Pandumaan Sipituhuta, Sumatra

2012 was also tense for the Batak people of Pandumaan Sipituhiuta, Sumatra Utara. Their ancestral domain covers about 6,000 hectares, part of which is benzoin forest.[1] Passed from one generation to the next, the people maintain the forest in order to make ends meet. In 2009, however, the government of Humbang Hasundutan Regency issued a license to PT Toba Pulp Lestari, a pulp and paper mill, to manage the area. After obtaining the license, the company cut down the benzoin trees and replaced them with pine trees from which paper can be made. The indigenous people of Pandumaan Sipituhuta fought back and the company and the government's apparatus responded with violence. On 19 September 2012, the indigenous people of Pandumaan Sipituhuta clashed with the company's security forces and the Mobile Brigade (Brimob, paramilitary police) guarding the company. During the disturbance, the security forces and Brimob ran away because they were outnumbered. Later, the Humbang Hasundutan Police summonsed eight members of the community whom they perceived as being the coordinators of the clash. On 27 September, thousands of people from Pandumaan Sipituhuta marched to the police station to respond to the police summons. Prior to this, however, the people had participated in a dialogue with the parliament (DPRD) of Humbang Hasundutan, which the police had also attended. In these talks, it was decided that the police should not continue their investigations into the indigenous people of Pandumaan Sipituhuta and that a stakeholder meeting should be arranged to find a solution. The stakeholder meeting was, however, held without the knowledge of the indigenous people and it was decided to continue the legal investigations into the indigenous people regarding their clash with Brimob.

Intimidation of indigenous peoples of Dongi, Sulawesi Selatan Province

Dongi regency is a village located in the middle of Soroako city, Sulawesi Selatan. The indigenous people of Dongi have been living there for hundreds of years. In

1967, the government issued a license to PT INCO to operate a mine on the Dongi's ancestral domain without consulting them or asking their permission, as the owners of the domain. Ever since, the indigenous people of Dongi have been facing pressure and intimidation, with traditional leaders and activists being particularly targeted.

Since the company never fulfills its corporate social responsibility commitments, the indigenous people of Dongi have to obtain electricity from the company's lines installed at the roadside of Dongi village. Various attempts to negotiate with the company have never been responded to.

In 2012, the management of PT INCO was transferred to PT VALE and, in September, PT VALE started to intimidate the indigenous people of Dongi. The intimidation involved police officers patrolling the outskirts of Dongi village and PT VALE also gave an ultimatum to the Dongi to stop obtaining electricity from its lines within 72 hours. The Dongi fought back, mobilizing text messages sent by all the members of Dongi community demanding that the local government immediately settle the problem and require PT VALE to stop its intimidation against them. A letter was also sent to the President of the Republic of Indonesia, asking for his attention in settling the matter. A few days later, a special member of the Presidential staff, who happened to be in Sulawesi Selatan, came to Dongi village and held talks with the indigenous people. The dialogue started a more comprehensive conflict settlement plan between PT VALE and the indigenous people of Dongi.

Conflicts with companies in Muara Tae, Kalimantan Timur Province

The Muara Tae community has been experiencing conflicts with various companies, namely PT Sumber Mas (logging company) in 1971, PT Londong Sumatera (palm oil plantation) in 1995, PT Gunung Bayan Pratama (coal mining) in 1996, PT Munte Waniq Jaya Perkasa (palm oil plantation) in 2010, and in 2011 with PT Borneo Surya Mining Jaya (palm oil plantation). Along with the national and international networks, AMAN and the Muara Tae community has attempted to stop this latter company, which keeps its land clearing activities. In November, AMAN accompanied the representatives of Muara Tae community to a Roundtable on Sustainable Palm Oil (RSPO) in order to lobby and urge stakeholders to halt the seizure of the ancestral domain. The settlement process for this case is underway.

West Papua[2]

2012 saw an escalation in the violence in West Papua. The Chair of the National Commission on Human Rights (Komnas HAM) reported to the media that the Commission had received more than 6,000 reports of human rights violations taking place in Papua in 2012. From January to October, the Commission received 4,000 cases and an additional 2,000 were reported in the period from November to December alone.[3] The cases include shootings and torture of indigenous leaders, activists, students and journalists. In October, Papua police opened fire on students attending a rally near the State University of Papua (Unipa) in Manokwari, shooting two and injuring three more, including a journalist. In another incident in Wamena, on 17 December, two activists were killed, six were injured and the office of Adat Council burned down.[4] The Chair of Komnas HAM promised that a fact-finding mission would be sent to assess the situation, particularly in the Wamena shootings.

The foreign media are banned from reporting in Papua without a special permit and thus very few foreign media outlets have been granted approval.[5]

AMAN Congress

One milestone in 2012 was the Congress of Indigenous Peoples of the Archipelago, held in April 2012 in Halmahera, Maluku Utara. The congress was organized by AMAN in cooperation with the government of Halmahera Utara regency and was attended by more than 2,000 representatives of indigenous peoples from the entire archipelago. The congress made a number of significant decisions, ranging from organizational matters to political decisions regarding views on and recommendations for government policies and programs. Indigenous peoples, amongst other, urged the state to create a political and legal climate in accordance with the joint aspirations of indigenous peoples and the state for political sovereignty, prosperity and dignity. ❍

Notes and references

1 Benzoin is produced from benzoin trees (*Styrax benzoin*) and is highly valued as an ingredient in incense for burning in ritual ceremonies, for traditional and modern medicinal purposes, perfumery and for fragrant cigarettes.
2 Indonesia's West Papua and Papua Provinces
3 http://nasional.kompas.com/read/2012/12/19/20303066/6.000.Kasus.Pelanggaran.HAM.di.Papua.Sepanjang.2012
4 http://beritanda.com/nasional/berita-nasional/keamanan/10704-penembakan-dua-warga-sipil-di-wamena-melanggar-ham.html
5 http://www.thejakartaglobe.com/home/papua-police-shut-down-knpb-protest-in-manokwari/551931

Abdon Nababan *is a Toba Batak from North Sumatra. He is the Secretary General of Aliansi Masyarakat Adat Nusantara.* ***Rukka Sombolinggi*** *is a Toraya who is the Special Staff to AMAN's Secretary General. She is also serving as a Member of the Executive Council of Asia Indigenous Peoples' Pact (AIPP).* ***Erasmus Cahyadi*** *belongs to Terre Clan from Flores who's been working for AMAN since 2004 and currently the Director of Legal and Human Rights of the Organization*

MALAYSIA

In all, the indigenous peoples of Malaysia represent around 12% of the 28.6 million population. They are collectively called *Orang Asal*.

The Orang Asli are the indigenous peoples of Peninsular Malaysia. They number 180,000, representing a mere 0.6% of the national population. Anthropologists and administrators have traditionally categorized the 18 Orang Asli subgroups under Negrito (Semang), Senoi and Aboriginal-Malay.

In Sarawak, the indigenous peoples are collectively called Orang Ulu or Dayak and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 50% of Sarawak's population of 2.5 million people.

The 39 different indigenous ethnic groups in Sabah are called natives or Anak Negeri. At present, they account for approx. 47.4% of the total population of Sabah, a steep drop from the 60% estimated in 2000.

In Sarawak and Sabah, laws introduced by the British during their colonial rule recognizing the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies over the rights and interests of the indigenous communities.

Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but has still not ratified ILO Convention 169.

National Inquiry into land and indigenous peoples

The National Inquiry that is being conducted by the Human Rights Commission of Malaysia (SUHAKAM) into the land rights of the Orang Asal, Malaysia's indigenous peoples, continued in 2012 (See *The Indigenous World 2012*). Public hearings on problems facing indigenous peoples took place in March in Sarawak,

April/May in Peninsular Malaysia, and June in Sabah. Forced land grabs by private companies, the inaction of the local authorities and non-recognition of native customary rights to land were among the issues brought before the hearings. Other grievances aired at the inquiry included the loss of ancestral lands due to re-zoning of forest reserves, water catchments and agricultural purposes.[1] After the hearing in Sarawak, SUHAKAM concluded that "controversies over native land rights in Sarawak are still raging with no solution in sight due to a mighty clash of minds with regards to the interpretation of the term 'native rights' between the state government and the natives".[2]

In addition to creating public awareness, the inquiry has been seen as a major platform for empowering the indigenous communities to mobilize around the protection of their customary land. Communities came together to find historical evidence that would substantiate their stories and claims to custom-

ary rights land that were to be presented before the Inquiry. Groups of villages with similar issues were able to organize to select one representative to speak on their behalf. Women, too, rose to the challenge despite some of them never having spoken in public before.

The report of the national inquiry is due to be released in April 2013.

Resistance to the issuing of communal titles

As mentioned in *The Indigenous World 2012*, the state government in Sabah has started to issue communal titles on the condition that the communities agree to the development of the land and its planting with mono-crops (oil palm or rubber) through joint ventures with government agencies or private companies. Since the communal titles programme was established in 2010, seven such titles, involving a total of 2,716 people in three districts, have been issued. The Director of the Lands and Surveys Department has announced that "if everything goes well, the number of communal titles issued will rise to 69 involving 38,594 hectares of land in 150 villages for some 9,000 beneficiaries".[3]

The amendment to section 76 of the Sabah Land Ordinance that paved the way for the issuing of communal titles with specific conditions as well as the issuing of the titles themselves has been heavily criticized by indigenous peoples and indigenous peoples' organizations. The division of lots within the communal title does not follow traditional ownership boundaries and does not enable the crops that have been planted by native customary rights (NCR) land claimants to be maintained. With the merging of NCR lands to form one large plantation, conflicts have also arisen over the traditional village administration. SUHAKAM recorded such cases through the land inquiry, along with the peoples' dissatisfaction at the government's introduction of the communal title concept without considering their concerns.

The special terms attached to the issuing of communal titles are considered to violate the rights of natives, and may not necessarily serve the interests of those who have already established NCR over the area. These special terms escaped the scrutiny of the "beneficiaries" from Lalampas, Tongod because they were lured by payments of RM 300-500 into signing a document which they later found was a joint-venture agreement to develop their land.

Community members are not considered landowners but beneficiaries. The beneficiaries listed in the communal titles do not know the actual location of their plot of land within the communal title as this is not specified. When a joint-venture agreement is signed between the beneficiaries and the joint-venture company, the beneficiaries are not expected to work on their plot, and allegedly not allowed to enter the area. It is possible that, in just one generation, the beneficiary and the heir to the plot of land may lose their link with it. This could prove detrimental to natives claiming NCR to land as Malaysian courts require stringent proof of continuous use of, and links with, the land in question.

Court victories

A number of important rulings on land cases in favour of indigenous peoples were issued in 2012. In Peninsular Malaysia, in a landmark decision in the case of *Mohamad Nohing and 5 Others v The State Government of Pahang and 3 Others*, the High Court not only upheld the precedent set by the *Sagong Tasi* case (which recognized the Orang Asli's right to native title under common law) but also ruled that the creation of a Malay Reservation over the disputed lands did not extinguish the Orang Asli's native title rights to it. This is despite the fact that the Malay Reservation was created in 1923 by the British colonial government, in accordance with the Torrens system of land alienation.[4]

Nevertheless, even with this positive development in the legal arena, Orang Asli are still being forced to go to court to obtain recognition of their rights to their customary lands. At least four other cases are currently being heard by the courts. The "encroachers" in these cases include state-sponsored commercial development projects as well as forest conversion to oil palm plantations allocated to private corporations.

In Sabah, the hearing for the appeal in the case of the native occupiers of forest reserves, in *Andawan bin Ansapi & Ors v Public Prosecutor,*[5] was postponed twice. In 2011, the Kota Kinabalu High Court decided that the natives had the right to stay on the land to which they had NCR, even in forest reserves established under the Sabah Forest Enactment 1968. The High Court judge overturned a Magistrate's Court decision in 2009 imposing fines on six indigenous villagers from Imahit in Tenom who had been accused of encroaching onto the forest reserve to grow hill rice. The High Court decided that the natives had "ex-

press authority" to remain on the land as they possessed customary rights to it, which means that native customary rights continue to exist within forest reserves and are not simply a right and privilege under the enactment but also a pre-existing right under native customary law. Justice David Wong also spoke of the native peoples' being a "part of the land".

In a landmark decision, the Court of Appeal in Kuching dismissed the state government's appeal against a decision favouring the native landowners. The Court of Appeal was presented with the legal issue of whether it was proper for the natives to seek a declaration of their NCR over provisional leases and timber licences granted by the Superintendent of Land and Survey and the state government of Sarawak by way of an ordinary Writ of Summons or whether they should have to apply for a judicial review. The state had submitted that NCR claims had to be filed by way of judicial review as these involved elements of public law and a challenging of the public authorities' exercise of their power under the laws of Sarawak in issuing such provisional leases and timber licences.[6]

Anti-dam campaigns

In 2012, indigenous peoples continued to protest against the planned construction of mega-dams in Sabah and Sarawak (see *The Indigenous World 2011 and 2012*). On 26 September, 200 villagers commenced a blockade of the access roads leading to the Murum Dam in Sarawak, thereby halting the construction of the dam. The villagers were representing 1,500 indigenous people from the Penan and Kenyah communities who will lose their homes when the dam's reservoir is flooded. The villagers knew they would soon be resettled but did not know the details until the government's plan was leaked to them in September, even though construction of the dam had begun back in 2008.

With the help of Australian company Hydro Tasmania, the Sarawak state government advertised the Murum Dam as a model of "best practice" for what a socially responsible dam should look like. Chinese investors signed up to help build this dam and 11 more in Sarawak that will provide electricity for a multi-billion dollar government initiative called the "Sarawak Corridor of Renewable Energy" (SCORE).

Evidence suggests, however, that the extra electricity is not needed in Sarawak, and that corruption is the real driving force behind the decision to build the dams.[7]

The government responded to the protests by setting up police posts near the blockade, sending politicians to negotiate with the communities, declaring the blockade over, and accusing civil society organizations of instigating it. The villagers have issued a set of demands, asking that their rights under the UNDRIP be respected. The government has not yet met these demands.[8]

Anti-dam campaigns also took place in Sabah and Peninsular Malaysia. In Peninsular Malaysia, for example, the Semai communities affected by the Ulu Jelai hydroelectric dam in the state of Pahang have organised various protests objecting to the imposition of the project in their territories without their free, prior and informed consent.[9]

Positive developments in Selangor

In the state of Selangor, the (opposition) government continues to take measures to secure Orang Asli rights to their customary lands. A new state law entitled the Orang Asli Native Title Enactment was drafted with input from Orang Asli civil society members and concerned lawyers. The draft law seeks to recognise and secure currently-occupied Orang Asli traditional lands and territories in the state as well to allow for the co-existence and co-ownership of lands that are now protected areas or forest areas. To this end, the state government of Selangor has also embarked on a programme to help Orang Asli prepare their own community maps. This is with a view to assisting the legally-required ground surveys for alienation purposes.[10]

Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+) readiness workshop

In May, Malaysia officially became a UN-REDD country. Currently, REDD+ in Malaysia is still in the readiness phase and, as part of the process of developing a national institutional framework for REDD+ in Malaysia, workshops were held in the three regions. JOAS (Jaringan Orang Asal SeMalaysia - the indigenous peoples' network of Malaysia) participated in the workshops, at which issues such as free, prior and informed consent and the sharing of benefits were discussed. It is important that indigenous peoples, women and local communities are considered

in every step of the process, in line with Article 26 of the UNDRIP and, through the workshop discussions, the REDD+ unit has identified the urgent and important need for communication with stakeholders.

Indigenous peoples' organizations, community-based organizations and NGOs in Malaysia are concerned to ensure that the necessary social and environmental safeguards are put in place. However, indigenous peoples' awareness about REDD+ is still limited as many of the terms are highly technical and hard to understand. There are also misconceptions as to what REDD+ is all about and how it might affect / reduce the rights of the indigenous communities. Nevertheless, a recommendation to make indigenous peoples' organizations and NGOs part of the decision-making process has been made and adopted by the REDD+ unit. ❍

Notes and references

1 http://103.6.238.225:35480/documents/682315/1164730/11062012-suhakam+iquiries.pdf
2 http://thestar.com.my/news/story.asp?file=/2012/3/15/sarawak/10919043&sec=sarawak
3 http://borneoinsider.com/2013/02/22/oj-6249-in-three-districts-to-get-communal-titles-soon/
4 https://www.facebook.com/notes/center-for-orang-asli-concerns-coac/high-court-decision-in-the-bera-semelai-case/484013524975912
5 File K41-128 of 2010.
6 http://hornbillunleashed.wordpress.com/2012/02/17/27633/
7 http://www.internationalrivers.org/blogs/267/malaysia-what-to-do-when-indigenous-groups-blockade-your-dam
8 Ibid.
9 https://www.facebook.com/notes/center-for-orang-asli-concerns-coac/orang-asli-go-on-memo-marathon-over-dam-projects/515444811832783
10 Information from COAC, which is a member of the Selangor Orang Asli Land Task Force (BBTOAS).

JOAS (Jaringan Orang Asal SeMalaysia) *is the indigenous peoples' network of Malaysia. It is the umbrella network for 85 community-based non-governmental organisations that focus on indigenous peoples' issues.*

THAILAND

The indigenous peoples of Thailand live mainly in three geographical regions of the country: indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south of Thailand (Mani people); small groups on the Korat plateau of the north-east, and in eastern Thailand, especially along the border with Laos and Cambodia; and the many different highland peoples in the north and north-west of the country (the Chao-Khao). With the drawing of national boundaries in South-east Asia during the colonial era and in the wake of decolonization, many indigenous peoples living in remote highlands and forests were divided. There is thus not a single indigenous people that resides only in Thailand.

Nine so-called "hill tribes" are officially recognised: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.[1] There is no comprehensive official census data on the population of indigenous peoples. The most often quoted figure is that of the Department of Welfare & Social Development. According to this source, there are 3,429 "hill tribe" villages with a total population of 923,257 people.[2] Obviously, the indigenous peoples of the south and north-east are not included.

A widespread misconception of indigenous peoples being drug producers and posing a threat to national security and the environment has historically shaped government policies towards indigenous peoples in the northern highlands. Despite positive developments in recent years, it continues to underlie the attitudes and actions of government officials.

Thailand has ratified or is a signatory to the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

In 2012, after the previous year's heavy rainfall and long flooding in the central plain, which caused billions of dollars of damage, everything seemed to be back to normal. Looking at the situation of the country's indigenous peoples, however, not much has changed. Despite some positive developments with respect to policies related to indigenous peoples in recent years, such as the issuing of Cabinet Resolutions to restore the traditional livelihoods of the Chao Ley and the Karen in 2010, there have been no real improvements. Indigenous peoples are still facing numerous problems, particularly related to land and resource rights.

The Karen in Kaeng Khachan National Park

In 2010-2011, Karen communities who lived in Bang Kloi Bon, an administrative area of Kaeng Khachan district, Phetchaburi province, and in Kaeng Khachan National Park, were forced to move from their traditional homeland to live in Bang Kloi Lang, the designated relocation site. Their houses and rice barns were destroyed and burned down by the park officials and military. This has had serious consequences for their lives and livelihoods (see more details in *The Indigenous World 2011*).

In response to this, the affected Karen and their supporters have jointly voiced their concerns at national and international fora. This has included preparing a report that was submitted to the UN Special Rapporteur on the rights of indigenous peoples, Mr. James Anaya, and to the UN Committee on the Elimination of Racial Discrimination (CERD).

On 31 July 2012, during its 81st session, the CERD Committee, after receiving information submitted by indigenous peoples' organisations and NGOs, requested that the Thai government provide information on their situation in the park and on the measures taken to improve their situation. Having discussed the report produced by the Government of Thailand, the CERD Committee expressed concern that: " … the various forestry and environment protection laws may have a discriminatory effect on ethnic groups living in forests. The Committee is also concerned that it has not been assured how their free and prior informed consent is guaranteed in decision-making processes affecting them".

Furthermore, the CERD Committee recommended "… the State party to review the relevant forestry laws in order to ensure respect for ethnic groups' way

1. Kaeng Khachan National Park
2. Ratchaburi province
3. Phetchaburi Province
4. Kaeng Khachan dam

of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment." [3]

At a national level, the affected villagers entrusted the Lawyers' Council of Thailand to take a legal case against the Kaeng Khachan National Park (KKNP) officers both at the Administrative Court and the Civil Court, on charges of human

rights violations and causing damage to personal property. Both courts took up the case, and it is now under investigation.

In addition, the National Human Rights Commission (NHRC) was also requested to investigate the case and, having done so, concluded that the accusations made against Karen people with regard to being foreign forest destroyers and drug traffickers were not grounded. The NHRC proposed the following measures[4]:

1. Kaeng Khachan National Park should stop arresting and intimidating villagers until the truth has been established. During this fact finding, the 28 families should be allowed to go back and live traditionally as they want.
2. An integrated coordinating mechanism should be established among the parties involved to resolve the problems. These parties include the Coordinating Committee of the Cabinet Resolution of 3 August 2010 (regarding Karen livelihood), Kaeng Khachan National Park officials, the Local Administrative Organisation of Huay Mae Priang, relevant government agencies and affected villagers.
3. The Provincial Government Office should establish a committee to assess the harm caused to villagers, and find ways to redress and compensate for the damage caused by the government authorities' action, with the participation of the affected communities.
3. The Local Administration Department of Kaeng Khachan District should set up a mobile unit to speed up the surveying and granting of Thai citizenship to eligible Karen people.

In addition, the affected Karen people also stood up, voiced their concerns and requested that their problems be addressed by the relevant government agencies. This included participating in a campaign at the House of Parliament on 29 March 2012, participation in the King's Coronation Day on 5 May 2012, participation in a public forum organised by Thai-PBS (a public TV station) and, on 23 August 2012, the submission of an open letter to the Prime Minister requesting a transfer of the Kaeng Khachan National Park manager (Mr. Chaiwat Limlichit-aksorn). The case has been given considerable media attention.

At community level, a number of government agencies and one of the Royal Projects (Pit Thong Lang Phra) have provided support to the affected villagers to improve their living conditions. These include the provision of farmland and the

development of basic infrastructure such as a water system. In addition, citizenship rights have also been addressed.

Another problem, however, is emerging as the Government of Thailand has included Kaeng Khachan National Park on its list of proposed new World Heritage sites.[5] If accepted, this may seriously affect the indigenous communities and it was done without any consultation.

The situation of U-Rak-La-Woy

The U-Rak-La-Woy (often referred to as Chao Ley – "people of the sea") are one of the indigenous peoples living along the West coast on the Andaman Sea. They live scattered across five provinces in the south of Thailand – Phuket, Phang Nga, Satun, Trang and Krabi. Their population numbers approximately 12,000 persons, living in 41 communities.[6] Their way of life is heavily dependent on the sea and they are known for their deep-sea diving skills, catching fish with their bare hands.[7] Their way of life, however, has been changed by settlers and, above all, by their areas being promoted for tourism, such Koh Phi Phi, Koh Sirae, Rawai beach, etc. The establishment of marine national parks has also had a serious impact on their traditional livelihoods; they are no longer allowed to fish for a living in areas where they have done for centuries, as these areas have been made part of the park.

Between 2010 and 2012, 32 U-Rak-La-Woy were arrested by the Marine National Park officials and taken to court. The latest case happened in Kura Buri District, Pang Nga province, in October 2012 when nine people were arrested. This has caused enormous problems for their lives and livelihoods. Some of them are now heavily in debt as they had to borrow money from outsiders and are having difficulties paying back the loan. Their fishing boats and equipment were confiscated. Some of them have to work as wage labourers now. To avoid conflict with the marine park officials, some of them have to go far out to sea to catch fish by diving down to depths of 30-50 meters. This is very risky since a lack of decompression can cause minor strokes or paralysis.

To address these problems, the Ministry of Culture passed a cabinet resolution on 2 June 2010 to restore the Chao Ley's traditional livelihoods. Its solutions comprise both short-term and long-term plans (see *The Indigenous World 2011).* The implementation of these work plans on the ground has been problematic,

however, as they conflict with the existing policies and laws of some ministries, in particular the Ministry of Natural Resources and Environment. As one of the U-Rak-La-Woy leaders said,"… national park officials did not recognise the cabinet resolution; they said it's not a law. That's why our friends got arrested when they fished in Marine National Park". As a result, representatives of the Chao Ley went to Bangkok on 12 November 2012 and urged the Prime Minister to concretely resolve their problems.[8] There has been no progress as yet.

The situation of the Mani

The Mani are a small hunter/gatherer group living in the Banthad mountain range in Trang, Satun and Patthalung provinces. Mani means 'people' or 'human being'. Locally, the Thai refer to the Mani as 'Sakai' or 'Ngaw'. Both these terms have pejorative meanings. The population of each community is usually very small, around 30 – 40 persons. Kwan Mai Dam Community numbers only eight individuals.

The Mani are facing food security problems as the forests on which they depend for food and shelter are being rapidly cleared by lowland Thai farmers to plant rubber trees and oil palms. They have to adopt a variety of new survival strategies to cope with these changes, including, for example, planting crops such as bananas and sweet potatoes. In Klong Tong, Palian district of Trang province, the Mani have established their own small rubber gardens and a permanent settlement. In addition, some Mani have begun doing occasional wage labour for local farmers. They are also promoted for tourism as their exotic appearance is an added attraction. They receive some payment in cash for putting on a show and for being photographed by tourists, which they use to buy food from local stores.

The future of the Mani is very critical and uncertain. They need to be more organised to prevent their identity and culture from disappearing.

Conclusion

The problems that indigenous people in Thailand are facing vary. For some, the situation is getting worse, such as for the U-Rak-La-Woy and Mani. There needs to be an efficient mechanism and measures to protect and safeguard the rights of

indigenous peoples at different levels. One measure being widely discussed right now is the establishment of a Council of Indigenous People in Thailand (CIPT). This body could play a key role in coordinating, promoting and protecting the rights of indigenous peoples. It is currently in the process of being developed and, hopefully, will be formally established in the near future. ❍

Notes and references

1 Ten groups are sometimes mentioned, i.e. the Palaung are also included. in some official documents. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.
2 The figure given is sometimes 1,203,149 people, which includes immigrant Chinese in the north.
3 Committee on the Elimination of Racial Discrimination, 81st Session (6-31 August 2012), CERD/C/THA/CO/ 1-3, paragraph 16
4 Recommendations from a report of the National Human Rights Commission on Kaeng Khachan case
5 http://www.mcot.net/site/content?id=51077014150ba02a5c0000cc#.UQoqhqUrLko
6 http://www.khaosod.co.th/view_news.php?newsid=TUROd01EVXdNakl5TVRFMU5RPT0=
7 http://yadfonfoundation.files.wordpress.com/2012/09/chaolae.pdf
8 http://www.tcithai.com/TCIJ/view.php?ids=1483

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VIETNAM

As a multi-ethnic country, Vietnam has 54 recognized ethnic groups; the Kinh represent the majority, comprising 87%, and the remaining 53 are ethnic minority groups, with an estimated 13 million accounting for around 14% of the country's total population of 90 million. Each ethnic group has its own distinct culture and traditions, contributing to Vietnam's rich cultural diversity.

The ethnic minorities live scattered throughout the country, inhabiting midland, coastal and mountain areas, but are concentrated mostly in the Northern Mountains and Central Highlands in the South. The Vietnamese government does not use the term "indigenous peoples" for any groups but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam's indigenous peoples. The term 'ethnic minorities' is thus often used interchangeably with 'indigenous peoples' in Vietnam. The Thai, Tay, Nung, Hmong and Dao are fairly large groups, each with between 500,000 and 1.2 million people. There are many groups with fewer than 300,000 people, however, sometimes only a few hundred. Around 650,000 people belonging to several ethnic minority groups live on the plateau of the Central Highlands (Tay Nguyen) in the south.

All ethnic minorities have Vietnamese citizenship, and Vietnam's constitution recognizes that all people have equal rights. The Cultural Heritage Law of 2001 was passed to provide recognition of and guarantees for the cultural heritage and traditional practices of all ethnic groups.

The Government of Vietnam has not ratified ILO Convention 169 but voted in favour of the UNDRIP although it does not recognize ethnic minorities as indigenous peoples.

Over the past two decades, Vietnam has experienced rapid economic growth and has become a middle-income country. It has made impressive achievements in poverty reduction but these achievements have been uneven and ethnic minorities still suffer from high poverty rates. In 2010, the national poverty rate,

assessed by the new[1] poverty standard, was 20%. In the ethnic minority dominated area of the mountainous north-east it reached 37.7%, and in the Central Highlands 32.8%.

Risk of falling back into poverty

According to the Ministry of Labour, War Invalids and Social Affairs, there were more than 1.5 million poor households in Vietnam in 2012, of which the majority are ethnic minorities and people living in mountainous areas.[2] With the poverty line being drawn at US$ 18 income per month, those who are just above the poverty line remain vulnerable. There is no policy to provide direct support to ethnic minority or other households in mountainous areas that have crossed the poverty threshold. After escaping from poverty, these near-to-poor households therefore lack the support needed to build sustainable livelihoods. Very few benefit from preferential loan policies and most have difficulty in accessing loans due to high interest rates. These people have limited productive capacities and limited access to markets. All this contributes to high levels of insecurity and a high danger of falling back into poverty.

Land allocation for ethnic minorities

According to a government report to the Standing Committee of the National Assembly on 13 December 2012,326,909 ethnic minority households (around2 million people)need to be supported to obtain residential land and productive land by 2016.[3] Mr. Phuoc, Chairman of the Ethnic Minority Council, added that the situation "is more serious in rocky mountainous areas such as Cao Bang, Ha Giang...".[4] The report pointed out that, in many places, the land to be allocated to the people is not available or is very little. In some places, land reclamation requires huge investments. The scattered landholdings and lack of water lead to inefficient production. In addition to pointing to the limited availability of land, the report also mentioned a number of reasons for the scarcity of land, including infrastructure development on productive and residential land; relocation and resettlement after infrastructure construction; and mining that disregards the culture, customs and production conditions of the people concerned. Other reasons for land scarcity are: inadequate land management; the loss of land due to sale; and mortgaging. One of the solutions presented in the report is that uncultivated, inefficiently or improperly used lands (of which there are more than 4 million hectares) should be taken back from state-owned farms and allocated to ethnic minority people. However, according to Mr. Phuoc, no solution has yet been found in practice, either at central or local level in terms of allocating residential and agricultural land to ethnic minorities. These difficulties are exacerbated by the increasing migration to ethnic minority areas. Mr. Phuoc emphasized that this is a very important issue because ethnic minorities are of vital significance to national defence and security.

The health status of ethnic minorities

In November 2012, the Ministry of Health held a seminar on Population and Reproductive Health of Ethnic Minorities, in cooperation with the People's Committee of Lao Cai Province in Lao Cai. The health status of ethnic minorities in mountainous areas has been assessed on the basis of some key indicators such as malnutrition rate, child mortality rate, diseases and life expectancy. The malnutrition rate among ethnic minority children in terms of weight/age, height/age and

weight/height ratios has been reducing in recent years but is still high compared to the average national rate. The mortality rate of minority children under one is two to three times higher than the national average in Northern Mountains and Central Highland regions. Life expectancy is also lower than the national average. For ethnic minorities with very small populations, such as the Mang, La Hu, Cong, Co Lao, Pu Peo, Romam and O Du, overall health status and life expectancy are even lower and these small populations are considered very vulnerable or even under threat of extinction.

The key factors that have been identified as being responsible for the lower health status of ethnic minorities are high rates of poverty, the poor care given to women, even when they are pregnant, limited access to healthcare services, and the habits and traditions of some ethnic minority groups, including child marriage (marriage before the age of 19, sometimes even at 13-14).Alcohol abuse has also been identified as a cause of the low health status of ethnic minority men in particular. Finally, the lack of clean drinking water and poor sanitation, and lack of knowledge of hygiene are a major cause of the common preventable diseases that are prevalent in ethnic minority communities.

The education status of ethnic minorities

The November seminar in Lao Cai also confirmed the continuing high illiteracy rate among ethnic minorities. The Northern mountainous region, which has the highest proportion of ethnic minorities, is also the region with the highest illiteracy rate among people over the age of 15 years (12.7%). The Central Highland and Mekong river delta rank second and third with 11.73% and 8.4% respectively. The percentage of unskilled labourers among ethnic minorities is also much higher than the national average. With over 90%, the Mekong river delta and Central Highlands have the highest percentage of unskilled labourers. The percentage of the population completing primary and secondary vocational training or going to university is very low among ethnic minority groups: Thai 1.6%, Muong 2.0%, Khmer 1.0%, H'Mong 0.3% and other groups 1.5%.

In the seminar, the following key factors determining the education status of ethnic minorities were identified:

- High rate of poverty: poverty is considered one of five most common reasons for high school drop-out rates, especially among girls. It has been found to be the main reason among the Hmong, J'rai and Khmer students
- Language barriers: most indigenous students are confronted with language barriers when starting school due to the lack of education in their own language and the lack of adequate preschool preparation
- The standard curriculum is not really relevant to many students from indigenous groups. Bilingual and inter-cultural teaching and, where it exists, teaching in their own scripts is preferable
- Teacher-student relationship: on average, around 50% of the teachers, rising in Ha Giang and Lai Chau to 85.7% and 61.1% respectively, are not indigenous people themselves
- Long distances to schools and poor school infrastructure are important obstacles to ethnic minority students accessing education.

Weakening of customary law

Customary law has long regulated social relationships within indigenous communities but is now rapidly vanishing. It is not recognized and under pressure because it is considered outdated, inappropriate and not compatible with national statutory law. In the 1980s, many customs and habits were prohibited by law. Conversely, many laws have been passed without the knowledge of the ethnic minorities. In the past, disputes within communities were resolved through application of customary law by recognized village elders. As this form of social control and conflict resolution is no longer effective, indigenous communities are faced with an increase in conflicts and serious crimes such as theft and even murder. Along the Vietnam-Laos border in Son La and Dien Bien provinces, many Thai and Hmong men are arrested for drug smuggling.

Lack of awareness of legal rights

The "law blindness" among ethnic minorities is mainly a result of the fact that all laws are written in the majority Kinh language while the educational level of ethnic minorities is very low. Commune judicial officers hardly ever provide advice to

local people, and there is a general lack of ethnic minority lawyers. In response to this situation, the Ministry of Justice issued a circular in December 2012 on the provision of legal aid and the enhancement of people's awareness, respect and observance of the law among ethnic minorities.

REDD+ and community rights to forests

In October 2012, the UNREDD Programme's pilot projects in the two districts of Di Linh and Lam Ha of Lam Dong province came to an end after 20 months of implementation. The Vietnamese government has also officially approved the National Action Programme on REDD+ for the period 2011-2020.

Experience in implementing the pilot REDD+ project under the UN REDD Programme showed the need to consider a number of issues related to indigenous peoples if the success of REDD+ is to be ensured. One key issue is the lack of land for agricultural production and the lack of rights over forest land. A recent study in Lam Dong province indicated that most forest land is designated as "Protection Forest" or "Protected Areas", or has been allocated to private companies, while the K'ho indigenous communities have become dependent on employment from these forest owners. As a consequence of the non-recognition of their land and forest rights, the K'ho in Lam Dong have been accused of illegally encroaching on land that forms part of their ancestral territory. Forest tenure conflicts are increasing in the K'ho area, especially with private companies who have been given forest land and resources but who are not fulfilling their obligation of creating jobs for the K'ho.

It is now increasingly recognized not only among academics but also by government officials that community-based forest management is a more effective and fairway of implementing REDD+ but that, for this to succeed, the indigenous communities need to have secure rights over community forests and not just management or use rights. The K'ho believe that if they get their rights to their forest recognized, they can manage it in a sustainable manner. And they hope that REDD+ will bring about the changes in laws and policies needed to recognize and protect those rights. ❍

Notes and references

1 Prime Ministerial Decision N0 09/1/2011/QD-TTg date 30/1/2011 on the PovertyLine for Poor and Near-to-poor Households, period 2011-2015
2 Ministry of Labor, War Invalids and Social Affairs, Decision No 375/QD-LDTBXH Approval of the Results of the Survey and Statistics of Poor and Near-to-poor Households in 2011
3 Unpublished report presented by Mr. Phuoc, Chairman of the Ethnic Minority Council.
4 Ibid.

Due to the sensitivity of some of the issues covered in this article the authors prefer to remain anonymous.

LAOS

With a population of over seven million, Laos is the most ethnically diverse country in mainland Southeast Asia. The ethnic Lao, comprising around a third of the population, dominate the country economically and culturally. There are, however, pockets where the number of indigenous peoples exceeds that of the Lao and where their culture is prominent. Another third of the country consists of members of other Tai language-speaking groups. The remaining third have first languages in the Mon-Khmer, Sino-Tibetan and Hmong-Iu Mien families. These groups are sometimes considered to be the "indigenous peoples" of Laos, although officially all ethnic groups have equal status, and the concept of "indigenous peoples" is not recognized. The Lao government currently recognizes 160 ethnic sub-groups within 49 ethnic groups.

Indigenous people are unequivocally the most vulnerable groups in Laos, representing 93% of the country's poor. They face territorial, economic, cultural and political pressures and are experiencing various livelihood-related challenges. Their land and resources are increasingly under pressure from government development policies and commercial natural resource exploitation. There is no specific legislation in Laos with regard to indigenous peoples and use of the term in either the Lao or English language is not allowed in written form. The government did, however, vote in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), although it has done nothing to implement it.

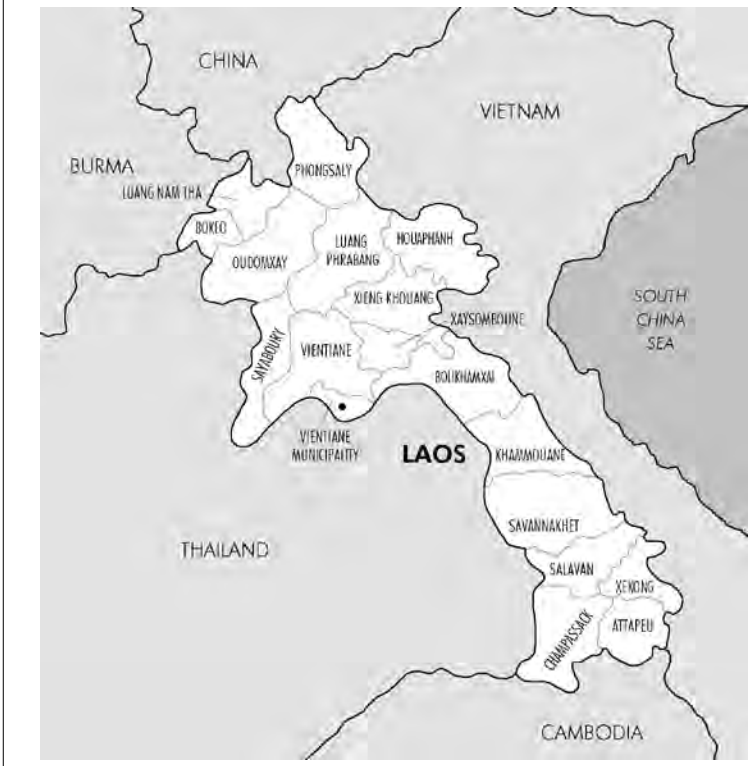
Poverty reduction-related national policies

National policies relating to poverty reduction have been revised several times over the past ten years in Laos. Although many of these are well-intentioned, their poor implementation has instead led to the marginalization of many indigenous communities.[1] One of the most significant is the 8th Party Congress and Directive Order No. 9 of the Politburo, 8 June 2004, which in-

structs the merging of villages in order to maximize the distribution of poverty reduction activities and accelerate economic development. It is also the principal policy document cited by local authorities when developing land concessions with the stated objective of turning land into economic opportunities so that national development can be speeded up. This policy means that, in upland areas where villages comprise less than 200 people, and less than 500 people in lowland areas, they must be amalgamated administratively with another village or physically relocated to meet the minimum population requirement. The consequence of this has been an increase in land and natural resource disputes and disruption to indigenous peoples' cultural connections with their territory. Unfortunately, village merging takes no account of the ethnicity of villages, nor of customary use rights pre-existing the consolidation process. In these new multi-ethnic communities (Hmong, Lao, Mon-Khmer groups mixed together), indigenous people are usually disadvantaged in comparison to ethnic Lao, who generally get the lion's share in terms of development benefits. Customary leaders' traditional prerogatives, including management of natural resources, become obsolete and these communities increasingly rely on state institutions for conflict resolution.

Free, Prior and Informed Consent

In March 2012, a Free, Prior and Informed Consent (FPIC) piloting activity on REDD+, supported by the German Agency for International Cooperation (GIZ) in Xayabouly province was halted due to border issues and political sensitivities and, possibly, due to illegal logging by military holdings near the Thai border area. The Ministry of Defense ordered the project to be stopped and the FPIC team working in the field was called back, leaving the process incomplete. Communities involved in the process included ethnic Lao, Hmong, Khamu and Pray. The outcomes of this process are now hard to measure as the final community meetings aimed at giving or withholding consent were not held. A Lao FPIC guidelines document, created by the project, is awaiting endorsement by the Ministry of Agriculture and Forestry. An FPIC manual developed by OXFAM was translated into the Lao language but has not been released.



Communal land titling

The titling of communal bamboo land in Sangthong district that took place in 2011 has become a famous case; graduate students now often conduct research in the area. Although Sangthong involved ethnic Lao communities, it has become highly relevant as communal land titling was also conducted among the Makong communities of Nakai Plateau, next to the Nam Theun 2 Dam in 2012. Communal titling, however, is not specifically related to indigenous peoples or territories and any community in Laos can be eligible. In June, OXFAM Australia was also involved in mapping rights to water, land and natural resources in Taoi district, Saravane province. This exercise could be a first step towards communal land

titling. It is important to note that communal titling is not recognized in the land law currently undergoing legal revision.

Land concessions

Land concessions have been championed as a means of reducing poverty by increasing land productivity. In many instances, the opposite has been the case, with land losses to communities resulting either in greater impoverishment, or villages being pushed to encroach on protection, conservation or production forest areas.

Problems have arisen because concessions were granted without surveys or supervised land allocation, without consultation with local communities and with no consideration of existing land uses by villages, coupled with a perception that granting concessions would enable the government to achieve targets in other stated policies (such as eradication of slash-and-burn cultivation). Some land concessions last for up to 70 years, which means that indigenous people will never be able to repossess their land within their lifetimes.

Many concessions have reduced the cultivation and forest resource areas available to villagers, and pushed them to open up land in designated forest areas. Consequently, thousands of villagers have lost their right to use or access their land, and have been forced to leave their villages and find work outside farming. In 2012, the Harak people from Sekong province twice went to the national capital and were even broadcast on radio protesting at the grabbing of their ancestral land by a Vietnamese rubber plantation. The radio program was taken off air by the state and the Harak villagers were detained for 10 days without access to lawyers and without any charges being laid; in fact, the case is still not settled. In 2012, land-related conflicts also occurred in ethnic Jhru communities on the Boloven Plateau where a Vietnamese company has been granted a concession over Jhru coffee plantations and ancestral territory.

A moratorium has currently been called on the granting of all concessions until 2015, albeit only for mining, eucalyptus and rubber plantations. There have been several similar moratoria over the past ten years which have been ignored.

Hydropower

There were 13 hydropower projects under construction in 2012. There is generally little consultation conducted, and compensation provided to the affected communities is often inadequate. The largest and most obviously controversial is the Sayabouly Dam in Sayabouly province, for which Laos has given the go-ahead despite opposition from neighboring countries and environmentalists. Three dams in southern Laos are also threatening Mon-Khmer groups' livelihoods, including Houay Lampang and Xekaman 3 in Sekong province and Xekaman 1 in Attapeu province.

Indigenous Peoples' Day

International Day of the World's Indigenous Peoples was not celebrated in 2012; the previous year the government held a celebration in the ITECH trade center and many INGOs, bilateral institutions and also the UNDP joined in. In general, the opportunities to bring up issues related to human rights, land, etc. are getting fewer and the situation is worsening. In 2012 the Government also, for example, shut down a radio programme providing legal advice to citizens, and at the end of the year the disappearance of an outstanding human rights defender and social activist and the expulsion of a committed foreign INGO director resulted in a deterioration of the relationship between the state and civil society.

Customary law

The Lao government officially released the results of the Customary Law project (conducted in 2010), providing individual reports on all of the 49 ethnic groups of the country. This comprehensive report is aimed at promoting the reorganization of informal legal systems as an integral part of the overall legal framework of the country. The findings of the survey will ultimately pave the way for developing a strategy to ensure that customary practices, including informal systems for the settlement of disputes, are harmoniously integrated with the state legal system, not only respecting cultural and ethnic traditions but also in line with international

principles of the rule of law and human rights standards. The validation and recognition of customary law and institutions is a step forward, opening up a discursive space that will allow indigenous leaders' voices to be heard. ❍

Notes and references

1 James R. Chamberlain, Participatory Poverty Assessment II, National Statistics Centre, Asian Development Bank, ADB TA 4521, Institutional Strengthening for Poverty Monitoring and Evaluation, 2006-2007.

Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.

BURMA

Burma's diversity encompasses over 100 different ethnic groups. The Burmans make up an estimated 68 percent of Burma's 50 million people. The country is divided into seven, mainly Burman-dominated divisions and seven ethnic states. The Burmese government does not recognize the existence of indigenous peoples in the country and refers to those groups generally considered indigenous peoples as "ethnic nationalities". This includes the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. However, there are many more ethnic groups that are considered or see themselves as indigenous peoples, such as the Akha, Lisu, Lahu, Mru and many others.

Burma has been ruled by a succession of Burman-dominated military regimes since the popularly-elected government was toppled in 1962. The regimes have justified the oppression of ethnic nationalities by claiming that the military is the only institution that can prevent Burma from disintegrating along ethnic lines. After decades of armed conflict, the military regime negotiated a series of ceasefire agreements in the early and mid-1990s. While these resulted in the establishment of regions with some degree of administrative autonomy, the agreements also allowed the military regime to progressively expand its presence and benefit from the unchecked exploitation of natural resources in ethnic areas.

In November 2010, the military-backed Union and Solidarity Party (USDP) won Burma's first general election in 20 years by a landslide. The UN said the electoral process failed to meet international standards. Three months later, the USDP-dominated Parliament installed former General Thein Sein - the military regime's former Prime Minister and the architect of the widely-criticized 2008 Constitution - as Burma's President. Thein Sein and his nominally civilian administration took positive steps toward reform. Thein Sein released hundreds of political prisoners, eased certain media restrictions, engaged in ceasefire talks with ethnic armed groups, and introduced measures to make the country attractive to foreign investors. However, many critical issues re-

mained unaddressed, such as the ongoing serious human rights violations, increased military offensives in Kachin State, lack of significant legislative and institutional reforms, and persecution of Muslim Rohingya in Arakan State.

Burma voted in favour of the UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, but has not ratified ILO Convention 169.

Regime escalates military offensives in Kachin State

In Kachin State, armed conflict between the Tatmadaw (Burma's Army) and the Kachin Independence Army (KIA), which began in June 2011, continued throughout 2012 (see *The Indigenous World 2012*). The Tatmadaw deployed nearly 25% of its battalions to Kachin State and increased the use of artillery as part of its ongoing offensives against the KIA. Fighting affected 15 of the 18 townships in Kachin State, as well as six townships in Northern Shan State.

Tatmadaw commanders ignored two orders issued by President Thein Sein in December 2011 and January 2012 to cease all hostilities against the KIA. Despite Tatmadaw claims that its military operations were in response to KIA aggression, there were numerous reports of Tatmadaw attacks against innocent civilians, in violation of international humanitarian law. The human rights violations committed by Tatmadaw soldiers included the killing of civilians, arbitrary arrest, torture, forced labour, rape of women and destruction of property.[1]

At the end of December 2012, the Tatmadaw escalated its aggression with the use of military helicopters and fighter jets to carry out air strikes against KIA positions in areas near the group's headquarters in Laiza, Momauk township.

Despite several rounds of meetings between regime and KIA representatives, the KIA was not able to seriously consider the regime's offers of dialogue because of the Tatmadaw's continued offensives.


CHINA
INDIA
Kachin state
Myitsone
Sagain division
Salween River
Wanhai
Chin state
Mandalay division
Shan state
LAOS
Magwe division
Naypyitaw
Arakan state
Karenni state
Pegu division
Rangoon division
Hutgyi Dam
Irrawaddy division
Karen state
RANGOON
Mon state
THAILAND
ANDAMAN SEA
Tenasserim division
BURMA

Number of IDP soars in Kachin and Northern Shan States

As a result of the ongoing Tatmadaw aggression, the total number of internally displaced persons (IDP) in Kachin and Northern Shan States, which was estimated at 50,000 at the beginning of the year, had reached 75,000 by December. In addition, around 10,000 people had fled across the border into China to find relative safety in makeshift camps in Yunnan Province.

While IDP in regime-controlled areas of Kachin State received some form of assistance from the authorities and international aid organizations, the government frustrated the delivery of humanitarian assistance to IDP in KIA-controlled areas. Regime authorities only allowed three small deliveries of aid from the UN during the whole of 2012. As a result, some 40,000 IDP in KIA-controlled areas have endured two harsh winters with only minimal assistance provided by community-based organizations.

Deadly sectarian violence hits Arakan State as regime's persecution of Rohingya continues

In Arakan State, long-standing tensions between Buddhist Rakhine and the Muslim Rohingya minority turned into deadly sectarian violence in 2012. The riots were triggered when three Rohingya men allegedly raped and murdered a Rakhine woman in Rambree township on 28 May. This incident was followed by the massacre of ten Muslim pilgrims six days later, by a mob of around 300 Rakhine in Taunggoat township.

Violence between the two communities occurred in three major waves in June, August and October and spread to 14 of the 17 townships in Arakan State. According to official figures, 178 people were killed in the unrest and over 10,000 homes and religious buildings were burned. However, human rights organizations feared that the actual death toll was much higher.

The unrest displaced 115,000 people inside Arakan State, the overwhelming majority of whom were Rohingya. Thousands of Rohingya also attempted to seek safety by crossing the border by boat into Bangladesh.

The regime failed to effectively intervene to stop the violence, despite the imposition of curfews in numerous townships and the declaration of martial law in

all of Arakan State. Under the pretence of restoring law and order, police, border security forces (known as Na Sa Ka) and Tatmadaw troops committed serious human rights violations which mostly targeted Rohingya communities. Abuses included extrajudicial killings, mass arrests and the rape of women.[2] In November, the regime announced that it had detained over 1,000 people in connection with the unrest since June. In December, numerous reports continued to surface with regard to the regime authorities detaining Rohingya for their alleged involvement in the June riots.

Instead of promoting reconciliation, President Thein Sein and other regime ministers fueled tensions with statements that reflected the regime's long-standing discriminatory attitude towards the Rohingya. In July, President Thein Sein proposed the deportation of all Rohingya to a third country or their segregation in refugee camps as the solution to the unrest. Other regime ministers labeled the Rohingya as "Bengali" and insisted that they were "illegal immigrants from Bangladesh" who had no right to be granted Burmese citizenship.[3] The regime also indicated that Rohingya would be excluded from the planned 2014 nationwide census.[4]

In August, President Thein Sein appointed a 27-member commission to investigate the unrest and to make recommendations as to how to ensure peaceful coexistence between Buddhist and Muslim communities in Arakan State. The commission did not include any Rohingya representatives. By contrast, it included several commission members widely known for their anti-Rohingya views. The commission was scheduled to present the findings of its investigations to President Thein Sein by 31 March 2013.

The massive wave of internal displacement caused by the unrest resulted in a severe humanitarian crisis in Arakan State. The regime segregated Rohingya and Rakhine into separate IDP camps. Some of the Rohingya IDP camps have been described by aid workers as "open air prisons" and "among the worst in Asia."[5] By contrast, Rakhine IDPs were housed in camps with much better conditions in terms of shelter, water, and sanitation. In addition, Rakhine communities prevented UN and other international aid organizations from providing humanitarian assistance to Rohingya on many occasions because they alleged that the aid was being delivered in a partial and discriminatory way.

Peace agreements signed but fundamental political issues remain unaddressed

In 2012, Naypyidaw[6] continued to pursue peace talks with ethnic armed groups. Despite the ethnic nationalities' repeated calls for a time-bound and collective dialogue with all groups, the regime imposed a three-step process (dialogue at state level, dialogue at national level and the signing of a formal peace agreement in Parliament) that lacked a specific timeframe and involved separate talks with each group. Twelve groups signed agreements with Naypyidaw.[7] The agreements mostly focused on procedural aspects (ceasefire, opening of liaison offices, territorial demarcation and economic assistance) but failed to address more fundamental political issues.

The regime dropped, at least momentarily, the thorny issue of incorporating ethnic armies into the Tatmadaw under the Border Guard Force (BGF) scheme. However, it excluded from the agenda any discussion of a long-lasting political solution that would ensure respect for the rights of ethnic nationalities within the framework of a genuine federal union.

Even more worryingly, Naypyidaw insisted that promoting economic development - and not addressing the ethnic nationalities' political grievances - would be the key to bringing peace to ethnic areas. As a result, the regime promoted its economic interests (and those of its affiliated business groups) during peace talks with the Karen National Union (KNU) and the New Mon State Party (NMSP). Naypyidaw also pushed ahead with the establishment of more industrial zones, which have been known to result in displacement, environmental degradation, human rights violations and the fueling of tension between the regime and ethnic communities. In October, the regime announced that five of the seven new industrial zones would be established in ethnic states, including three in Karen State alone.

Although peace talks contributed to a de-escalation of armed conflict in several ethnic regions, the situation remained tense and ceasefires fragile as a result of Naypyidaw's refusal to reduce its military presence in most areas. Tatmadaw troops frequently clashed with the Shan State Amy-South and Shan State Army-North in Shan State and with the Karen National Liberation Army in Karen State. Tatmadaw soldiers also continued to commit serious human rights violations

against local ethnic populations, including attacks against civilians and forced labour.

Ethnic parties shun by-elections, more voters disenfranchised

On 1 April, Burma held by-elections to fill 45 parliamentary seats that were left vacant by MPs – all from the pro-regime Union Solidarity and Development Party (USDP) – who had been appointed to positions in the executive branch. Disappointed by their experience during the 2010 general elections, which the international community had almost unanimously condemned as not free and fair, most ethnic political parties did not participate in these by-elections. Only five ethnic political parties took part, fielding a total of seven candidates. In addition, the regime, in a repeat of the 2010 elections, disenfranchised some 200,000 voters in ethnic areas. Nine days before the by-elections, the regime Election Commission (EC) abruptly cancelled the polls in three constituencies in Kachin State. The EC justified the move by claiming that the situation was not conducive to holding free and fair elections due to the ongoing conflict. The National League for Democracy, led by Nobel Peace Prize laureate Daw Aung San Suu Kyi, won 43 of the 45 seats at stake, with the two remaining seats going to the USDP and the Shan Nationalities Democratic Party (SNDP).

Legislative and executive powers fail to address demands of ethnic nationalities

The parliaments in the seven ethnic nationality states[8] continued to play very marginal roles throughout the year. In 2012, local assemblies sat for an average of less than two weeks, during which MPs failed to adopt any significant legislation. In Naypyidaw, the National Parliament, dominated by USDP and military-appointed MPs, while meeting more regularly than local assemblies, did not introduce any legislation aimed at addressing important issues for ethnic nationalities. In addition, Parliament failed to repeal or amend oppressive laws such as the Unlawful Association Act, which had been frequently used by the authorities to detain citizens, activists and politicians in ethnic nationality areas.

Ethnic political parties also complained that there were no representatives from ethnic nationalities among the 11 new ministers appointed by President Thein Sein during a wave of cabinet reshuffles in August and September.[9] ❍

Notes and references

1 UN General Assembly, 67th session, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, 25 September 2012, UN Doc. A/67/383
2 Human Rights Watch, *The Government Could Have Stopped This*, 1 August 2012
3 Deutsche Presse-Agentur, *Rohingyas are not citizens: Myanmar minister*, 30 July 2012
4 Democratic Voice of Burma, *Minister rejects calls for int'l investigation in Arakan*, 31 July 2012
5 Guardian, *Burma 'creating humanitarian crisis' with displacement camps in Arakan*, 13 July 2012
6 Naypyidaw is the name of the new capital and thus seat of the government.
7 The 12 groups are: Arakan Liberation Party (ALP), Chin National Front (CNF), Democratic Karen Buddhist Army (DKBA) 5th Brigade; Karen National Union (KNU), Karen National Union/Karen National Liberation Army Peace Council (KNU/KNLA Peace Council), Karenni National Progressive Party (KNPP); National Democratic Alliance Army (NDAA), New Mon State Party (NMSP), Pa-O National Liberation Organization (PNLO), Shan State Army-North (SSA-N), Shan State Army-South (SSA-S), United Wa State Army (UWSA)
8 Myanmar is divided into seven regions (previously called divisions) and seven states, the latter being classified by ethnic composition: Chin State, Kachin State, Kayin State, Kayah State, Mon State, Rakhine State and Shan State. The creation of five so-called Self-administrated Zones and a Self-administrated Division for ethnic groups with smaller, yet substantial populations is new
9 Irrawaddy, *Minorities still neglected, say ethnic MPs*, 4 October 2012

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SOUTH ASIA

BANGLADESH

The majority of Bangladesh's 143.3 million people are Bengalis, and approximately 3 million are indigenous peoples belonging to at least 54 different ethnic groups. These peoples are concentrated in the north, and in the Chittagong Hill Tracts (CHT) in the south-east of the country. In the CHT, the indigenous peoples are commonly known as *Jummas* for their common practice of swidden cultivation (crop rotation agriculture) locally known as *jum*. A 2011 amendment to the constitution refers to the indigenous peoples of Bangladesh as "tribes", "minor races" and "ethnic sects and communities". Bangladesh has ratified ILO Convention No 107 on Indigenous and Tribal Populations but abstained when the UN Declaration on the Rights of Indigenous Peoples was voted on in the General Assembly in 2007.

Indigenous peoples remain among the most persecuted of all minorities, facing discrimination not only on the basis of their religion and ethnicity but also because of their indigenous identity and their socio-economic status. In the CHT, the indigenous peoples took up arms in defence of their rights in 1976. In December 1997, the civil war ended with a "Peace"' Accord between the Government of Bangladesh and the Parbattya Chattagram Jana Samhati Samiti (PCJSS, United People's Party of CHT), which led the resistance movement. The Accord recognizes the CHT as a "tribal inhabited" region, its traditional governance system and the role of its chiefs, and provides building blocks for indigenous self-determination. The CHT Accord, however, remains largely unimplemented, which has resulted in continued widespread human rights violations, violent conflicts and military control.

Legal and constitutional rights

In 2012, the Wildlife (Protection and Safety) Act 2012 was adopted by Parliament although indigenous leaders, organizations and national and local envi-

ronmentalists criticized and expressed deep concern at some of its provisions. The Act strengthens the role of the Forest Department, it lacks the provision of assessing public opinion before declaring any area protected and it does not ensure forest people's rights regarding livelihoods and traditions. The application of the Act would thus severely affect indigenous peoples and communities who largely depend on the forest and natural resources, traditional livelihoods and occupations.[1] Another problematic law amendment is the proposed amendment

of the Forest Act of 1927, which has already been placed before Parliament. Indigenous peoples have criticized the proposed amendment for, among other things, seriously weakening the CHT Accord, the CHT Regional Council Act and the three Hill Districts Council Acts and for posing a threat to the livelihood of indigenous peoples. It is argued that indigenous communities will face massive displacement if the land under the Hill District Councils is brought under the proposed "Notified Forest" through the amendment and the Hill District Councils at the same time lose their legal status to oppose decisions of the forest department.[2]

Despite its commitment to fully implement the CHT Accord within its tenure, the government did not take any measures in this regard in 2012. Meetings at different levels over the amendment of the CHT Land Dispute Resolution Commission Act of 2001 as per the CHT Accord were held. Even the 13-point proposal for amendment prepared by the CHT Regional Council was adopted at the 4th and 5th meetings of the CHT Accord Implementation Committee and in an Inter-ministerial meeting held on 30 July with the Law Minister in the chair. However, the Act has yet to be tabled before Parliament and amended.[3]

Although the government proudly announced the transfer of authority of a number of departmental functions to the CHT Hill District Councils (HDCs) in November, most of these functions had already been transferred previously. The most crucial subjects, such as law and order, land and land management, police (local), secondary education and forest and environment have yet to be transferred to the HDCs.[4]

On a positive note, the Parliamentary Caucus on Indigenous Peoples has started drafting an "Indigenous Peoples' Rights Act" in order to protect and ensure the rights of indigenous peoples in Bangladesh.[5]

Human rights violations

The pattern of persistent and widespread human rights violations against indigenous peoples has continued and the impunity with which such violations are carried out irrespective of the perpetrators being state or non-state actors remains a serious concern. In 2012, the number of incidents of human rights abuse against indigenous peoples increased drastically compared to 2011, both in the CHT and in the plains. Eight people (two from the CHT and six from the plains) were re-

ported killed and 23 were either arrested or detained, while a further 133 were tortured or intimidated and 276 indigenous houses were demolished. A total of nine communal attacks were made on indigenous communities across the country, of which four were in the CHT and five in the plains. Moreover, 165 people fled and took shelter in the nearby state of India during brutal communal attacks on indigenous villages in Matiranga upazila (sub-district) under Khagrachari district. It is reported that Bengali settlers committed most communal attacks in the CHT with security forces playing a role either passively or collaboratively. In the plains, influential land grabbers carried out the attacks with the support of the local administration, including the police.[6]

Violence against indigenous women and children

Violence against indigenous women is a burning issues in Bangladesh and perpetrators enjoy absolute impunity due to a lack of access to justice. In 2012, a total of 75 indigenous women and children across the country were subjected to violence (55 were from the CHT and 20 from the plains). Of these, 17 (14 from the CHT and three from the plains) were raped. seven indigenous women were killed, of which four were from the CHT and three from the plains (one committed suicide due to sexual harassment). In addition, attempted rapes were made on 13 indigenous women (one from the plains, 12 from the CHT) while two women from the CHT were abducted. In addition, 33 indigenous women were physically assaulted, harassed and molested. Thirty out of the 75 victims were children under 16 years of age. Bengali settlers and security forces allegedly committed most of the cases of violence against indigenous women in the CHT. Cases were filed in 32 incidents and the police arrested perpetrators in 17 of these. No one has, however, so far been convicted.[7]

Land rights and land dispossession

Dispossession of indigenous peoples' land continued in 2012. In all, 565 land-related incidents were recorded in the CHT by the Kapaeeng Foundation. According to the records, two families were attacked, 10 people were assaulted and injured, 13 families were uprooted and some 540 families faced the threat of evic-

tion in connection with land grabbing. In the plains, in all, 243 land-related incidents were recorded. Fourteen houses were burned to the ground, 29 families were attacked, 17 people assaulted and injured and one killed. One hundred and eighty-five families were threatened with displacement. The number of incidents of arson, looting, assaults and killings in the CHT significantly decreased in 2012 in comparison with 2011. However, the number of incidents related to uprooting of families and threats of eviction increased dramatically. In the plains, the number of incidents of arson, looting, assaults, killings and threats of displacement increased significantly in 2012.[8]

The Land Commission mandated as per the CHT Accord to settle land disputes in the CHT remained non-operational in 2012. The term of the controversial chairman ended in July without the Commission having settled a single land dispute and no new chairperson has been appointed so far. The government has yet to form a Land Commission for indigenous peoples of the plains despite its assurances in its election manifesto that "Special measures will be taken to secure their original ownership on land, water bodies, and their age-old rights on forest areas. In addition, a land commission will be formed." The failure to settle disputes over land is the prime reason for the regular outbreak of conflicts and communal attacks, the continued process of forcible occupation of lands belonging to indigenous peoples and, in many cases also, the violence perpetrated against indigenous women.

Discriminatory attitudes towards indigenous peoples in the CHT

As reported in *The Indigenous World 2012*, the government has imposed restrictions on the travel and activities of foreigners visiting the CHT in the name of "higher security measures". The recent addition is the refusal to permit the entry of international human rights organizations into Bangladesh, particularly those working on CHT development activities. For example, Tom Eskildsen, Co-President of Jumma Net, Japan, and an adviser to the international CHT Commission, was denied entry at Hazrat Shajalal International airport on 23 July and deported from Bangladesh without explanation of the reason for his deportation.[9]

The discriminatory attitude towards indigenous peoples was also demonstrated in relation to the celebration of International Day of the World's Indigenous Peoples. The indigenous peoples of Bangladesh have been celebrating 9 August,

World Indigenous Peoples' Day, without any obstacles since the announcement of the first UN decade on indigenous peoples. However, on 11 March, the Ministry of Local Government and Rural Development issued a letter entitled "Regarding celebration of International Day of the World's Indigenous Peoples", which was sent to all Deputy Commissioners of the country who forwarded it to all lower administrative units. The letter asked all Deputy Commissioners:[10]

- to send necessary instructions to the relevant people to ensure that (on Indigenous Peoples' Day) high government officials do not give speeches that are contradictory to the policies of the government, taken at different times.
- to provide no government patronage during the International Day of the World's Indigenous People.
- to take steps to publicize, in the print and electronic media, the fact that there are no indigenous people in Bangladesh.

and directed:

- that unnecessary celebrations in the name of Indigenous Day in the month of August should be avoided as it is nationally recognized as the "Month of Mourning".

Some positive developments

The EU, UNDP, ILO, Oxfam GB and some other organizations took initiatives to address indigenous issues in Bangladesh last year. In 2012, national and international seminars were jointly organized by the Bangladesh Adivasi Forum, the ILO, the National Human Rights Commission, Oxfam GB, NGOs and civil society aimed at better understanding indigenous peoples' rights in Bangladesh. Ministers, Members of Parliament, civil society members and indigenous leaders all attended those events.

In connection with the review of the human rights situation in Bangladesh through the Universal Periodic Review (UPR) second cycle in April 2013, indigenous peoples' organizations throughout the country for the first time formed a coalition known as the "Coalition of Indigenous Peoples' Organizations of Bangladesh". The coalition prepared a joint submission report identifying a number of broad themes on areas of concern regarding the human rights of indigenous peo-

ples for the period 2009 to 2012. [11] The coalition will also engage in lobbying in relation to the UPR. ❍

Notes and references

1 http://www.thedailystar.net/newDesign/news-details.php?nid=241534
2 Kapaeeng Foundation information sharing, 25 December 2011
3 PCJSS annual report on the CHT Accord Implementation status, 2012
4 PCJSS annual report on the CHT Accord Implementation status, 2012
5 http://www.thedailystar.net/newDesign/news-details.php?nid=248046
6 Human Rights Report 2012, Kapaeeng Foundation
7 Ibid
8 Kapaeeng Foundation report on the human rights situation of indigenous peoples 2012
9 http://www.thedailystar.net/newDesign/news-details.php?nid=244866
10 11 April 2012: Kapaeeng Foundation information sharing; http://www.chtcommission.org/wp-content/uploads/2012/10/Letter_to_LGRD_Ministry.pdf
11 Source: Kapaeeng Foundation information sharing - Joint submission on the human rights situation in Bangladesh by the Coalition of Indigenous People's Organizations.

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NEPAL

According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 35.81% of the total population of 26,494,504, although indigenous peoples' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 indigenous peoples, 59 castes, including 15 Dalit castes, and 3 religious groups, including Muslim groups. Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been marginalized by the dominant groups in terms of land, territories, resources, language, culture, customary laws, and political and economic opportunities.

The 2007 Interim Constitution of Nepal promotes cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. Nepal's indigenous peoples are waiting to see how these intentions will be made concrete in the new constitution, which is still in the process of being promulgated. Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 and UNDRIP is still wanting, however, and it is yet to be seen how the new constitution will bring national laws into line with the provisions of ILO 169 and the UNDRIP.

Failure to adopt new constitution

In 2010, one of the committees of the Constituent Assembly (CA) mandated to prepare a concept paper, as well as to make recommendations on state restructuring and state power divisions for drafting of the Constitution, recommended the formation of 14 provinces, 23 autonomous regions and unspecified numbers of

special and protective areas based on the primary criterion of identity and secondary criterion of ability (see *The Indigenous World 2011*). Since then, political parties, including the Nepali Congress (NC) and the Communist Party of Nepal - Unified Marxist Leninist (CPN-UML), have tried to undo these recommendations (see *The Indigenous World 2012*). In 2012, the three main political parties decided to go for a vote at the CA on controversial issues such as the names and numbers of federal units. This was done with the expectation that the main political parties could control indigenous and Madhesi[1] CA members, through party whips, to vote against identity-based federalism.

In response to this, the Indigenous Peoples' Caucus and Madhesi political parties formed an alliance and, on 11 May, stated publicly that they would vote in favour of single identity-based federalism. Together with other CA members belonging to the Dalit Caucus, Muslims and CPN (Integrated Maoist), this alliance formed a majority in the CA. Faced with this prospect, the CA was dissolved on midnight of 27 May, thus failing to deliver the new Constitution by the 27 May deadline. The Prime Minister announced that elections would be held on 22 November although the Interim Constitution has no provision for holding fresh elections. Due to legal problems and political disagreements, the CA election was subsequently postponed to April/May 2013.

Continued indigenous pressure for identity-based federalism

In the lead-up to the deadline for promulgation of the Constitution in May, the Indigenous Peoples' Mega Front realized that there was a need for mass demonstrations along with intellectual debates to put pressure on the main political parties and dominant groups, and that such pressure would be possible only if each Indigenous Peoples' Organization (IPOs) were inspired to engage (see *The Indigenous World 2011 and 2012*). Leaders of the Mega Front and a number of IPOs' leaders therefore organized a series of events, starting with an international conference in Limbuwan (19-21 January), followed by similar events in Tamuwan (29 April-1 May), Tharuwan (11 May), Tamslaing (18 May) and Newa (19 May). During these events, positions on the nature of the right to self-determination, autonomy and self-rule were discussed and international experts, academics and activists from Switzerland, India and the USA were invited to share their views and interact with Nepal's indigenous leaders. Each event was followed by a

march, and the estimated number of indigenous peoples who marched in the streets of Dharan, Limbuwan was 20,000, in Pokhara, Tamuwan 60,000, and Dhangadhi, Tharuwan 70,000.

Just a week before the demise of the CA, the Indigenous Nationalities' Joint Struggle Committee, an alliance of NEFIN (Nepal Federation of Indigenous Nationalities) and other IPOs and fronts, enforced a nationwide three-day (20 to 22 May) general strike demanding identity-based federalism with autonomy and self-rule in the new Constitution. Hundreds of thousands of indigenous peoples marched in the streets of various parts of the country, with a greater concentration in the capital, Kathmandu. The protest was only called off after the government signed a nine-point agreement with the indigenous peoples' movement, promising ethnicity-based federalism.[2]

From movement to political parties

After the dissolution of the CA, NEFIN, the Indigenous Peoples' Caucus and other IPOs jointly organized a political conference in Kathmandu on 4-5 July. Indigenous leaders began intense soul searching during the conference and came to the conclusion that the main political parties, led by dominant groups, would never ensure identity-based federalism in the new Constitution and that an alternative political force was inevitably necessary. A task force was established to

form an indigenous peoples' political party, to be declared on 9 August. On that auspicious day, the manifesto of the Social Democratic Pluri-National Party was declared, creating a ripple through national politics.[3] Indigenous leaders associated with the CPN-UML[4] and NC[5] began to leave their respective parties *en masse*. Efforts were made to find common ground among indigenous leaders, with their previously varied political associations from left to right. All leaders were unanimously agreed on indigenous issues, including the right to self-determination, autonomy and self-rule but were polarized around ideological ones: left leaning groups insisted on Marxism as a guiding principle but considered pluri-nationalism and indigensim as debatable, whereas others, including those from the indigenous peoples' movement, were for social democracy, pluri-nationalism and indigenism but against Marxism as a guiding principle. As efforts to reconcile the two groups failed, left-leaning groups declared their Federal Socialist Party (FSP) on 22 November,[6] followed by the Social Democratic Party (SDP) led by a council of chairpersons on 30 December. Some indigenous intellectuals and movement leaders joined neither of the parties as the task of merging the different indigenous political parties or forming an alliance was necessary to advance the cause of indigenous peoples, especially autonomy and self-rule, in a meaningful way.

Dominant groups engineering a movement against indigenous peoples' demands

To counteract the indigenous demands, some Bahun and Chetri (dominant caste groups) political leaders from various political parties, including the CPN-Maoist, CPN-UML, NC and Rastriya Prjatantra Party, staged an indefinite strike, beginning on 27 April, with a demand for *Akhanda Sudurpacchim* ("Undivided Far-West") in the far-western region of Nepal, in order to deny autonomy and self-rule of the Tharu indigenous peoples, in particular, and of all indigenous peoples and the Madhesi, in general. Even the government's security forces and civil servants marched in the streets after their official duty was over, providing their full support to such a movement. In order to protest against the strike in the Tharus' ancestral land, around 70,000 Tharus and other indigenous and pro-indigenous peoples assembled in Dhangadhi on 11 May under the banner of the "Joint Tharu Struggle Committee" (JTSC). Police fired tear gas to disperse the masses and the activists threw stones at the hotel where indigenous leaders were residing. The strike was

used by the main political parties to prove that many "Nepalese people" are not in favour of identity-based federalism.

Racism rears its ugly head

On 8 May, the National Integrity and Ethnic Goodwill Society (NIEGS), comprising dominant groups, marched to the Tharu Museum at Danda in Nawalprasi district, set fire to it and vandalized the motorbike of a JTSC activist.[7] On 9 May, a clash took place between police and demonstrators at Kawasoti and Danda as the JTSC was calling a strike to protest at the vandalisation of Tharu Museum. The police fired 12 rounds of ammunition and 20 rounds of tear gas into the people, leaving at least 17 injured on either side.[8] Dhan Bahadur Thanet Tharu, who sustained a bullet wound during a clash with police at Danda of Nawalparasi, died on 5 June.[9] Bowing to intense pressure from NEFIN, the government declared Dhan Bahadur Tharu Thanet a martyr.[10] This unfortunate incident did not explode into communal riots, as the Tharu and indigenous leaders refrained from countering the violence however, it is an indication that racist riots could flare up at any time in the future.

Engineered census data

On 26 November, the findings of the 2011 census were made public. NEFIN rejected the findings as they showed a decrease in the total indigenous population from 37.21% in 2001 to 35.81% in 2011. The census data revealed that the number of caste and ethnic groups had gone up from 100 in 2011 to 125 in 2011, but removed 12 of the 59 indigenous peoples from the list, i.e. Thduam, Surel, Bankaraia, Larke, Baragaunle, Marphali Thakali, Mugal, Tangbe, Tingaunle Thakali, and two extinct groups, Chhairotan and Free, while adding the Athpahariya, Bahing, Bantawa, Chamling, Khaling, Kulubng, Loharunbg, Mewahang, Nachhiring, Sampangm Thulung and Yamfu, who were previously included under Rai indigenous peoples, and Ghale, previously included within the Gurung indigenous peoples.[11] To show their protest, NEFIN burnt copies of the census report on 2 December in front of the Central Bureau of Statistics in Kathmandu.[12]

Allegations against donors

Although international donors are required to forge new partnerships with indigenous peoples and implement them as per the objectives of the first and second International Decade of the World's Indigenous People, the funding available to indigenous peoples has thus far been negligible. Almost all donor money goes either to the Government of Nepal or to civil society, both controlled by the dominant groups. The dominant groups, however, often falsely allege that the UN, Norway, the UK and other Western donors are providing funding for caste- and ethnicity-based politics in Nepal. On 25 May, a delegation of Hindu upper-caste people complained to a group of diplomats representing the UNDP, Switzerland and the Department for International Development (DFID) that their support to certain groups in Nepal was being used against them. The UK Minister of State for International Development (DFID), Alan Duncan, replied that the comment was "biased", and that the DFID—Nepal office was helping Nepal implement its "own commitment on inclusion". He categorically denied that DFID was supporting the ongoing campaigns for federalism based on ethnic lines but he "strongly conveyed the message that the voices raised in the campaigns should be heard" and that "It's untenable and unacceptable that any society can have second class citizens and I have no doubt that lasting peace will only be achieved when Nepal has a truly inclusive society."[13]

Follow-up on CEDAW Shadow Report

To follow up the status of implementation of the concluding observations and recommendations made by the CEDAW (Committee on the Elimination of Discrimination against Women)[14] (see *The Indigenous World 2012*), the National Indigenous Women's Federation (NIWF) organized an interactive program between government officials and indigenous women leaders in Kathmandu on 27 November. The government officials confessed that they had done nothing so far but promised that they would try to implement the recommendations relating to indigenous women.

Reducing Emissions from Deforestation and Forest Degradation (REDD)

Nepal has been implementing the Readiness Preparation Plan (RPP) since 2010 and will complete it in 2013. In line with the RPP, the Climate Change and REDD Forestry Cell under the Ministry of Forest, Soil and Conservation prepared a draft framework for the national REDD+ strategy. In September, the Climate Change and REDD Forestry Cell presented the revised REDD+ Social and Environmental Safeguards (SES) indicators and gave 30 days' notice for further feedback and inputs, also announcing a national level multi-stakeholders' workshop on the indicators. In order to ensure that indigenous peoples' earlier feedback on the draft indicators had been duly included and that, among other things, proper reference was made to ILO Convention 169 and the UNDRIP, and recognition of indigenous traditional knowledge, skills and customary practices for sustainable management of the forest, NEFIN established a working team with the mandate of closely looking at the revised indicators. NEFIN participated in the indicators workshop in October and, jointly with the NIWF, submitted their final inputs within the month. ❍

Notes and References

1 Madhesis (referring to the Hindu caste groups of the Terai region) are regionally excluded groups but, since the Madhesi movement of 2007, they have emerged as the fourth most powerful political force. Their issues, such as regional autonomy, are, however, yet to be fulfilled.
2 http://www.ekantipur.com/the-kathmandu-post/2012/05/22/top-story/govt-janajati-groups-sign-9-pt-deal-banda-called-off/235169.html
3 http://www.youtube.com/watch?v=s0a1-p3csLw
4 http://www.myrepublica.com/portal/index.php?action=news_details&news_id=42982
5 http://www.myrepublica.com/portal/index.php?action=news_details&news_id=42928
6 http://www.thehimalayantimes.com/fullNews.php?headline=Rai+declares+Federal+Socialist+Party-Nepal+&NewsID=355247
7 http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal_Monthly_Update_2012-May.pdf
8 http://www.myrepublica.com/portal/index.php?action=news_details&news_id=34875
9 http://www.ekantipur.com/2012/06/06/top-story/nefin-activist-tharu-passes-away/355161.html
10 http://www.ekantipur.com/2012/06/07/top-story/cabinet-declares-thanet-a-martyr/355225.html
11 http://www.ekantipur.com/the-kathmandu-post/2012/12/01/nation/nefin-to-protest-census-report/242341.html
See also, a PowerPoint presentation on the 2011 Census by Yogendra Gurung in a program organized by NEFIN in Kathmandu on 6 January 2013.

12 http://www.ekantipur.com/2012/12/02/headlines/Indigenous-people-torch-copies-of-census-report/363527/
13 http://www.thehimalayantimes.com/fullNews.php?headline=Duncan+faces+questions+on+DFID%27s+role&NewsID=337547
14 http://www.unhcr.org/refworld/publisher,CEDAW,CONCOBSERVATIONS,NPL,4eeb45822,0.html

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INDIA

In India, 461 ethnic groups are recognized as *Scheduled Tribes*, and these are considered to be India's indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis,* which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called "central tribal belt" stretching from Rajasthan to West Bengal.

India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. India has a long history of indigenous peoples' movements aimed at asserting their rights.

Violent conflicts havebroken out in indigenous areas all over the country but, above all, in the Northeast and the so-called "central tribal belt". Some of these conflicts have lasted for decades and continue to be the cause of extreme hardship and serious human rights violations for the affected communities.

The Indian government voted in favour of the UNDRIP in the UN General Assembly. However, it does not consider the concept of "indigenous peoples", and thus the UNDRIP, applicable to India.

Legal rights and policy developments

The controversial Land Acquisition, Rehabilitation and Resettlement Bill 2011, which seeks to replace the controversial Land Acquisition Act of 1894 and

provides for mechanisms of land acquisition and adequate rehabilitation of all affected persons, could not be passed in Parliament at the end of 2012. The Bill, introduced into Parliament in September 2011, was referred to the Parliamentary Standing Committee on Rural Development for examination. The Committee submitted its recommendations in May 2012. The Bill was then referred to a Group of Ministers (GoM) due to differences within the Cabinet over certain provisions of the Bill. On 18 December 2012, the Bill, rechristened the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, was hurriedly moved in the Lok Sabha for consideration but deferred until the Budget Session in 2013 following objections by opposition members.[1]

Although the Bill has positive elements, it still has provisions that allow land to be acquired in 5th Schedule Areas for private companies and in forest areas in violation of the Forest Rights Act. The draft amendments were recommended by the GoM and finalized by the Minister of Law and Justice on 29 November 2012.[2] The provisions referring to Scheduled Tribes (STs) are found in clauses 38A and B. Clause 38A provides, among other things (e.g. details on monetary compensation), that:

- As far as possible, no acquisition of land shall be made in the Scheduled Areas;
- Where such acquisition does take place it shall be done only as a last resort;
- The prior consent of the concerned local governments (Gram Sabha, Panchayats or the Autonomous District Councils) shall be obtained in all cases of land acquisition in such areas;
- In case of a project involving land acquisition which involves involuntary displacement, a Development Plan shall be prepared, laying down the details of procedure for settling land rights. It shall also contain a programme for the development of alternative fuel, fodder and non-timber forest produce on non-forest lands;
- The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity;
- Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of current laws and regulations shall be treated as null and void and, in the case of acquisition of such lands, rehabilitation

and resettlement benefits shall be made available to the original tribal and Scheduled Caste land owners.

Clause 38B(3) refers to the Forest Rights Act (FRA) of 2006 and simply states that where communities' rights have been recognized under the FRA these rights "shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights."Clearly, this clause is in violation of the FRA. It allows for the acquisition of forest rights following compensation of their monetary value, which defeats the very purpose of the FRA.

At the end of 2012, the much-touted National Tribal Policy could not be finalized by the Ministry of Tribal Affairs despite the Parliamentary Standing Committee on Social Justice and Empowerment urging the Ministry to expedite the matter. In its report tabled in Parliament on 19 December 2012, the Committee asked the Ministry to take "expeditious action" to finalise the National Tribal Policy and place it before Parliament within three months for its consideration.[3]

Human rights violations against indigenous peoples

According to the latest report of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 5,756 cases of atrocities against indigenous peoples/tribals were reported in the country during 2011 as compared to 5,885 cases in 2010, showing a marginal decrease. For 2012, the NCRB statistics are not yet available but cases of human rights violations against indigenous peoples were reported at regular intervals.

Human rights violations by the security forces

In 2012, the security forces were responsible for alleged fake encounter killings, torture, arbitrary arrests and other human rights violations against indigenous peoples.

On 6 January 2012, a Bhil tribal died in custody in the Sorwa police station in Alirajpur district of Madhya Pradesh. He was picked up on 5 January 2012 by the police after being named in a First Information Report as the prime suspect in a murder case.[4]

On 3 February 2012, the police tortured a tribal woman, her two children and brother at Jhallar police station in Betul District, Madhya Pradesh. The victims were brought to Jhallar police station for questioning in connection with the death of the woman's husband on 3 February 2012. The victims were allegedly subjected to physical and mental torture by the police while in their custody. Two of the victims were minors and detention of minors is illegal under the Juvenile Justice (Prevention and Care of Children) Act of 2000.[5]

On 2 February 2012, two persons from Karoudi Khurd village under Barhi police station in Katni district of Madhya Pradesh claimed to have lost Rs.600. They suspected a 15-year old Class VIII student. They caught the victim and locked him up in their house while villagers gathered to thrash the boy, alleging he was a thief. They then took the boy to Barhi police station. At the police station,

the victim was locked up and beaten by the policemen. When he kept denying having stolen the money, four policemen allegedly inflicted electric shocks to his genitals and he sustained severe bodily injuries. Seeing that the teenager was in a critical condition, the police took him back to the village and left him a few metres from the hamlet. The local Scheduled Cast-Scheduled Tribes atrocities police station[6] refused to entertain the victim's complaint against the accused policemen, stating that there was no evidence. The victim then went to the office of the Superintendent of Police but there, too, his complaint was not entertained. In a report submitted to the National Human Rights Commission, the police denied the allegation of police torture but stated that departmental action had been taken against two police officers for their inaction and negligence.[7]

On 22 March 2012, a 40-year-old tribal woman was raped by four persons, including two members of the India Reserve Battalion (at Keinou village in Bishnupur district of Manipur.[8]

From 10-12 July 2012, a 60-year-old tribal woman was allegedly illegally detained for three days and tortured at Kotwali police station in Bundi district of Rajasthan. On 10 July, the victim, a widow, was allegedly forcibly picked up by police from a sheltered home in connection with cases related to one of her sons, who was accused of theft. The victim alleged that she was not allowed to leave the police station and was detained for three days in the lock-up and tortured by male policemen during interrogation. The victim suffered injuries and could hardly walk.[9]

On 13 July 2012, three tribals were killed by police in an alleged fake encounter at Mowamari village under Dudhnoi police station in Goalpara district of Assam. Police claimed all three youths were members of a banned organization and killed them during an encounter. The families of the deceased alleged that they were killed in cold blood in a fake encounter after being picked up on suspicion of being militants.[10]

On 17 September 2012, a tribal was tortured at Ganganagar police station under Gandecherra Sub-Division in Dhalai district of Tripura. The victim belongs to the Reang community, which is identified as a Particularly Vulnerable Tribal Group. He was picked up by police along with a tribal woman from his house. The police allegedly demanded Rs. 1000 for his release. He failed to pay, however, after which he was subjected to a beating by three policemen. The victim sustained serious injuries and one of his eyes was damaged.[11]

On 21 December 2012, a team of security personnel in army fatigues picked up three tribals from Narayanpur Bazar under Mushapur police station in Baksa

district, Assam. On 23 December 2012, the dead body of one of them was recovered, while another one survived with multiple injuries and walked back home. However, the whereabouts of the thirdremains unknown. It is suspected that he was also extrajudicially killed.[12]

Human rights violations by armed opposition groups

Armed opposition groups continued to be involved in gross violations of international humanitarian law, including killings, abductions and torture, during 2012.

The Maoists continued to kill innocent tribals on charges of being "police informers", or simply for not obeying their diktats. During 2012, the Maoists allegedly killed several tribals, among others in Koraput, Malkangiri and Koraput districts in Orissa;[13] and in Sukma district of Chhattisgarh.[14]

Apart from killings, the Maoists were also accused of sexual crimes. On 4 November 2012, two minor tribal girls, aged 12 to 14 years, allegedly raped by suspected Maoists, were rescued by security forces from the jungles of Bijapur district in Chhattisgarh. The medical examination of the two girls confirmed sexual abuse.[15]

Alienation of tribal land

The 5th Schedule and 6th Schedule to the Constitution of India provide stringent protection of land belonging to tribal peoples. In addition, at the state level, there is a plethora of laws prohibiting the sale or transfer of tribal lands to non-tribals and providing for the restoration of alienated tribal lands to them. Yet the lands of tribals continued to be alienated.

On 26 April 2012, Minister of State in the Ministry of Rural Development stated in the Lok Sabha that 437,173 cases of tribal land alienation had been registered, covering 661,806 acres of land in the states of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Tripura. Of the 437,173 cases, 217,396 cases had been disposed in favour of tribals, covering an area of 412,865 acres. However, 190,573 cases went against the tribals, covering an area of 334,684 acres. Another 30,687 cases remained pending in the Courts, covering an area of 54,247 acres.[16]

The conditions of tribal internally-displaced people

Development–induced displacement

The government admits that displacement of Scheduled Tribe people takes place during various development projects. However, there are no official figures available regarding such displacements. The National Rehabilitation and Resettlement Policy 2007 was formulated to address the problem of displacementsresulting from development projects. The Policy sets out the basic minimum requirements for all projects which lead to involuntary displacements. The policy has been circulated to various States and Union Territories for implementation.[17] However, the States are totally indifferent towards the plight of the tribals, who have been denied rehabilitation and compensation when their lands have been acquired for development projects.

Conflict-induced displacement

In 2012, the government failed to ensure proper repatriation and rehabilitation for conflict-induced internally-displaced people (IDP), including tribals.

In 2012, Assam witnessed another round of communal clashes between the Bodo tribals and Muslims in Bodoland Territorial Area Districts (BTAD) consisting of Baksa, Chirang, Kokrajhar and Udalgiri districts and, since July, neighbouring Dhubri district. The clashes displaced over 400,000 people from both the Bodo tribal and Muslim communities.[18] The state government started the rehabilitation process but hundreds of IDP families from both communities were still living in relief camps at the end of the year.

At least 30,000 Bru (also called Reangs) tribals of Mizoram continued to languish in the relief camps in Tripura at the end of 2012. The fourth phase of repatriation of Bru refugees, which began on 26 April 2012, ended in failure[19] despite the visit of then Union Home Minister P. Chidambaram to Tripura and Mizoram.

The plight of at least 30,000 Gutti Koya tribals of Chhattisgarh[20]who are living in miserable conditions in Khammam, Warangal and East Godavari districts of Andhra Pradesh continued to be deplorable. For example, the Gutti Koyas living in temporary accommodation in Khammam district have been denied Scheduled Tribe certificates in the district. Revenue officials have been refusing to issue the certificates to them as the Gutti Koya tribal group is not included on the list of Scheduled Tribes in Andhra Pradesh even though they are classified as tribals in Chhattisgarh. As a

result, the tribals were not able to access government schemes and justice under Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.[21]

Repression under forest laws

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the FRA) has been touted as progressive legislation aimed at undoing the "historical injustice" committed against the forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been living in the forests for centuries. However, the implementing rules for the FRA, passed in 2007, have ended up perpetuating the historical injustices.

As of 31 January 2012, a total of 3,168,478 land rights claims had been received across the country. Of these, a total of 2,724,162 cases (85.98% of the total received) had been disposed, out of which 1,251,490 titles (45.94%) had been distributed and 1,472,672 claims (54%) rejected. In terms of the rejection rate, Uttarakhand is at the top with 100%, followed by Himachal Pradesh (99.62%), Bihar (98.12%), Karnataka (95.66%), Uttar Pradesh (80.48%), West Bengal (73.12%), Maharashtra (67.91%), Madhya Pradesh (63.32%), Chhattisgarh (55.86%), Jharkhand (53.13%), Assam (50.94%), Rajasthan (49.85%), Andhra Pradesh (47.76%), Gujarat (30.95%), Orissa (30.75%), Kerala (16.95%), and Tripura (15.07%). The rejection rate of 11 states is above 50 per cent.

On 6 September 2012, the Government of India notified the FRA Rules 2012. The amended rules are certainly an improvement but the distribution of titles continues to be slow. By the end of 2012, the claims filed had increased to 3,237,656. However, only 27,686 titles had been distributed in 11 months, which brought the total of distributed titles up to merely 1,279,076. With 1,512,254 claims rejected, the rejection rate continued to be higher than the distribution rate.[22]

In its report submitted to Parliament on 19 December 2012, the Parliamentary Standing Committee on Social Justice and Empowerment, while taking note of the slow progress in distribution of title deeds under the ST and Other Traditional Forest Dweller Act, asked the Ministry of Tribal Affairs to involve itself in the implementation process and appropriately guide the states. The report stated, "State governments should be sensitised about their obligations

towards the Act and persuaded to initiate action at the earliest so that the work of distribution to title deeds take off without any further delay."[23]

Slow implementation of reservation in employment

In a welcome development, the Constitution (117th Amendment) Bill 2012 was passed by the Rajya Sabha, the Upper House of Parliament, on 19 December 2012. The Bill, which provides for government job promotions to be reserved for SCs and STs in proportion to their population, was approved by the Union Cabinet on 5 September 2012.[24] A Special Promotion Drive for SCs, STs and Other Backward Castes (OBC) since November 2008 had failed to achieve its target. According to a Note from the Department of Personnel and Training to the Cabinet, various departments and State-run undertakings had only been able to fill 17,898 of the 30,968 vacancies identified in the promotion quota as of March 2012.[25]

The situation was similar in direct recruitment. As of March 2012, various government departments had provided jobs to 27,540 SCs, STs and OBCs as opposed to an identified backlog of 46,552 vacant posts.[26]

Development fund for tribals reduced

In its report tabled in Parliament on 19 December 2012, the Parliamentary Standing Committee on Social Justice and Empowerment expressed the "utmost concern" at lower funding allocations for tribals in 2012-13. The Committee pulled up the Ministry of Tribal Affairs for not seriously pursuing the matter with the Ministry of Finance and the Planning Commission with regard toa higher budget and asked the Ministry to appraise it of the action taken by it in this regard. The Committee had noted that, in contrast with the 96.650 billion Rupees (1.86 billion US$) requested for its annual plan by the Ministry during the year 2012-13, the Planning Commission had allocated only 40.9 billion Rupees (US$ 786 million). As a result of the reduced allocation, which is less than 50 per cent of the requested budget, proposed new initiatives such as Adivasi Bhavan, the National Tribal Information System, or the planned 114 new

schools-cum-vocational training centres in Left-Wing Extremist tribal districts, could not be implemented during the year.[27] ❍

Notes and references

1 Land acquisition bill deferred till Budget session, *The Hindu*, 18 December 2012.
2 A copy of the report is available atAsia Indigenous and Tribal Peoples Network (AITPN):www.aitpn.org
3 Thirtieth Report on the action taken by the Government on the observations/recommendations contained in the Twenty-fifth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha)on Demands for Grants (2012-13) of the Ministry of Tribal Affairs.
4 NHRC Case No. 318/12/53/2012-AD filed by ACHR on 17 January 2012.
5 NHRC Case No. 416/12/5/2012 filed by ACHR on 8 February 2012.
6 Created in tribal areas in accordance with the Scheduled CasteandScheduled Tribe(Prevention ofAtrocities) Act of 1989.
7 NHRC Case No. 567/12/24/2012 filed by ACHR on 15 February 2012.
8 NHRC Case No. 61/14/1/2012-PF filed by ACHR on 10 April 2012.
9 AITPN compliant to NHRC dated 25 July 2012.
10 NHRC Case No. 346/3/6/2012-AFE filed by ACHR on 25 July 2012 .
11 AITPN complaint to the NHRC dated 21 September 2012, NHRC Case No. 45/23/5/2012.
12 NHRC Case No. 4/3/0/2013-AD filed by ACHR on 26 December 2012.
13 Tribal peasant killed by Maoists, *The Hindu*, 8 January 2012;Maoists kill tribal man in Odisha, *Zee News*, 19 January 2012; Koraput tribal killed; Maoist hand suspected, *The Pioneer*, 25 February 2012.
14 Maoists kill cop, civilian in Chhattisgarh, *Zee News*, 24 June 2012.
15 Two minor girls raped by Naxals rescued from Chhattisgarh jungles, Zee News, 4 November 2012.
16 Lok Sabha Unstarred Question No.3495, available at: http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=122082
17 Displacement of Tribals, Lok Sabha Unstarred Question No. 362.
18 Assam Riots: Preventable but not prevented, ACHR, September 2012.
19 Fourth phase of Bru repatriation ends, *The Times of India*, 16 May 2012.
20 National Commission for the Protection of Child Rights, "Visit to Dantewada (Chhattisgarh) and Khammam (Andhra Pradesh) to Investigate Status of Health and Education of Children affected by Civil Unrest 17th to 19th December 2007".
21 Migrant Gutti Koyas in a piquant situation in State, *The Hindu*, 24 February 2012 .
22 Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 [for the period ending 31st December, 2012], Ministry of Tribal Affairs, Govt. of India.
23 Thirtieth Report on the action taken by the Government on the observations/recommendations contained in the Twenty-fifth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha)on Demands for Grants (2012-13) of the Ministry of Tribal Affairs.
24 Rajya Sabha passes SC/ST quota bill, *Daily News and Analysis*, 17 December 2012.

25 No SC, ST, OBC candidates for 40 pc 'backlog vacancies', *The Indian Express*, 14 December 2012.
26 No SC, ST, OBC candidates for 40 pc 'backlog vacancies', *The Indian Express*, 14 December 2012.
27 Thirtieth Report on the action taken by the Government on the observations/recommendations contained in the Twenty-fifth Report of the Standing Committee on Social Justice and Empowerment (Fifteenth Lok Sabha)on Demands for Grants (2012-13) of the Ministry of Tribal Affairs.

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NAGALIM

Approximately 4 million in population and comprising more than 45 different tribes, the Nagas are a transnational indigenous people inhabiting parts of north-east India (in the federal states of Assam, Arunachal Pradesh, Nagaland and Manipur) and north-west Burma (parts of Kachin state and Sagaing division). The Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. Nagalim is the name coined to refer to the Naga homeland transcending the present state boundaries, and is an expression of their assertion of their political identity and aspirations as a nation.

The Naga people's struggle for the right to self-determination dates back to the colonial transfer of power from Great Britain to India. Armed conflict between the Indian state and the Nagas' armed opposition forces began in the early 1950s and it is one of the longest armed struggles in Asia. A violent history has marred the Naga areas since the beginning of the 20th century, and undemocratic laws and regulations have governed the Nagas for more than half a century. In 1997, the Indian government and the largest of the armed groups, the National Socialist Council of Nagaland Isaac-Muivah faction (NSCN-IM), agreed on a cease-fire and, since then, have held regular peace talks. However, a final peace agreement has not yet been reached.

Largely as a result of India's divide-and-rule tactics, the armed movement was split into several factions fighting each other. In 2010, the reconciliation process among the Nagas of the past years resulted, however, in the formation of a Joint Working Group of the three main armed factions, the NSCN-IM, the Government of the People's Republic of Nagaland/National Socialist Council of Nagaland (GPRN/NSCN) and the Naga National Council (NNC).

Progress in the peace talks in 2012

Over the past few years, talks on a comprehensive political package as a final outcome of the long-drawn-out peace talks between the Government of India (GoI) and the National Socialist Council of Nagaland, Isaak and Muivah faction (NSCN-IM) have been ongoing amid public cynicism. For the past 15 years, the negotiating parties have been claiming that good progress is being made but nothing concrete has been made public that would make one believe this claim. There was little change in this regard in 2012.

The possibility of a political settlement by early 2013 was much reported in the media. The Indian Express, one of the main national newspapers, reported on

15 October that the GoI had secured a written commitment[1] from the NSCN-IM that it would accept the Indian Constitution. The newspaper also reported that the Naga group recognised the impracticality of redrawing state boundaries in the interests of peace in the Northeast. The news article also claimed the existence of a basic document, mutually agreed upon by the two parties, with the outlines of a final settlement scheduled for early 2013.

However, nobody really knows what the framework of proposals or the mutually-agreed basic document referred to in the Indian Express (15 October) actually is. The national, regional and local newspapers nonetheless kept on featuring stories about the possibility of a settlement throughout the year. These were based on the following events:

- Newspapers reported that the GoI was working on a package to safeguard the identity and preserve the culture of the Nagas living in the hill districts of Manipur, parts of Arunachal Pradesh and parts of Assam. In this regard, on the advice of the Prime Minister, the Union Home Minister, Mr. Sushil Kumar Shinde agreed to conduct consultations with the Chief Ministers of the three States.
- On 9 October, Mr. Shinde held a consultation with the Chief Ministers of Arunachal Pradesh and Manipur to seek their opinion on a model for the agreement that was likely to be worked out. Apparently, Mr. Shinde discussed a six-point proposal with them. The Chief Ministers insisted on a written submission of the six-point proposal mentioned by Mr. Shinde but nothing has been forwarded to the State governments to date.
- According to newspaper reports, Mr. Tarun Gogoi, the Chief Minister of Assam has supported an early resolution, and even favoured the project of 'greater autonomy' for all Nagas, as long as it does not alter the territorial status quo of the State.
- In October, a 19-member delegation of the Joint Legislators' Forum (JLF) of Nagaland state called on the Union Home Minister, Sushil Kumar Shinde, to settle the Naga issue ahead of the Assembly elections in 2013. They appraised the Union Minister of the fact that all 60 Members of the Legislative Assembly (MLA) unanimously support an early resolution. The delegation was headed by the Speaker, Kiyaneilie Peseyie, Chief Minister Neiphiu Rio, and State opposition leader, Tokheho Yepthomi.

Hiccups in the talks

The year 2012 did not start well for the GoI and the NSCN-IM. There were major incidents that did not fit with the much-acclaimed progress in the talks reported in the media. Some of these were:

- In a letter dated 18 January, one of the key leaders of the NSCN-IM, Mr. Anthony Shimray, threatened to begin an indefinite hunger strike in Tihar Jail, seeking his unconditional release as a member of the peace talks. He further stated that since the peace talks were not taking place under the law and courts of India, any member of NSCN involved in the peace talks could not stand trial, and he appealed to the National Investigation Agency (NIA) to withdraw all the charges against him. He further stated that the hunger strike was also aimed at removing any hindrances that were blocking substantive progress in the peace talks.
- On 7 February, at a press conference held at NSCN-IM's headquarters at Camp Hebron in Nagaland state, Executive Member of NSCN-IM's Steering Committee and Convener of its Political Affairs Committee (PAC), V.S. Atem, along with Karaibo Chawang, Convener of NSCN-IM's Ceasefire Monitoring Committee (CFMC) alleged that the Chairman of the Ceasefire Monitoring Group (CFMG), N. George (representing the GoI) and 29 and 31 Assam Rifles (AR) had violated the ceasefire rules on the ground.
- They alleged that the NSCN-IM was served notification by N. George banning the carriage of weapons from 7-23 February, in blatant violation of the ceasefire rules. Further, they alleged that the 29 AR had been asking for land details of the designated Camp Hebron. And, later that month, the 31 AR wrote to the NSCN-IM Ao region calling on them to dismantle their camp at New Chungtia.
- A 5-day stand-off from 19-24 April between the AR and NSCN-IM led to a tense situation in the states of Manipur and Nagaland. The situation was defused only by the intervention of the Union Ministry of Home Affairs. The Naga army had accused the Assam Rifles of wilfully trespassing over the boundaries of Camp Hebron in Nagaland on 19 April, while the Assam Rifles maintained that NSCN-IM camps had been surrounded to ensure

that their cadres stuck to the rules laid down by the ceasefire monitoring group.

- This incident was actually a result of a large arms confiscation[2] made by the AR and state police as well as the arrest of 13 NSCN-IM cadres. The NSCN-IM retaliated by detaining six Assam Rifles personnel. While they released the Assam Rifles personnel that same day, they "confiscated" their weapons. The Army and the Assam Rifles had been putting pressure on the NSCN-IM to return these weapons, which led to the standoff.
- On 1 April, Capt. Yaomi of NSCN-IM was arrested by personnel from the 19 AR in Holom village in Tirap district, Arunachal Pradesh. He was tortured to death and his body was dumped in Khonsa District Hospital later.
- In yet another major upset for the NSCN-IM, on 18 December, Brigadier Absalom Raman, a well-respected leader, was arrested in Arunachal Pradesh by a joint team of Arunachal Pradesh and Assam police.
- On 21 December, representatives of the NSCN-IM were prohibited from leaving India by the immigration department at the orders of the National Investigation Agency (NIA) when they were on their way to attend the General Assembly of the Unrepresented Nations Peoples' Organisation (UNPO).

The proposed 'Framework for a Solution'

One prominent aspect over which there is much speculation is the probable framework for the solution. Nothing has been officially spelt out but a number of writers and newspapers are claiming that the framework for a final agreement is based on the so-called 'Supra State model'. This story was published in the Seven Sisters Post back in 2011. The discussions about the framework for a solution can be summarized as follows:

- The GoI is expected to make amendments to the Indian Constitution, either through a change to Article 371A or through the introduction of a new Article borrowing from Article 370, that give special Status to Jammu and Kashmir. Under this provision, the Nagas would have a separate flag and the Nagaland Legislative Assembly would be renamed the Tatar Hoho.
- Naga populations living in Assam, Manipur and Arunachal Pradesh would enjoy the same rights as those in Nagaland, i.e. in harmony with Naga

customary laws and cultural and educational aspirations, without changing the territorial status quo of the states.
- The contentious issue of the decommissioning of weapons is also being tackled with a proposal to regularize NSCN-IM cadres so that they can guard Naga areas alongside the Indian Army.
- There are provisions for different budget headings aimed at implementing development projects in all Naga-inhabited areas.

People's opinion and the opposition

Among the Nagas, the mood on the ground regarding the peace talks is cautious and skeptical. It is hard for anyone to know whether any of these much talked-about political developments find any acceptance among the people. This comes as no surprise since the talk of an early solution has remained among the negotiators only and one does not know how credible the reports in the newspapers are. Some renowned citizens and CSOs have reacted to this situation and, obviously, there are signs of protest at the current political deal, being called a sell-out. There is no way that the public can form an informed opinion on the so-called peace proposals. There is an inherent danger in this because it is hard to imagine a meaningful peace pact without the informed participation of the people.

While Mr. Tarun Gogoi, Chief Minister of Assam, is supportive of the idea of greater autonomy (without changing the existing boundary of the states), the Chief Ministers of Arunachal Pradesh and Manipur are not ready to examine even the concept of greater autonomy for Nagas in their respective states. At this stage, it is unclear how supportive they would be in facilitating or brokering a solution. Rather, they may end up on the side of the opposing groups. This could be particularly true when it comes to the issue of the Nagas in Manipur.

The National Socialist Council of Nagaland (NSCN) faction headed by S.S. Khaplang (NSCN-K) said that its organization would always stand on the people's side and that they would not accept a piecemeal solution (referring to the current peace proposals), as reported on 12 October in the E-Pao, a local daily of Manipur.[3]

NSCN-K and Burmese government sign cease fire agreement

On 9 April 2012, NSCN-K signed a five-point ceasefire agreement with the Burmese government at Khamti in Sagaing province. NSCN-K has managed to obtain some concessions, such as a ceasefire office at Khamti in Sagaing division, a sub-office at Thamadi on the Indo-Myanmar border and promises of roads, bridges and schools built in the districts under self-administration.

Three townships in Sagaing division have been given the status of self-administered zones: Leshi, Lahe and Nanyung townships. According to NSCN-K leader Wangtin Naga, they are demanding that the Nagas in the Naga-dominated districts of Kachin also be granted self-administration. Furthermore, they are demanding that mineral resources in Naga areas should not be explored or exploited without their consent.[4] ❍

Notes and references

1 Available at: http://www.indianexpress.com/news/breakthrough-nscn-commits-to-constitution/1016823/0
2 Available at: http://www.indianexpress.com/news/end-standoff-with-nscn-centre-tells-assam-rifles/940984/2
3 Available at: http://e-pao.net/GP.asp?src=24..251012.oct12
4 'Ceasefire with Myanmar is a historic achievement for Nagas', *The Times of India* May 16, 2012. http://articles.timesofindia.indiatimes.com/2012-05-16/guwahati/31725581_1_naga-areas-nscn-myanmarese

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MIDDLE EAST

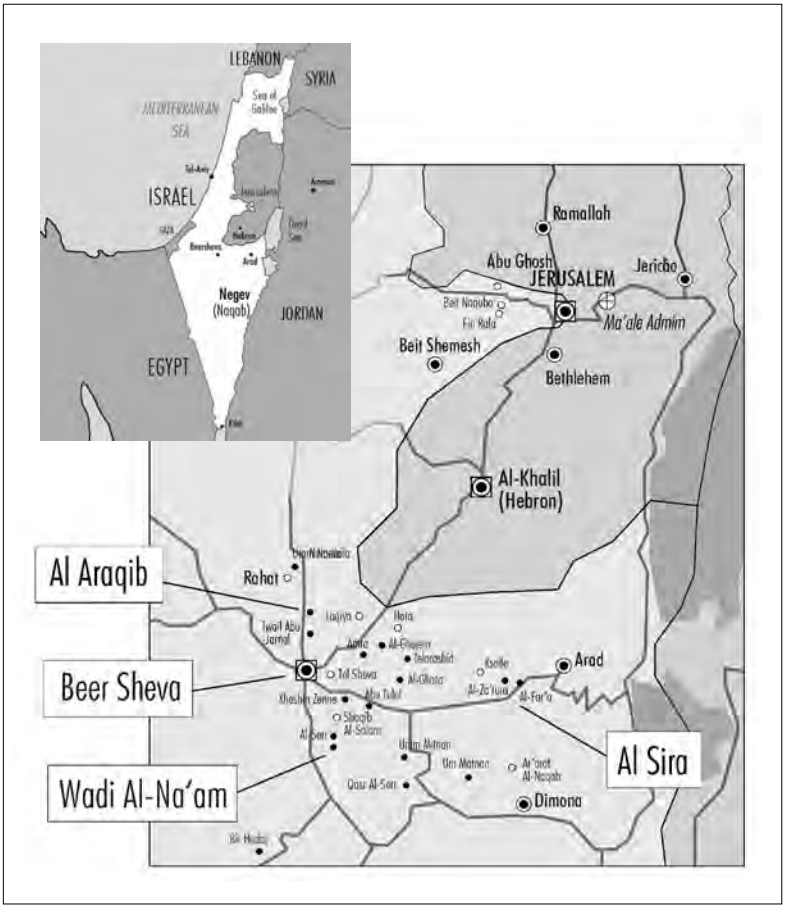
ISRAEL

Israel's Arab Bedouin are indigenous to the Negev-Naqab desert. Centuries ago, they were semi-nomadic. Bedouin combined herding with agriculture in villages linked by kinship systems, which largely determine land ownership. Prior to 1948, about 90,000 Bedouin lived in the Negev. After 1948 most were expelled to Jordan and Sinai. Only about 11,000 survived in Israel. In the early 1950s, the Israeli government concentrated this population within a restricted geographical area that was about ten percent of the Bedouins' former territory, with a promise of a return to their original lands within six months. This promise has yet to be fulfilled. According to the Central Bureau of Statistics, 53,111 Bedouin live in 35 "unrecognized villages", which lack basic services and infrastructure. The other 148,729 Bedouin live in seven townships and ten villages that have been recognized over the last decade. However, these townships and villages hinder the traditional Bedouin way of life and provide few employment opportunities.

Israel has not ratified ILO Convention No. 169 and has violated many of its provisions. Additionally, Israel did not participate in the vote on the UN Declaration of the Rights of Indigenous Peoples and has failed to meet this Declaration's provisions.

Policy towards Bedouin

The Prawer-Amidror Plan and the Master Plan for the Metropolitan Beer Sheva currently pose massive threats to Bedouin (See *The Indigenous World 2012*). The Prawer-Amidror Plan would displace at least 30,000 Bedouin citizens. Similarly, the Master Plan, which was approved in September 2012, would force, for example, the 1,000 residents of the unrecognized villages of Atir and Umm el-Hiran to be evacuated and their homes destroyed in order to develop a forest on the land of Atir and a Jewish village on the land of Umm el-Hiran.[1] NGOs filed



objections to this Master Plan but the National Planning and Building Committee rejected the majority of these objections on 5 June 2012.[2]

Frequent Magistrate's Court hearings also determine the status of Bedouin. In June, at least ten court hearings were held, trying Bedouin and activists for trespassing and illegally building on state land. The Negev Coexistence Forum (NCF)'s Executive Director, Haia Noach, stated, "The court has turned into another tool of the state to oppress the people and their struggle." However, some have fortunately been acquitted of these charges. On 10 October, the Beer Sheva District Court dismissed charges against Sheikh Sayyah Abu Mede-

ghem and his son Aziz. This acquittal was a testament to the effectiveness of Bedouin-led protests.[3]

On 8 October 2012, the formerly "unrecognized" village of Al Bagar was recognized as part of the Regional Council of Ramat Negev, which set a precedent in the Negev-Naqab. The state refers to this village as Ramat Ziporim and intends to concentrate all Arab Bedouin who live north of Mitzphe Ramon and surrounding Route 40 within Ramat Ziporim.

Demolitions

In 2012, demolitions took place on multiple occasions in the following unrecognized and recognized villages:

- **Al Arakib** (November 14, October 18, September 12, August 16 , July 17, June 24, May, April 23, March 6, February 13 and January 18)
- **Hirbat Al-Batal** (August 29, May 8 and May 2)
- **Wadi Ari'ha** (September 20 and July 4)
- **Bir Hadaj** (September 27, September 20, August 29 and June 11)
- **Segev Shalom** (July 4, June 11, May 8 and January 18)
- **Lakia** (March 6 and February 19)
- **Hura Area** (February 15 and January 9)

Additionally, demolitions occurred on one occasion in each of the following villages: Kochleh, Abde, Al Zarnug, Al-Sdir, Rachameh, Sawa, Umm Ratam, Tel-Arad, Aroer, Wadi Al-Na'am, Bir El-Hamam, Wadi Rwain, Hashem Zane, Alsira, Abu Krinat, Rahat, Tel Sheva, Aroer, and Umm Batin.

Since 2007, there have been 51 demolition orders on homes in Alsira (a village of 500 residents). On 6 December 2011, the Kiryat Gat Magistrate's Court cancelled these demolition orders. The judge who ruled on this case described the demolition orders as "disproportionate". The state, however, appealed this decision. The case was again heard on 3 December 2012 and postponed until April 2013.[4]

Elections reveal systematic disenfranchisement

Israeli parliamentary elections will take place on 22 January 2013. Bedouin, however, are pessimistic as to their potential impact on these. The Bedouin population has repeatedly been denied the opportunity to elect its own local council representatives from among Bedouin leaders. In response to an NGO campaign, the Israeli High Court ordered elections in December 2012 for the Abu Basma Council.[5] However, a few months ago, a Ministry of the Interior (MOI) committee split Abu Basma into two new regional councils and further delayed the elections.[6]

Role played by UN Mechanisms

The status of Negev Bedouin is a rising concern for the United Nations. In May, James Anaya, UN Special Rapporteur on the rights of indigenous peoples, met with NCF representative Dr. Mansour Nasasra and promised to pressure the Israeli authorities to drop the Prawer-Amidror Plan. The UN Committee on the Elimination of Racial Discrimination (CERD) also criticized the Prawer-Amidror Plan. In March, CERD strongly recommended that the government withdraw the Plan on the grounds that it is discriminatory (Concluding Observations, Paragraph 20). Rachel Rolnik, the UN Special Rapporteur on adequate housing, further addressed the problems inherent in the Prawer-Amidror Plan following a trip to the Negev in February.

Bedouin community organizing and advocacy

Bedouin have been highly organized and vocal this past year. On 29 April, Bedouin protests addressed the role of the Jewish National Fund (JNF) in destroying Al Arakib village in order to build a forest on the village's land. In May, Bedouin protested at the fifth "Conference of the Negev" in Beer Sheva. This protest focused on the marginalization of the Bedouin population due to the development of the Negev. Bedouin leaders had attempted to attend the conference but were denied entry. "The conference is at the expense of the Bedouin," said Sheikh Sayyah al-Touri, a Bedouin leader. On 18 October, 2,500 Bedouin and their supporters protested at the MOI offices in Beer Sheva in response to recent

police brutality and demolitions. The protest took place in conjunction with a strike, also opposing police brutality and demolitions. ❍

Notes and references

1 ידוהיבושייתבוטלבגנביאודברפכסורהתהנידמה .וואיצהליה. YNet. 27 September 2012. Retrieved from http://www.ynet.co.il/articles/0,7340,L-4286514,00.html

2 Adalah.org, 25 June 2012: Planning Council Rejects Objections filed against Master Plan for Beer Sheva; Decision Paves the Way for Evacuation of Unrecognized Villages in the Naqab. Retrieved from http://www.adalah.org/eng/?mod=articles&ID=1799

3 Adalah.org, 10 October 2012: Court cancels indictment against Arab Bedouin leader protesting against home demolitions in Al Araqib village in the Naqab (Negev). Retrieved from http://adalah.org/eng/?mod=articles&ID=1842

4 Adalah. Org, 3 December 2012: "Court Hears State Appeal Against Cancellation of All Demolition Orders Against 51 Homes in Unrecognized Arab Bedouin village of Alsira". Retrieved from http://www.adalah.org/eng/Articles/1881/Court-Hears-State-Appeal-Against-Cancellation-of

5 The Abu Basma Council is the regional council covering several Bedouin villages in the northwestern Negev desert of Israel.

6 **Kestler-D'Amours, Jillian:** 24 December 2012. Israel denies Bedouins right to elect representatives. *The Electronic Intifada*. Retrieved from http://electronicintifada.net/content/israel-denies-bedouins-right-elect-representatives/12034 (accessed: 2 April 2013).

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PALESTINE

Following Israel's declaration of independence in 1948, the Jahalin Bedouin, together with four other tribes from the Negev Desert (al-Kaabneh, al-Azazmeh, al-Ramadin and al-Rshaida), took refuge in the West Bank, then under Jordanian rule. These tribes, who number approximately 13,000 people, are semi-nomadic agro-pastoralists living in the rural areas around Hebron, Bethlehem, Jerusalem, Jericho and the Jordan Valley. These areas are today part of the so-called "Area C" of the Occupied Palestinian Territory (OPT). "Area C", provisionally granted to Israel in 1995 by the Oslo Accords and which was due to cease to exist in 1998, represents 60% of the West Bank. It is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, nature reserves and settler-only by-pass roads, all under Israeli military control.

The Bedouin living in the Occupied Palestinian Territory (OPT) are seeing their environment sliced off, paved, walled, fenced, dumped, polluted, overpumped, increasingly desiccated and degraded. Bedouin culture, both in the Negev (where up to 70,000 Bedouin are due for forced displacement by the Prawer Plan) and the OPT, is also rapidly being eroded, especially in Area C.

Visit by the UN Special Rapporteur on adequate housing

In her preliminary remarks following her 2012 official visit to Israel-Palestine, the UN Special Rapporteur on adequate housing, Prof. Raquel Rolnik, had this to say:

> *Throughout my visit, I was able to witness a land development model that excludes, discriminates against and displaces minorities in Israel which is being replicated in the occupied territory, affecting Palestinian communities. The Bedouins in the Negev – inside Israel – as well as the new Jewish set-*

tlements in Area C of the West Bank and inside Palestinian Neighbourhoods in East Jerusalem – are the new frontiers of dispossession of the traditional inhabitants, and the implementation of a strategy of Judaisation and control of the territory.[1]

The indigenous people in Area C not only suffer from land grabs by settlers and the Israeli state; they also have the misfortune to live on land which hosts the water, farmland, land reserves, road systems and all other resources supporting the Palestinian cities and villages of Areas A and B. Without these resources, Palestinian "cantons" will not be able to survive and will end as so many "Gazas" under Israeli control from "without". Little surprise that Naftali Bennett, rising star of the Habayit HaYehudi ("the Jewish Home", the political party of the Religious Zionists), past leader of the Judaea and Samaria ("Yesha") Council, former head of Benjamin Netanyahu's office, and an incoming cabinet minister, champions total annexation of Area C.

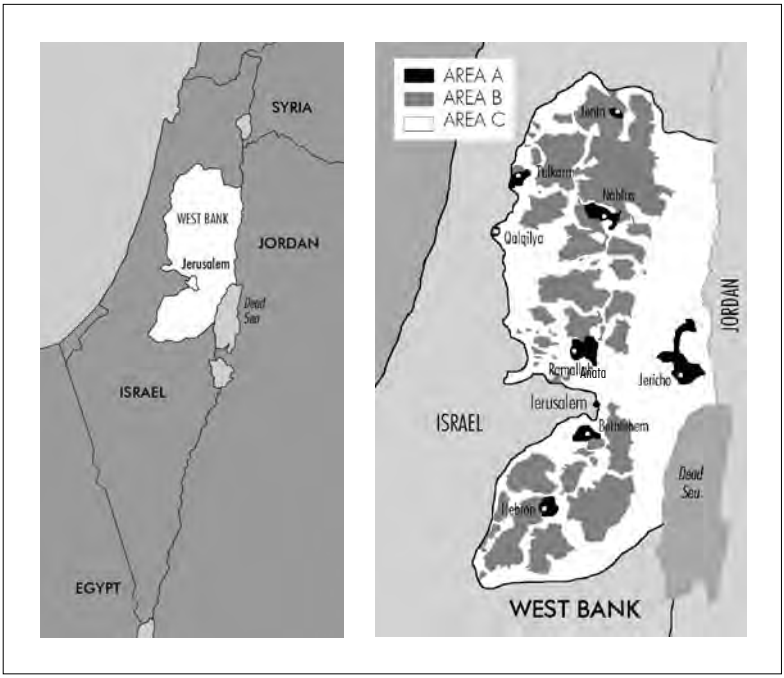
Living under harsh ongoing military occupation, these indigenous peoples are neither free to roam nor graze their animals; nor can they access markets, since the Wall and Military Closure policy have banned them from Jerusalem, their nearest city. As the UN Special Rapporteur, Prof. Rolnik, puts it:

Due to the barrier, settler expansion and violence, and the isolation of land as closed military zones, access to land to graze livestock, collect hay and water, and cultivate agriculture is severely restricted. Communities are now forced to purchase such necessities at a premium. This has resulted in a dramatic decrease in herd sizes and increase in debt. Inequality in the amounts of water made available to the Israeli settlements and those made available to the Palestinian population was visible: neighbouring settlements and villages had totally different patterns of water supply.

The Jahalin in the Judaean Desert

Prof. Rolnik elaborated specifically as to the Jahalin in the Judaean Desert:

I visited the Arab al-Jahalin Bedouin community of Khan al Ahmar in the area under the direct control of Israeli authorities. This community, among others



in the area of "Greater Jerusalem", has been informed by the Civil Administration that a master plan has been approved which would lead to their expulsion from the area where they currently live for the expansion of Ma'ale Adumim settlement. This plan was prepared without consulting the affected community. Furthermore, the authorities have recently built a road next to the community restricting access to the outside and isolating the inhabitants. The only school in the area, which was built by the community, is under a demolition order… The community is in great uncertainty regarding its future.

The people of Al Khan al Ahmar have still not exhausted all legal recourse. The military wants to move thousands of people to Jericho, against their wishes, where they would have to sacrifice their traditional way of life, including raising livestock, in order to live in a city – thus experiencing the same model of pressure the Bedouin in the Negev have experienced for the past 40 years. Constant, high-level advocacy may have delayed this forced relocation, but the inevitable is an-

ticipated in 2013, especially since the elections in January 2013 brought to power the most right-wing Israeli government ever. Moreover, diplomatic pressure was **not** in evidence recently in South Hebron Hills when military demolition orders were issued for donor-funded solar systems for herders; diplomatic pressure cannot therefore necessarily be relied on as a solution.

The case of the Bedouin of Wadi abu Hindi

The Bedouin of Wadi abu Hindi, near Jerusalem, are still in legal proceedings against their planned relocation but the Israeli Supreme Court has no record of dealing pro-actively with political issues: it always avoids "hot potatoes". Living in the shadow (and unhealthy stench) of the Jerusalem municipal garbage dump and that of two settlements – Qedar and Ma'ale Adumim – they are also threatened by these two settlements' plan to expand and join with each other.

The Bedouin of the Jerusalem Periphery

Another exquisite example of the current state of play is the Jahalin Bedouin, who have lived on or near E-1 since 1952.[2] They recently made the headlines as Israel threatened to punish Palestinian "chutzpah" [3] in successfully achieving UN Observer Status by "developing" E-1. E-1 is a tract of 12 sq. kms of land east of Jerusalem, lying between Ma'ale Adumim and East Jerusalem. The main strategic purpose of the planned "development" is to close off Jerusalem to the east (the wall, checkpoints, settler roads and East Jerusalem settlements having already closed off the northern and southern access routes to the city for West Bank Palestinians). This will curtail Palestinian East Jerusalemites' access to the land they need for their natural growth, and for West Bankers' access to Jerusalem. Once Israel has built on that land, it will permanently sever the West Bank into a southern canton separated from the centre (the northern canton similarly cut off by the Ariel settlement bloc), the border blocked off by the Jordan Valley settlement bloc, with water and farmland, the vital resources and support system for the remainder of the West Bank, all based in Area C. The eviction of Bedouin from E-1 would thus drive a Judaised wedge through that entire region, working to close the free access of West Bank Palestinians to their future capital in East

Jerusalem, delineating a judaised version of Greater Jerusalem in the entire region, and would have a fatal impact on Palestinian viability and the "two state solution". Denial of East Jerusalem as the Palestinian capital, and lack of contiguity or free access between Ramallah, East Jerusalem and Bethlehem also dispossesses the Palestinian economy of 35% of its potential income.[4]

Bedouin of the Jordan Valley

Here, too, Bedouin are the victims of Israeli land grabs. According to the UN Special Rapporteur, in 2011 the Jordan Valley "sustained the largest number of demolitions ... with 199 structures demolished and 401 people displaced".[5] They are also facing "temporary" displacements so that the military may hold exercises—the same reason given to Palestinian villagers in early statehood days. Such "reasons" were later seen as intentionally misleading as "temporary" came to mean "permanent"; "temporary" displacement thus comes burdened with resonance.

"We'll make a pastrami sandwich of them"

By moving the Bedouin to Jericho, Israel will be in grave breach of the Geneva Conventions and will probably be committing a war crime (or even, possibly a crime against humanity).[6] It will, however, bring to fruition Ariel Sharon's plan of the early 1970s, as told to Winston Churchill (Jr.)

> *We'll insert a strip of Jewish settlement in between the Palestinians, and then another strip of Jewish settlement, right across the West Bank, so that in 25 years' time, neither the United Nations, nor the United States, nobody, will be able to tear it apart.* ❍

Notes and references

1 UN Special Rapporteur on adequate housing. Preliminary remarks on the mission to Israel and the Occupied Palestinian Territory – 30 January to 12 February 2012. At http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11815&LangID=E

2 They have lived there since 1952, after being violently expelled from the Negev by Israeli forces, having refused to serve in the Israeli military. These early refuseniks are still paying the price, but never more than now.
3 "Chutzpah" can be translated as "nerve" or "great confidence and courage to do something that might involve being impolite to someone in authority".
4 Statistic of the NSU (Negotiation Support Unit of the Negotiation Affairs Department of the PLO)
5 UN Special Rapporteur Report, Preliminary Remarks 2012.
6 Diakonia's legal opinion http://www.diakonia.se/documents/public/IHL/IHLanalysis/Diakonia_Forced_Transfer_of_Bedouin_Communities_Legal_Brief.pdf

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NORTH AND WEST AFRICA

MOROCCO

The Amazigh (Berber) peoples are the indigenous peoples of North Africa. The most recent census in Morocco (2006) estimated the number of Amazigh speakers to be 28% of the population. However, the Amazigh associations strongly challenge this and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population may well number around 20 million in Morocco, and around 30 million throughout North Africa and the Sahel as a whole.

The Amazigh people have founded an organisation called the "Amazigh Cultural Movement" (ACM) to advocate for their rights. There are now more than 800 Amazigh associations established throughout the whole of Morocco. It is a civil society movement based on universal values of human rights.

The administrative and legal system of Morocco has been highly Arabised, and the Amazigh culture and way of life is under constant pressure to assimilate. Morocco has for many years been a unitary state with a centralised authority, a single religion, a single language and systematic marginalisation of all aspects of the Amazigh identity. Recent years have however seen positive changes, and the new Constitution of 2011 now officially recognises the Amazigh identity and language. This is a very positive and encouraging step forward for the Amazigh people of Morocco even though no steps have been taken to implement the Constitution yet.

Morocco has not ratified ILO Convention 169 and has not voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

The overall situation of Amazigh rights

A year and a half after the Moroccan Constitution was amended to establish equality between the Amazigh and Arabic languages, Tamazight has yet to be implemented concretely as an official language. It must be recalled that the

new Constitution gives equality to all Moroccan citizens, languages and cultures, and recognises the different international human rights conventions.

This official implementation is still awaiting enactment of the organic law that will establish rules as to how Tamazight is to be officially implemented, along with methods for integrating it into teaching and into life generally as an official language. Work to harmonise the legal arsenal with the new Constitution has not, in fact, yet commenced.

The Amazigh therefore do not yet have the right to use their own language in the country's courts. They still have to endure application of Article 5 of Law 3.64 of 26 January 1965 on the unification of jurisdictions, which pronounces Arabic the only language of use within the justice system, in flagrant violation of the

provisions of Articles 2 to 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

An Amazigh member of parliament, Fatima Chahou, spoke only in Tamazight during the parliamentary session of 30 April 2012, which was broadcast on Moroccan television. She called on the Minister for Education to ensure the widespread teaching of Tamazight in schools. Following this intervention, according to the parliamentary spokesperson, the Speaker of the House decided to ban the use of the Amazigh language due to a lack of available interpreters. The Amazigh movement reacted rapidly, denouncing this decision and describing it as an illegitimate and unconstitutional act, demanding that it to be reconsidered. Parliament responded by explaining that a lack of interpreting services was behind this decision, and calls were therefore made to provide interpreting in the Amazigh language as soon as possible.

Amazigh civil and political rights

Despite the generally favourable climate for Amazigh rights, the establishment of Amazigh political parties still seems to be taboo. The Amazigh Democratic Party (PAD), which was banned by the courts following the Minister of the Interior's referral of this matter to them in 2010, has still not recovered its legitimacy. The party leaders continue to demand their right to exist on a par with other political parties. A number of associations have still not received confirmation of their legal status: the AKAL association in Agadir, the Souss Association for Dignity -Al Karama- and Human Rights in Agadir, the Agadir section of the Izerfane Organisation, and the Tawada Association in Ouarzazate. These associations have met all the legal requirements stipulated in Article 5 of Law 00/75 on public freedoms but are still being refused the right to exist because of their Amazigh nature. This represents a flagrant violation of Article 5(d) indent 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.[1]

Amazigh and the land problem

The Amazigh used to live in communities with their economy based on the land (livestock rearing, subsistence agriculture, etc). The land was farmed commu-

nally under a system known as TAJMA3T (collective ownership). After colonisation, the state established a new land system and stripped the Amazigh of their land. More than 60 years on, this is emerging as a problem between the Amazigh and the state. The problem has become more acute in recent years with the High Commission for Waters and Forests' decision to demarcate state lands by the end of 2014.

The government and the High Commission for Waters and Forests are violating the indigenous communities' right to enjoy the use and ownership of lands they have lived on for centuries. This became clear over the course of the summer of 2012 with the publishing of press releases by the High Commission and the adoption of decrees by the government aimed at commencing this demarcation of so-called state lands in the Souss-Massa-Draa region to the south of Morocco, particularly around Chtouka Ait Baha, Ait Baâmrane, Ifni, Tanalt and Idda Ougnidif, with the intention of evicting the inhabitants and turning the lands into hunting reserves.[2]

The Amazigh associations are holding numerous meetings and focusing their demands on the right to land. The Tamaynut Organisation, the largest Amazigh organisation in Morocco, paid several visits to the Imider region[3] in 2012, where the indigenous population have been staging a sit-in since August 2011 in demand of their right to operate the silver mine that is established on their lands.

In fact, the *Société Métallurgique de Imider* (Imider Metallurgy Company/SMI) has been working a silver deposit on the communal lands of the inhabitants of Imider since 1969, drawing the necessary water for mineral treatment from the water table and expelling pollutants, at no advantage to the local population, and not even employing the local unemployed youth. In recent years, the people of Imider have noted a highly disturbing drop in the water level of nearly 60%, rendering some previously productive plots virtually useless. Whole fruit orchards have been lost for lack of water.[4] The Amazigh of Imider are demanding a share of the profits, work for the young unemployed, respect for international standards and respect for the environment.

Teaching the Amazigh language

The new school year 2012 was characterised by the Minister for Education's commitment to move forward with the teaching of the Amazigh language. A number of

circulars were sent to school institutions and to ministerial delegations calling on those responsible to make efforts to encourage the widespread teaching of Tamazight. This has not been followed up, however, partly due to a lack of resources, particularly human, and partly due to a lack of will on the part of head teachers, who have little motivation to commence teaching this language despite its official status.

Moreover, the Ministry of Education does not always provide pupils and teachers with curricula and educational materials in Tamazight, and the teachers do not receive sufficiently clear, in-depth or adequate training to be able to teach it.

Information

Information is a crucial demand for the Amazigh movement in terms of promoting the Amazigh language and culture. The Amazigh TV station "Tamazigh TV" operates with a far smaller budget than the Amazigh would wish. Moreover, in 2012, the *Société Nationale de la Radio et Télévision* (SNRT) decreased the proportion of Amazigh broadcasts on public Arabic-speaking channels from 30% to less than 20%. This yet again reflects the secondary place of the Amazigh language and culture in Morocco's visual landscape.

Continuing hope

Although 2012 was considered by observers to be North Africa's Arab Spring, Morocco spectacularly escaped the troubles that hit the region, largely by virtue of its long history of flexible politics. The struggle of the Amazigh cultural movement takes place within a context of peaceful demands and within the framework of the international human rights conventions, giving it enormous credibility and power of advocacy. It is to be hoped that this combination of flexible politics from the Moroccan government and peaceful demands from the Amazigh will lead to a greater enjoyment of human rights for Morocco's Amazigh people. ❍

Notes and references

1 Annual statement from the «Azetta Amazigh» *Réseau Amazigh pour la Citoyenneté* on the situation of Amazigh linguistic and cultural rights in Morocco during 2012, on the occasion of the 64th anniversary of the publication of the Universal Declaration of Human Rights. http://www.amazigh-world.org/studies/index.php

2 Ibid

3 Imider is a small commune nestled at the foot of the High Atlas mountains, some 300 km to the south-east of Marrakech, between Tinghir and Boumaln-N-Dadès, on the N10, the main road linking Ouarzazate and Errachidia. It is a desert zone scattered with small settlements, the existence of which is closely linked to the presence of water. Around 5,000 inhabitants live in the seven villages of this commune (Ait-Mhend, Ait-Ali, Ait-Brahim, Anou N Izem, Izoumken, Taboulkhirt and Ikis),and they are primarily devoted to subsistence farming (market gardening and small livestock rearing).The inhabitants of this region are Amazigh.

4 Report written by members of the World Amazigh Congress (CMA), in coordination with APMM-Maroc, Tinghir section, December 2012
Report sent to the UN Special Rapporteur on the rights of indigenous peoples, to the UN Committee on Economic, Social and Cultural Rights, the EU Delegation for relations with the Maghreb countries, the European Parliament and NGOs.

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ALGERIA

The Amazigh are the indigenous people of Algeria, as well as of other countries of North Africa and the Sahara, and have been present in these territories since ancient times. The Algerian government, however, does not recognise the indigenous status of the Amazigh. Because of this, there are no official statistics concerning the number of Amazigh in Algeria. On the basis of demographic data relating to the territories in which Tamazight-speaking populations live, associations defending and promoting the Amazigh culture estimate the Tamazight-speaking population at around 11 million people, or 1/3 of Algeria's total population. The Amazigh of Algeria are concentrated in five large regions of the country: Kabylia in the north-east, Aurès in the east, Chenoua, a mountainous region on the Mediterranean coast to the west of Algiers, M'zab in the south, and Tuareg territory in the Sahara. A large number of Amazigh populations also exist in the south-west of the country (Tlemcen and Béchar) and also in the south (Touggourt, Adrar, Timimoun...), accounting for several thousands of individuals. It is also important to note that large cities such as Algiers, Blida, Oran, Constantine, etc, are home to several hundred thousand people who are historically and culturally Amazigh but who have been partly arabised over the course of the years, succumbing to a gradual process of acculturation.

The indigenous population can primarily be distinguished from other inhabitants by their language (Tamazight), but also by their way of life and their culture (clothes, food, beliefs...). After decades of demands and popular struggles, the Amazigh language was finally recognised as a "national language" in the Constitution in 2002. Despite this achievement, the Amazigh identity continues to be marginalised and folklorised by state institutions. Officially, Algeria is still presented as an "Arab country" and anti-Amazigh laws are still in force (such as the 1992 Law of arabisation).

Internationally, Algeria has ratified the main international standards, and it voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, these texts remain unknown to the vast major-

ity of citizens and, thus, not applied, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria in this regard.

Legislation maintains Amazigh marginalisation

The state's resources continued to be directed almost entirely at promoting Algeria's Arabo-Islamic identity during 2012, while the Amazigh identity remained hidden and relegated to an inferior position. The budget devoted to promoting the Amazigh language and culture through the High Commission for Amazigh Affairs (HCA), the official body attached to the Office of the President of the Republic for this purpose, was 96 million Algerian Dinars (AD), or 0.0015% of the 2012 general state budget, for a population that comprises one-third of the country's inhabitants.[1] The Amazigh TV channel does not have the resources to

produce or buy programmes and, consequently, around half of its airtime is spent broadcasting in languages other than Tamazight. Teaching of the Amazigh language also remained handicapped due to an absence of funding, along with a lack of high-quality educational resources. Alongside this, anti-Amazigh laws such as the Law on Arabisation remain in place, and new ones have been enacted such as the 2012 Law on Association, which restricts individual and collective rights and freedoms.[2]

According to this law, no association can be established without the prior agreement of the authorities, and they can refuse a request for registration if the association's goals and objectives are "in contrast with national constants and values". It does not specify, however, what these "national constants and values" are. The new law also prohibits associations from "interfering in the internal affairs of the country", which means they are not able to express a point of view on government policies. All contact with foreign NGOs is now subject to the approval of the Ministry of the Interior and the Ministry of Foreign Affairs. "These provisions are a serious blow to the right to freedom of association," said Mr Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in May.[3]

The rights of Amazigh women are governed by a "Family Code" which relegates women to a position of inferiority and submission to men. Based on Islamic Sharia Law, this text and the resulting practices are a violation of the rights of Algerian women generally and of Amazigh civilisation and conscience. The Amazigh people reject this legislation, which authorises polygamy, makes women minors for life and prohibits them from marrying non-Muslims. The rights of Amazigh women are being flouted because Algerian law ignores Amazigh traditional and customary law, known as "Azref".

Deteriorating socio-economic conditions

Algeria's Amazigh are prevented from benefiting from the natural resources found in their territories (water, forests, oil, gas, etc.). In the Sahara, the Mozabite and the Tuareg receive no benefits from the energy resources of their sub-soil, and the waters of the Kabylia and Chenoua mountains benefit large cities such as Algiers first and foremost, with no compensation for the local people. Amazigh living in rural and mountainous areas consequently survive due only to the remit-

tances sent home by emigrants. Unemployment in these regions is three times higher than the national average. Young people, in particular, are now seeking solace in alcohol and drugs, exile and suicide, this latter henceforth in a new form: setting fire to oneself. The Tizi-Wezzu University Hospital considered this phenomenon to be of sufficient concern and importance that it devoted a scientific conference to the issue in June 2012. Experts advanced socio-economic reasons but also noted a lack of cultural reference points and recommended listening more to young people and addressing their social and cultural needs (work, housing, recreation...). The Algerian authorities provide no reliable or exhaustive statistics with regard to this subject, which is considered taboo, but judging by the cases reported in the media it would seem that there are around 40 suicides every year in Tamazight-speaking regions.

Under the pretext of the war on Islamic terrorism, the Algerian government has sent massive military reinforcements to Kabylia, in particular, a mountainous region close to Algiers. This region has the highest concentration of armed forces in Algeria but also the greatest level of insecurity (murders, armed robberies, kidnappings). During 2012, Algerian soldiers killed a number of citizens and wounded several others "in error", according to official reports. The victims are sometimes caught in the crossfire of armed operations against Islamist terrorists but these incidents can also occur for no apparent reason, at any time and in any place. Abductions of people for ransom were also commonplace in 2012 although there are no official statistics nor any information on the identity of the perpetrators of these kidnappings as the Algerian authorities are extremely secretive with regard to all issues of security.

Restrictions on basic freedoms

Freedom of movement is restricted both inside and outside the country. The land border with Morocco has been closed since 1994, thus preventing Amazigh on both sides of the border from making contact, as provided for by the UN Declaration on the Rights of Indigenous Peoples, which has been adopted by Algeria.

The M'zab region is regularly shaken by violence between the indigenous Mozabite population and the Chaambas Arabs. According to civil society organisations in M'zab, the Algerian authorities are fuelling the conflict by discriminating against indigenous people. Moreover, acts of police and judicial intimidation and

harassment are a constant for all human rights activists and members of independent associations. The members of the Amazigh World Congress (CMA) and the Movement for an Autonomous Kabylia (MAK) are particularly targeted.

A 19-year state of emergency that gave the administration, police and army unlimited powers was lifted in February 2011 but, to date, the same restrictions on freedoms remain in place. All organisational activity is subject to the authorisation of the administration. During the course of 2012, numerous scientific and cultural activities were thus banned because they were being organised by associations independent of the Algerian authorities. The authorities are still refusing to authorise the registration of the Kabyle Women's Association and the Amazigh Human Rights League, whose applications were submitted to the Tizi-Wezzu Wilaya (Prefecture) in 2005. ❍

Notes and references

1 Ministry of Finances, www.mf.gov.dz

2 Law No.12-06 of 12 January 2012 on associations, Official Journal No. 2 of 15/01/2012

3 **Mr. Maina Kiai**, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: "Algeria: Upcoming elections must address civil society's legitimate demands on freedom of association", 4/05/2012, Geneva, http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=12110&LangID=E

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MALI

Mali's total population is estimated at about 15.5 million inhabitants. The Tuareg represent approx. 10% of the population. They live mainly in the northern regions of Timbuktu, Gao and Kidal, which together cover 2/3 of the state's surface of 1,241,021 km^2. This territory they share with the also semi-nomadic Berabich (Arabised Berbers) (Moors), the Kounta (Arabs) and the nomadic Fulbe or Peul. The Songhaï live in the cities of Gao and Timbuktu and on the more fertile lands near the Niger River.

Traditionally, Tuareg are semi-nomadic pastoralists, rearing dromedaries, goats and sheep. They occasionally engage in trade, bartering game and dromedary meat, along with rock salt, in return for dates, fabrics, tea, sugar and foodstuffs. They have a distinct culture and way of life for which they have their own concept "temust", which can be translated as "identity" or "nationality". They speak the Tamashek language.

Tuareg living in Mali belong mainly to three different traditional political entities called "confederations": the Kel Tademekat living around and north of Timbuktu; the Welleminden living east of Gao having Menaka and In Gall in the state of Niger as their main urban centres; the Kel Adrar living around the Adrar Massif and the city of Kidal. Each of these political entities has a paramount chef, or *Amenokal* in Tamashek. During French colonial times, it was the colonial power that appointed the new *Imenokalen* (plural for Amenokal). The Kel Adrar were subject to the Amenokal of the Kel Ahaggar, the most powerful "confederation" living around the Hogar Massif in the south of the state of Algeria, before the French decided to break it up and appoint a separate Amenokal for the Kel Adrar.[1] Each confederation is made up of tribes belonging to one of the five classes of Tuareg society: the *imazighen* or nobility, the *ineslimen* or religious experts, the *imghad* or vassals, the *inaden* or handicraft workers and the *iklan* or servants/slaves. Very slowly, the rigid difference between these classes is diminishing.

The Constitution of Mali recognises cultural diversity and the National Pact recognises the specific nature of the Tuareg-inhabited regions. In

addition, legislation on decentralisation gives local councillors, including some Tuareg, a number of powers, although not the necessary resources with which to exercise them.

Mali voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the state of Mali does not recognise the existence of indigenous peoples on its territory as understood in the UNDRIP and ILO Conventions.

The MNLA

Without doubt, the major event of 2012 was the Tuareg uprising, led by the *Mouvement Nationale de Liberation de l'Azawad* and the Declaration of Independence on 6 April 2012.

This uprising should be considered the culmination of a long history of resistance against (French) colonialism and its heritage, of which the most recent chapter was the uprising led by Ibrahim ag Bahanga in 2006-2009 (see *The Indigenous World* 2007, 2008 and 2009).

In 2009, the militarisation of the Adrar (Kidal region) by the Malian Armed Forces became so strong that ag Bahanga went into exile in Libya, where relatives of his had already fled after the uprising of the early 1990s. In Libya, ag Bahanga made plans with one of his nephews, Mohamed ag Najim, a colonel in the Libyan Armed Forces and commander of Gadhafi's elite desert units. In a 2011 interview with the Algerian newspaper Al Watan, Bahanga stated: "The disappearance of Al-Qaddafi is good news for all the Tuareg in the region… His departure from Libya opens the way for a better future and helps to advance our political demands. Now he's gone, we can move forward in our struggle." On 26 August 2011, ag Bahanga died in a car accident. In September 2011, Tuareg originally from Mali, both professional soldiers from the Libyan Armed Forces and recent young mercenaries, returned to the Adrar, bringing their weaponry with them.[3]

In the meanwhile, Tuareg students and young graduates, fed up with the broken promises, the violations not only of the spirit but also of the letter of the consecutive peace agreements, the lack of any economic or political perspective within the framework of Mali, founded the *Mouvement National de l'Azawad*

(MNA) in Timbuktu on 1 November 2010. This was the outcome of the International Congress of the Youth of the Sahara. Although they were a peaceful, civil society association, two of the main promoters, Mossa Ag Acharatmane and Boubacar Ag Fadil, were arrested by the Malian state security even before the end of the conference.[4] Following strong protests, they were released. Together with others, they fled and went in exile. Despite the repression, they managed to publish several open letters to the people of Azawad, to the people of Mali and to the international community. They promoted a multi-ethnic Azawad identity and, in their manifesto, called on the global community to recognise the right to self-determination of the people of Azawad, a region they defined as the territory of the three northern provinces of the state of Mali. They also denounced the presence

of AQMI (Al-Qaida division of Islamic North Africa) in Azawad and the complicity of the state security forces in drugs trafficking.

In October 2011, Tuareg fighters of the *Mouvement Touareg du Nord Mali pour le Changement* (MTNMC) (the new name of ag Bahanga's groups since his return to the Adrar in January 2011), the returnees from Libya led by Mohamed ag Najim and the MNA held long talks in the oasis of Zakak. The outcome was the formation of the *Mouvement National de Libération de l'Azawad* (MNLA). Hama ag Sid'Ahmed, ag Bahanga's father-in-law and former spokesperson of the MT-NMC explained: "We discussed the past errors of certain leaders of the movement. We talked about where things had gone wrong and tried to agree on a plan and on some common objectives. We created a ruling council, a military joint staff, commanded and coordinated by Mohamed ag Najim and other senior officers. There are 40 of them. And we created a political bureau which set about analysing and considering all political aspects, including how to raise awareness among the international community, especially the regional powers." [5] Bilal ag Acherif, a cousin of ag Bahanga, was chosen as Secretary-General.

Ansar Eddine

Iyad ag Ghali, the emblematic leader of the uprising of the early 1990s, who is also associated with the failure of the agreements signed at that time in Tamanrasset and Algiers, and the failed National Pact, also came to the meeting at Zakak. He wanted to become Secretary-General of the MNLA but his candidacy was rejected for several reasons, in particular, a mistrust in his sincerity to defend the option of independence because of his obscure dealings with the Algerian and Malian governments and his Islamist visions.[6] Shortly after, he also attended a meeting of the leaders of the Ifoghas, the most noble clan of the Kel Adrar, from among whom the Amenokal of the Kel Adrar is appointed. Although himself an Ifoghas, his candidacy here was also rejected.[7] The old Amenokal Intallah ag Attaher appointed one of his sons, and an MP in the Malian Assembly, Alghabass ag Intallah, as his future successor. Iyad then decided to create his own movement under the name of Ansar Eddine (Sword of the Faith), precisely the same name as the biggest Muslim organisation in Mali, with hundreds of thousands of followers in the south.

Having made different calls to Bamako, in late November 2011, the Malian regime dispatched a delegation of elected Tuareg National Assembly deputies to

meet the MNLA in the desert north of Kidal. They found it shocking to listen to the MNLA discourse pronounced by the relatively young Bilal ag Acherif. On 7 January 2012, Bamako sent Mohamed ag Erlaf, a former Tuareg rebel leader and a senior bureaucrat in the Malian administration in charge of the "Special Programme for Peace, Security and Development in the North" (PSPSDN) (see *The Indigenous World 2011*). He proposed a set of promises similar to those made in the 1990s and in 2006. This included particular offers aimed at dissociating Iyad ag Ghali from the MNLA, such as creating a new post of Islamic judge (*cadi*) for each of the administrative regions in the north and an imam for every important mosque. The MNLA leadership were outraged when they heard these divide-and-rule proposals.[8]

Independence of Azawad

On 17 January 2012, the MNLA launched its military offensive and took three small towns: Menaka in the Far East, and Aguelhok and Tessalit in the north. In Aguelhok, however, they were not alone. Ansar Eddine fighters joined the offensive against the Malian garrison stationed there. On 24 January, around 70 to 153 captured Malian soldiers were reportedly extra-judicially executed by having their throats cut. It is unclear under whose command this happened.[9] A week later, the MNLA attacked Léré and Niafounke, two towns south of Timbuktu. It became clear that the MNLA was able to attack where and when it wanted. This created a widespread fear among the Malian Armed Forces. On 22 February, the Malian Army retaliated by bombing the camp of Inkoudoudoukoume, made up of Kel Essouk Tuareg nomads, about 20 km east of Kidal.[10] On 22 March, a young US-trained captain, Amadou Haya Sanogo, instigated a coup d'état to overthrow the elected president Ahmadou Toumane Touré (ATT). This provoked a clash within the Malian Army between red berets loyal to the elected president and green berets backing the overthrow. Sanogo accused ATT of deliberately refusing to seriously tackle the Tuareg uprising in order to create a situation which would allow him to postpone the upcoming elections and hold on to his presidency.

Using this widespread confusion within the Malian Army and society in general, the MNLA launched an offensive to take the three major cities of Azawad. On 30 March it took Kidal, the next day Gao and, on 1 April, Timbuktu. However, this time they were joined not only by Ansar Eddine but also by units of AQMI and the *Mouvement pour l'Unicité et le Jihad en Afrique Occidentale* (MUJAO), an AQMI split-off

led by Berabich. The frontline was established on the Léré – Douentza line. There was a fear of foreign intervention among the MNLA leadership and this stopped them from attacking the Islamist forces. They therefore also secured the airports, leaving the centres of the cities to the Islamists. The MNLA established its headquarters in the largest city, Gao. On 6 April, the MNLA proclaimed Azawad independence. This proclamation was declared null and void by the French government, the EU, the UN and its member states. Gradually, the three Islamist organisations became more obvious, using their economic resources to buy over soldiers from the MNLA. The MNLA ran out of resources, both economic and human. This gave people who had joined the MNLA only after its military success, such as Alghabass ag Intallah, an opportunity to plead for a merger between the MNLA and Ansar Eddine. On 27 May, this merger was publicly announced but met with immediate and strong opposition from a sector of the MNA, Tuareg civil society and women. Shortly after, it was again abrogated when it became clear to everybody that Iyad wanted Azawad to be an Islamic state and to impose the Salafist version of sharia. Alghabass ag Intallah, however, joined Ansar Eddine. There has long been disbelief among the elder generation of Tuareg that Iyad really wanted to provoke a religious shift in Tuareg society and beyond. Hama ag Sid'Ahmed testified to a journalist in early 2012: "I know that Iyad is an important person in the region and that he's involved in religious matters. But I cannot believe that he would completely abandon the tolerance that is part of our Tuareg culture. Not for a second. Maybe Iyad and others realise that AQMI has a hold on some of our young people, and they're trying to present a different message about Islam that might possibly win back all those that the Salafists have co-opted into their ranks."[11] This disbelief would soon turn into a disaster for the MNLA.

Azawad under sharia terror

On 27 June, the MUJAO attacked the headquarters of the MNLA in Gao and, after heavy fighting, the MNLA was driven out of the city. It had already lost Kidal to Ansar Eddine and it finally also withdrew from Timbuktu. From that moment on, the Islamist organisations imposed a Salafist version of sharia on all places that they occupied. In Kidal, there were a number of protest marches by Tuareg women, but in vain. For the first time in history, Tuareg men lashed Tuareg women with whips in order to disband the marches. Throughout the entire year, the Islamists

were supplied with fuel from Algeria. Even in early January 2013, just before the French intervention, eye witnesses stated how several convoys of large trucks transporting 200 l containers of fuel from the Algerian border town of Bordj Badji Mokhtar had entered Gao and Timbuktu.[12]

On 10 October, Romano Prodi was appointed as UN special envoy for the Sahel.

These different acts of war have caused a vast displacement of people. According to the UNHCR, over 250,000 persons have fled to the neighbouring countries of Burkina Faso, Mauritania, Niger and Algeria. Around 167,000 have been internally displaced within Mali.[13] ❍

Notes and references

1 http://www.canal-u.tv/video/universite_toulouse_ii_le_mirail/furigraphier_le_vide_art_et_poesie_touareg_pour_le_iiie_millenaire_helene_claudot_hawad.10202
2 http://www.mnlamov.net/
3 Andy Morgan, "The Causes of the uprising in Northern Mali", 6 February 2012, available at http://thinkafricapress.com/mali/causes-uprising-northern-mali-tuareg
4 https://www.lapetition.be/en-ligne/Petition-pour-la-liberation-de-Mossa-Ag-Acharatmane-et-Boubacar-Ag-Fadil-8626.html
5 Andy Morgen, op. cit.
6 He brokered the release of Western hostages taken by AQMI. In 2007, he was nominated consul of Mali in Jeddah, Saudi Arabia, until he was expelled in 2008 after the Saudi government found out about his consorting with Al Qaeda activists. And in October 2011 itself, he was asked by the Malian president Touré to head a delegation to convince Tuareg fighters returned from Libya to reintegrate into Malian society.
7 A female delegate told him that he would have a long way to go before his fundamentalist dream of a sharia-dominated society became true, as he would have to climb over the bodies of all the dead women of Azawad. (Andy Morgen, op. cit.)
8 Andy Morgan, op. cit.
9 FIDH, War crimes in North Mali, http://www.fidh.org/IMG/pdf/mali592ang.pdf
10 Amnesty International, press release: "Mali: le gouvernement doit cesser de bombarder les civils." 23 February 2012.
11 Andy Morgan, op. cit.
12 Christophe Boisbouvier, "Le plus dur reste à venir.", Jeune Afrique n² 2717, 3 February 2013.
13 BBC Afrique, "Crise Malienne: l'appel du HCR", 3 August 2012.

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NIGER

Niger's indigenous populations are the Peul, Tuareg and Toubou. These peoples are all transhumant pastoralists. Niger's total 2009 population was estimated at 14,693,110. 8.5% of the population are Peul, i.e. 1,248,914 individuals. They are mostly cattle and sheep herders but some of them have converted to agriculture because they lost their livestock during the droughts. They live in all regions of the country. The Peul can be further sub-divided into a number of groups, namely the Tolèbé, Gorgabé, Djelgobé and Bororo. 8.3% of the population are Tuareg, i.e. 1,219,528 individuals. They are camel and goat herders. They live in the north (Agadez and Tahoua) and west (Tillabery) of the country. 1.5% of the population are Toubou, i.e. 220,397 individuals. They are camel herders and live in the east of the country: Tesker (Zinder), N'guigmi (Diffa) and along the border with Libya (Bilma).

The Constitution of June 2010 does not explicitly mention the existence of indigenous peoples in Niger. The rights of pastoralists are set out in the Pastoral Code, adopted in 2010. The most important rights in the code include an explicit recognition of mobility as a fundamental right of pastoralists and a ban on the privatisation of pastoral spaces, which poses a threat to pastoral mobility. An additional important element in the Pastoral Code is the recognition of priority use rights in pastoral homelands (*terroirs d'attache*). Niger has not signed ILO Convention 169 but did vote in favour of the United Nations Declaration on the Rights of Indigenous Peoples.

Niger – a secure "island" in a sea of insecurity

The regional context of Western Sahel changed significantly on 22 March 2012 when the coup d'état in Bamako paved the way for the occupation of northern Mali by three extremist groups Mujao (*Mouvement pour l'Unicité et le Jihad en Afrique de l'Ouest)*, Ansar Eddine (*Défendeurs de la Foi*) and Aqmi (*al-Qaida au Maghreb Islamique*). This has changed the lives of every Nigerien citi-

zen for the worse, one example being, according to Nigerien Foreign Minister Mr. Mohamed Bazoum, that investments in social services have reduced, as the government has been forced to reallocate the national budget for 2012 and 2013 from services to security.

For the pastoral groups, the situation in northern Mali has had catastrophic consequences by rendering mobility both more difficult and more costly, and by putting increasing pressure on strategic pastoral resources (pasture and water) in Niger due to the large influx of refugees. Many pastoralists have been forced to abandon their traditional transhumance routes - through northern Mali - and are instead having to use new routes along which they have no prior experience and no social network. The latter is a guarantee that they will be welcomed by host communities, thereby minimizing the risk of conflict. Using unfamiliar transhumance routes also makes illegal taxation by public and traditional authorities

more likely. One example during 2012 was the Togolese Savanna region (*Région de Savane*), where a circular was issued on 22 May ordering all pastoralists to remove their herds from the region within ten days or pay a fine of 50,000 francs per herd of 50 cattle.[1] This was in spite of the existence of the international transhumance certificate in the ECOWAS zone.

South Niger also shares a border with a troubled neighbor, Nigeria, and the increasing activities of Boko Haram in 2012 threatened to spill over into south-eastern Niger. The border was therefore closed between Niger and Nigeria in the eastern part of the country throughout most of the food crisis (please see section below). This had a severe impact on the capacity of pastoral groups to cope as their terms of trade deteriorated due to Nigeria's large influence over the market supply of cereal and demand for livestock. Pastoralists depend on the market for their cereal, and prices increased sharply in 2012 due to a lower supply coming in from Nigeria. In addition, the border closure meant that fewer Nigerian traders showed up at the largest camel market at N'guel Kolo, and pastoralists had to settle for half the price a Nigerian trader would have paid.

Pastoralists still marginalized in emergency response

The 2012 Sahel food crisis put an estimated 18.7 million people at risk of hunger and 1.1 million children at risk of severe malnutrition. In Niger alone, 6.4 million - out of a population of 14 million - were affected by food insecurity. The crisis prompted the largest humanitarian response the region had ever seen, and at global level this averted a large-scale disaster. The food crisis was coupled with a refugee crisis sparked by the occupation of northern Mali. The refugee and returnee figures reached 75,973 people in August 2012, with 52,518 officially registered by UNHCR[2] and more than 20,000 reported by CARE in Banibangou in Western Niger.[3] Refugee camp situations are not well adapted to the livelihoods of pastoralists, which meant that most pastoralists remained outside of the camps and therefore received less aid.

This influx put further pressure on water points and pasture, already stretched because more Nigerien pastoralists had stayed in the country rather than leaving for transhumance due to security reasons. Western Niger - bordering the Gao region of northern Mali - was especially affected, as noted by the Executive Sec-

retary of the largest pastoral association of Niger, AREN (*Association pour la Rédynamisation de l'Élevage au Niger*):

> *I was out by a permanent lake on the Niger – Mali border, where all the pastoralists had gone in search of water and pasture during the drought. I have seldom seen so many dead animals; there were animal carcasses everywhere. Both pastoralists from Niger and Mali had gone to the same lake. There were so many pastoralists; one would think that there were no more left in the rest of the country. After a short time, there was no more pasture left, but by then it had become too late to move elsewhere, because the animals were already in too bad a shape* (Dodo Boureima, 24.07.2012).

Pastoralists were marginalized from the 2012 emergency response both due to a badly adapted response and a response which was out of sync with the needs of these groups. In terms of timeliness, pastoralists are affected by food access issues earlier than other groups and need support to access animal fodder, water, vaccinations and to destock, in March and April, not May and June, when the emergency operation commenced. In addition, the refugee camps did not correspond to the needs of pastoralists as these are a sedentary type of settlement. The targeting and distribution of aid was only to a limited degree based on the needs of mobile groups, as needs assessments did not factor in the issue of mobility and nor did the actual aid distributions.[4] Pastoralists' needs were relegated to a few specialist NGOs rather than being addressed through national systems and hence remained marginalized.[5] As part of the fight to adapt emergency measures to the needs of pastoralists, Billital Maroobé[6] conducted a study on the feasibility of establishing a regional network of animal fodder banks (available at: http://www.maroobe.org), with the aim of integrating it into the regional food security reserve as an element of the ECOWAS regional agricultural policy, as adopted by the Committee of Ministers on 27 September 2012.

Violations of pastoralists' human rights in Niger

A conflict between pastoralists and agriculturalists developed into a tragic incident on 19 June 2012 when five pastoralists lost their lives and 14 more were injured. The incident took place in the Zuzu Peul camp in the canton of Koygolo**,** and the

killings were carried out with axes. A young man lost his life three weeks after the incident because of his injuries. In terms of material losses, 44 houses were burned down and seven sheep and one goat were killed. This was allowed to happen because the institutional and non-institutional actors failed to play their roles as defined by Nigerien law[7] whereby community and group chiefs have the power to facilitate a verbal conciliation process and to document the case and submit it to the public authorities. This case is now under investigation and AREN is following the process closely.

Pastoralist meeting

The European Commission, in collaboration with the African Union, organized a briefing meeting in Brussels on 22 February 2012 on issues and opportunities related to pastoralism, at which Billital Maroobé was invited to present an analysis of the West African pastoral situation. Later on in the year, Billital Maroobé participated in the meeting of the Expert Group under the global alliance for resilience in West Africa known as AGIR.[8] Billital Maroobé participated in a meeting with the Department for Agriculture, Environment and Water Resources of the ECOWAS Commission on September 6 and 7 to discuss its role as a pastoral association in the implementation of the ECOWAS agricultural policy. At national level, AREN was planning to organize its General Assembly in June 2012 but was forced to postpone due to the food and pasture crises. ❍

Notes and references

1 In particular, Circular N² 018/2012/RS/PKp of 22 May 2012, signed by the Kpendjal Prefect (Savanes Region, Togo)
2 http://data.unhcr.org/MaliSituation/country.php?id=157
3 Being outside the camps (mainly pastoralists), not being captured and assisted by the official system.
4 One way of factoring mobility into needs assessments is to do rapid biweekly updates on population movements, and distribution centers can be adapted to a context of mobility by being floating rather than fixed centers.
5 http://m.irinnews.org/Report/96638/Analysis-Sahel-crisis-lessons-to-be-learnt
6 The network covers seven countries (Senegal, Nigeria, Niger, Burkina Faso, Mali, Benin and Mauritania) and represents a total of 400,000 pastoralists. It was established ten years ago in 2003 and plays the role of advocacy at the ECOWAS level concerning pastoral issues, espe-

cially in relation to the regional agricultural policy (ECOWAP) and the ECOWAS action plan on pastoralism.

7 According to Law N² 93-028 of 30 March 1993 concerning the status of traditional chiefs in Niger and modified by Law N² 2008-22 of 23 June 2008.

8 http://www.oecd.org/swac/topics/agir.htm

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BURKINA FASO

Burkina Faso has a population of 14,017,262 (4th General Census of Population and Housing, December 2006) comprising some 60 different ethnic groups. The indigenous peoples include the pastoralist Peul (also called the *fulbe duroobe egga hoɗɗaaɓe,* or, more commonly, *duroobe* or *egga hoɗɗaaɓe)* and the Tuareg. There are no reliable statistics on the exact number of pastoralists in Burkina Faso. They live throughout the country but are particularly concentrated in the northern regions of Séno, Soum, Baraboulé, Djibo, Liptaako, Yagha and Oudalan - areas which are geographically isolated, dry and economically marginalised. Human rights violations and abuses are common and include demolition and burning down of houses, theft of belongings, and the killing of animals and people, including children and elders.

In some parts of Burkina Faso, Peul pastoralists are gradually becoming sedentarised. There are, however, still many who remain nomadic, following seasonal migrations and travelling hundreds of kilometres into neighbouring countries, particularly Togo, Benin and Ghana. Unlike other populations in Burkina Faso, the nomadic Peul are pastoralists whose whole lives are governed by the activities necessary for the survival of their animals and many of them still reject any activity not related to extensive livestock rearing.

The existence of indigenous peoples is not recognised by the Constitution of Burkina Faso. The Constitution guarantees education and health for all; however, due to lack of resources and proper infrastructure, the nomadic populations can, in practice, only enjoy these rights to a very limited extent. Burkina Faso voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples, but has not ratified ILO Convention 169.

An inventory of the violence against nomadic *egga hoɗɗaaɓe* pastoralists[1]

In 2012, the greatest number of human right violations and abuses against nomadic pastoralist - of whatever kind - were recorded. Over the past year, the *egga hoɗɗaaɓe* of Burkina Faso were subjected to a number of manhunts. This term relates specifically to punishing a nomadic pastoralist or group of nomadic pastoralists, for an error committed or allegedly committed by another pastoralist, nomadic or sedentary. No-one is spared because of their age, far less their innocence (see also The Indigenous World 2012, 2011 and 2010).

The reasons for the manhunts that took place in 2012 are complex and difficult to discern although it is clear that they are, in part, linked to the impunity that is gradually becoming a part of Burkina Faso's culture, and also to the fact that the nomadic pastoralists are a minority group in many areas where natural resource management is leading to increasing problems.

In all, during 2012, manhunts took place in nomadic pastoralist communities in at least six regions: Central Plateau Region (Bomboré V, Ganzourgou Province, January 2012), Boucle de Mouhoun Region (Passakongo, Mouhoun Prov-

ince, April 2012), Ziga Department (Nagrin, Sanmatenga Province, June 2012), Gombousgou Commune (Saré Peul, Zoundweogo Province, July 2012), South-West Region (Tonkar, Poni Province, August 2012) and Centre East Region (Zabré, Boulgou Province, December 2012). Also in 2012, the first common grave, in which six Peul corpses were buried, was found in Burkina Faso.

Quite apart from causing the death and serious injury of various people, both Peul and non-Peul, the main consequence of these violations has been that thousands of nomadic pastoralists have been forced to abandon their homes and belongings in order to save their lives, sometimes seeking refuge across the national border. More than 2,000 nomadic pastoralists thus fled their homes in 2012. The Tonkar events of August 2012, for example, resulted in 264 internally displaced persons, the Passakongo events of April 2012 in 308 internally displaced persons and the Zabré events of December 2012 in 1,437 internally displaced persons.

Another six hundred nomadic pastoralists left Burkina Faso following the Zabré events of December 2012 to seek refuge in Ghana.

Prevented from taking part in democratic elections

Combined municipal and parliamentary elections took place in Burkina Faso on 2 December 2012. In Bonkoulou village, Poni Province, council delegates noted that, at Polling Station No. 1 in Loropéni, "the land chief stood alongside the polling station officers from the moment the doors opened, banning one ethnic group from voting", namely, the Peul.[2]

The abduction of Idrissa Tall at a bus station

Idrissa Tall, a Peul, was kidnapped on 15 August 2012 "from a TSR coach on his way to Boromo, administrative capital of Balé Province in the Boucle du Mouhoun Region, where he lived with his parents". In fact, his father had sent him to the rural commune of Djigouè to sell a bull in preparation for the feast of Ramadan. It was as he was returning home that he was intercepted by a furious crowd who bundled him off the coach and took him before several witnesses. Even members of the CRS (Burkinabe riot squad) who were present did nothing, a family mem-

ber confided, explaining that Idrissa Tall's oppressors then took him deep into a forest to the north of the bus station, some 500 m away, and murdered him. The remains of his body were discovered by his family on 16 September.[3]

Possible ways of reducing the violence against nomadic pastoralists

Unlike in previous years, nomadic pastoralists were not the only targets of the manhunts in 2012. At Tonkar, for example, Mossi people were also the victims. At Zabré, Peuls who could in no way be considered nomadic pastoralists also suffered. The fear is thus that such events are revealing, and are the consequence of, a collapse in state authority.

In an attempt to ensure the greater safety of both lives and property of nomadic pastoralists, on 29 January 2012, Tabital Pulaaku International[4] (TPI) established a Technical Commission responsible for pastoralism and conflict management,[5] which is trying to find a regional solution to the violence against nomadic *egga ho*^{2} ^{2} *aa*^{2} *e* pastoralists. ADCPM, an association that defends the rights and cultural diversity of minority peoples, has organised numerous meetings with nomadic pastoralist leaders and indigenous populations in Benin, Burkina, Ghana, Niger, Nigeria and Togo, on the violence being unleashed against them. With IWGIA's support, the association has also produced a documentary film on the human rights situation of the Peuls in Burkina Faso and neighbouring countries including many testimonies on the human rights violations. The film also proposes solutions to the situation.

Conclusion

The violence unleashed against nomadic Peul pastoralists in 2012, on top of that seen in previous years, leads one to conclude that a new class of nomadic pastoralist is being created in Burkina Faso, highly impoverished by the manhunts and no longer trusting the rule of law. The fear is that these bruised men, who no longer have anything to lose, may turn violent or, as most of them are Muslims, form a reserve of potential recruits to the fundamental Islamist cause.

Following the Zabré events of December 2012, a strong commitment was, however, seen for the first time on the part of the Burkinabe state. On 7 January

2013, the Minister for Territorial Administration and Security clearly stated that: "There are people who have deliberately pursued other Burkinabe in order to attack them. Justice must be done in this regard. This practice must be brought to an end. No community can be held responsible for the actions of one of its members." [6] It is to be sincerely hoped that these words are followed up with actions. ❍

Notes and references

1 The article is based on research, witness statements and interviews.
2 Nabaloum, A. 2012. Burkina Faso: Elections municipales - Les résultats des arrondissements 4 et 10 annulés. Le Pays dated 30 December 2012.
3 Le Quotidien dated 10 September 2012. It will be recalled that a Lobi was killed. This led to the vengeance of the Lobi being directed at the Peul and Mossi. Tall and another person with Peul features were kidnapped. Realising that only Tall was actually Peul, he was killed and the other man released.
4 Tabital Pulaaku International is a network organisation for peul peoples all around the world
5 The Technical Commission responsible for pastoralism and conflict management is headed by the President of ADCPM, elected in January 2012 by the TPI General Assembly in Bamako.
6 Le Quotidien, N° 665 dated Tuesday 8 January 2013, p. 7.

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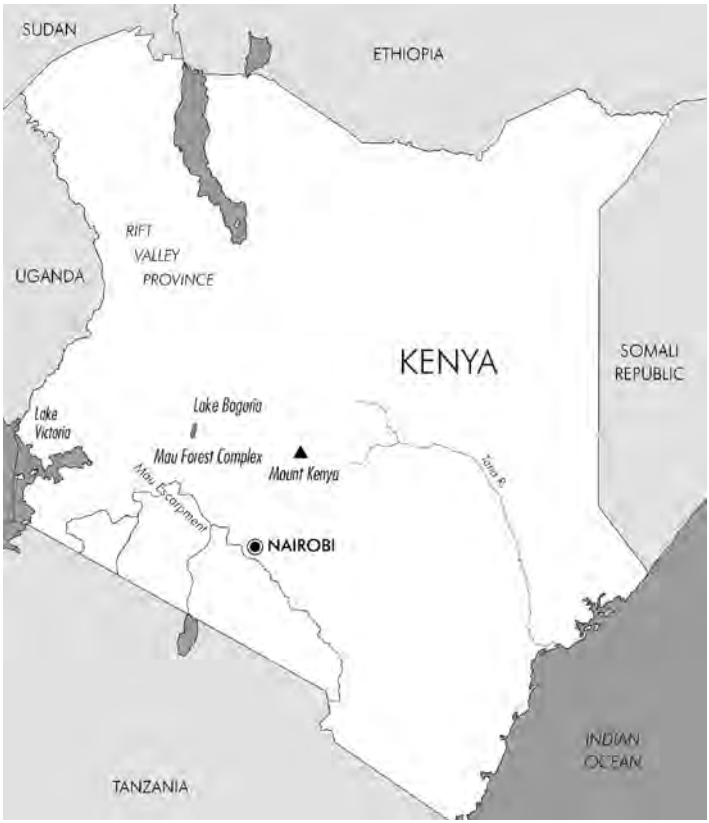
EAST AFRICA

KENYA

In Kenya, the peoples who identify with the indigenous movement are mainly pastoralists and hunter-gatherers as well as some fisher peoples and small farming communities. Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 79,000.[1] Pastoralists mostly occupy the arid and semi-arid lands of northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yaaku, Waata, El Molo, Aweri (Boni), Malakote, Wagoshi and Sanye, while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas. There is no specific legislation governing indigenous peoples in Kenya. The 2010 Constitution, however, specifically identifies minorities and marginalized communities as groups that are in need of heightened protection and attention from the state. The constitutional definition of marginalized groups, being broad, encompasses most of the groups that identify as indigenous peoples. Kenya has not ratified ILO 169 and abstained from the vote when the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly in 2007. In 2012, Kenya's rejection of the existence of indigenous communities in the country appears to have been reversed at the Human Rights Council when Kenya stated that the government recognised the vulnerabilities of minorities/marginalized communities. This acknowledgement paves the way for further deepened advocacy by communities.



Upcoming elections dominate 2012

Electoral politics dominated most developments in Kenya during 2012. The first elections under the constitutional structure adopted in August 2010 took place in March 2013. Preparations for the elections led to multiple developments for indigenous peoples, including concerns over new boundaries and political representation, opportunities for accessing new political seats, pre-electoral vio-

lence, and the stalling of many governance processes as politicians focused on electioneering.

The delimitation of political boundaries at the county, national assembly and ward level was challenged in court in 2012, raising grievances regarding the creation of new constituencies as well as number of wards given to a particular constituency mainly on the basis of population, geographical, ethnic, clan, community and other interests.[2] The court recognized the historical problems with boundary delimitation, in particular marginalization of minority groups through the boundary drawing process. Moreover, many of the concerns before the court related to the data reported from the national census, in particular in pastoralist areas in Northern Kenya and Turkana. Ultimately, the court made several adjustments to the delimitation decisions made by the Independent Electoral and Boundaries Commission (IEBC), many of which focused on explicit consideration of the ethnic and cultural identity of the communities within the newly-established electoral entities. The Court made extensive observations which we reproduce verbatim thus:

> 202.We note that the community of interest as defined by the IEBC centred mainly on socio-economic factors and was narrow and restrictive. But a community may be defined by more than socio-economic factors. These factors may be consequences of shared history, values and traditions, culture, common ethnic or tribal background or a variety of ties that create a community of voters with distinct interests.
>
> 212.We feel obliged to address the issue of clan identity as it relates to community of interest. In some Kenyan communities, the clan is the basic structure through which the social system, community welfare and political representation is organized, as community activities and loyalties are along kinship lines. We must emphasize and clarify that we do not endorse the exclusive affirmation of clan identity and clan-based political system, as it can be an obstacle to the promotion of civic citizenship based on human rights and democratic principles. However, where the clan is shown to be a key factor in providing shared values of personal identity and security that are of high emotive value, then it is a relevant community of interest that should be taken into account in the delimitation of electoral boundaries and weighed against the constitutional values and principles.

> 238.…In our diversity, we recognise the need to fulfil our national anthem, regarding living in unity, reflecting homogeneity while equipping the disadvantaged minorities with opportunities to participate in our national development. …
> 243. We must caution that taking into account the rights of the minorities and marginalized does not mean that the IEBC is obliged to create sectorial, ethnic or clan enclaves. What must be discouraged is the concept of exclusive constituencies and wards being formed on the basis of sectorial interests that do not meet the objectives of the Constitution. We must emphasise once again that delimitation of electoral boundaries is not the only means by which the problems of minorities and the marginalised will be solved.

The Court ordered a number of changes to the boundaries proposed by the IEBC, including:

- Moving 4 sub-locations from one constituency to another, in order to reunite the people with their fellow Giriama and Jibana.[3]
- A new ward created to provide for the "corner tribes" among the Somalis: "We find that the corner tribes, who form a distinct unit whose interests are peculiar and not taken care of by the larger tribes, have the right to be represented by people belonging to the same social cultural and economic context as themselves.... are recorded as being freed slaves of the major tribes and that these tribes look down upon them and do not see them as equals." [4]
- Adjustment to ward boundaries to bring together the Ogiek community, which occupies "specific and contiguous areas" and because "the IEBC failed to consider the rights of this minority and marginalised group." [5]
- Requiring the adjustment of Garissa County to reflect an agreement between communities because: "We are cognizant of the fact that clan interests form a strong community of interest in Garissa County".[6]

As a result of the contestation of boundaries and the continuing pattern of intimidation and ethnic mobilization to influence voting in many areas, violence erupted in several areas inhabited by indigenous people in 2012. Major incidents took place in the Tana River Delta and the Suguta Valley on the Samburu-Turkana border. In Tana River, where conflict between Orma pastoralists and Pokomo agriculturalists

has been a long-term pattern, 2012 was a deadly year. Hundreds of Kenyans, including dozens of police, were massacred in multiple raids and revenge attacks.[7] In Suguta Valley, Turkana pastoralists carried out deadly raids on police forces that had been sent to the area to recover livestock. Tensions between the Turkana and Samburu and the regular use of police to intimidate the Turkana minority in Samburu were identified as the underlying cause of what was the deadliest attack on Kenyan police since Independence in 1963. The Kenyan Defence Forces were deployed to the region to restore stability, and many Turkana families fled in anticipation of retribution by the security forces.[8] Rendille and Samburu community leaders also report that levels of violence around Isiolo, the heart of a region that is home to multiple pastoralist communities, were on the increase in the run-up to the 2013 elections.[9]

The electoral process has also affected the rights of indigenous women in significant ways. Under the Constitution of Kenya (2010), specific seats are reserved for women representatives from each of the newly-formed 47 counties and the Constitution mandates that no more than one-third of any elected body can be of the same gender. These new opportunities for women's political participation have enhanced options for indigenous women, several of whom are running for seats at multiple levels – from "women's representative" for an entire county to seats at the local level where county assemblies will be required to ensure that one-third of members are women. Despite these positive developments, women candidates continue to report discrimination and other barriers to running for elective office. Verbal and physical harassment, cultural barriers and limited access to campaign financing are some of the specific barriers that prevent women from competing for and winning elective office. Moreover, while the one-third rule applies directly to representative bodies at the county and local level, the Supreme Court of Kenya recently decided that the one-third rule should be progressively applied at the national level.[10] This means that the anticipated gains for women in Parliament (aside from the guaranteed "women's representative" seats) will not be realized in this election cycle but will come into effect gradually as a result of legislation yet to be enacted.

Constitutional implementation continued slowly

Constitutional implementation continued to move at a slower than anticipated pace in 2012, particularly in relation to issues that impact on indigenous peoples. The National Land Commission was not inaugurated in 2012, despite the fact that Com-

missioners were selected. Although the Land Act and Land Registration Act were passed in 2012, there are significant concerns as to the content of the laws and their impact on indigenous peoples. In particular, the vesting of unregistered community land in the National Land Commission in trust for County Governments rather than upon communities defeats the intent of the Constitution to restore trust land back to indigenous communities. Legislation on community land envisaged in Article 63 of the Constitution stalled in 2012, pending appointment of a Government Task Force to develop a proposed law. The mandate of the Task Force extends into 2013, however, so no action to adopt legislation is expected for at least another year. Legislation related to key provisions in the Constitution such as affirmative action and the political participation of minorities has yet to be drafted.

The National Gender and Equality Commission became operational in 2012, a potentially significant move forward for the rights of indigenous peoples in Kenya. The Commission has promotional, monitoring, research and investigatory functions related to gender, ethnicity and equality.[11] Part of this includes auditing the status of special interest groups, including minorities and women. Importantly, the Commission will coordinate the mainstreaming of gender and issues affecting marginalised communities into national development. The Commission will also advise on the development of the Constitutions' affirmative action provisions, which could have a substantial impact on indigenous peoples, and indigenous women specifically.

Legal cases

Indigenous communities in Kenya have been at the forefront of pushing for the rights of indigenous peoples in domestic courts and regional human rights institutions. This trend continued in 2012 with the referral of the Ogiek communication before the African Commission on Human and Peoples' Rights to the African Court of Human Rights.[12] The Ogiek case is the first indigenous rights litigation to come before the Court and one of the few cases to be heard by the court in its first five years of operation. The Ogiek case builds on the successful litigation of the landmark *Endorois Communication* at the Commission in 2010. Despite the clear recommendations for redress made by the Commission in that communication, the Government of Kenya has failed to take any tangible steps to enforce the Commission's decision. Despite repeated efforts by the Endorois community and its allies, the government has failed to provide any avenues for communication related to implementation.

Natural resource exploitation within areas inhabited by indigenous communities escalated in 2012. Despite the constitutional requirement for parliamentary scrutiny of natural resource exploration and exploitation contracts,[13] natural resource exploitation was the subject of intense contestation in relation to the Lamu Port project, Turkana oil find and expansion of geothermal energy productions beyond Olkaria. Litigation was initiated by indigenous communities in Lamu challenging the environmental and cultural consequences of the creation of the port.[14] These efforts have not made as much progress as anticipated due to judicial delays in the hearing of the case. Communities in Lamu, however, took their advocacy to the UN Permanent Forum on Indigenous Issues in May 2012 and attracted the attention of the UN Special Rapporteur on the rights of indigenous peoples. The Endorois, too, continued to challenge the encroachment onto their land and territories of the energy utility, Kengen, in its quest to expand its geothermal energy production area beyond Olkaria. Despite raising these issues before the UNESCO Heritage Committee, the Committee was not persuaded to reconsider or delay its decision to grant heritage status to the Kenya Lake System application, which includes Lake Bogoria.[15]

Reforms within the judicial branch of government reached their height in 2012, creating further opportunities for the use of courts to advance the rights of indigenous communities. The establishment of the Land and Environment Court, with jurisdiction to hear and determine disputes relating to the compulsory acquisition of land, land administration and management and disputes relating to public, private and community land,[16] presents an important avenue for addressing some of the contemporary land-related disputes afflicting indigenous communities in Kenya. Indeed, the long-drawn-out matter relating to the dispossession and forced eviction of the Samburu from Laikipia's Eland Downs farm and the latter's conversion to a national park[17] could now be transferred to this court for final determination.

Indigenous women's rights

Women from indigenous communities in Kenya continued to struggle in 2012 to attain equality with their male peers and with women from other non-indigenous communities. Entrenched poverty, unequal access to education and harmful practices remained major barriers to indigenous women's development.[18]

Important research on harmful cultural practices was published in 2012 by a Samburu grassroots organization dedicated to women's empowerment, the Sam-

buru Women Trust (SWT).[19] SWT's project, Silent Sacrifice, focused on the relatively unknown practice of girl-child beading. Girl-child beading is a practice in which Samburu *morans* agree with a young girl's family that she should be "beaded", allowing the moran to use the young girl as a sexual partner without any obligation to marry her or support the children that result from the union. Beaded girls are generally between 9 and 15 years of age. SWT views the practice as a modern form of sexual slavery. SWT's research focused on uncovering cultural beliefs about the practice, with the goal of changing community perceptions in order to eliminate the negative consequences for Samburu girls, such as early pregnancy, physical abuse, sexually-transmitted infections, school drop-out, forced abortion and infanticide. The release of SWT's research generated extensive publicity across Kenya and has led to increased awareness and dialogue about the practice in Samburu and nationwide.

An indigenous woman from Kenya, Ikal Angelei, was awarded the Goldman Environmental Prize in 2012 for her grassroots work to stop the development of the Gibe 3 Dam.[20] The dam is a project of the Ethiopian government, built on the Omo River, the river which provides 90% of the water to Kenya's Lake Turkana. Lake Turkana, the world's largest desert lake, is a major source of livelihood for dozens of indigenous communities in both Kenya and Ethiopia who depend on the lake for hunting, fishing and irrigation. Angelei founded the advocacy organization, Friends of Lake Turkana (FOLT), in 2008. As a result of FOLT's work, major international financing institutions withdrew their support for the dam project because of its anticipated negative environmental impacts. ❍

Notes and references

1 **Kenya National Bureau of Statistics, 2009:** Census 2009 Results: Ethnic Affiliation, http://www.knbs.or.ke/censusethnic.php

2 Republic v. Independent Electoral and Boundaries Commission and others, Misc. App. 94 of 2012, High Court (Nairobi), Kenya (19 July 2012).

3 Para. 301.

4 Para. 325. The corner tribes have been described in a UNDP report titled "Dynamics and Trends of Conflict in Greater Mandera" published on 2 May 2010, which states at page 8:
"Corner tribes brings together between four and nine numerically small clans, of diverse origins, who live around Mandera town and in the small triangular corner that makes the Ethiopia, Kenya and Somalia border. The tribes that have lived together, cooperated and operated as one clan from around 1959 to the extent that they pay the 'Mag'" (blood fine) together. The tribes include Shirmogge, Shekhal, Gobawein, Shabele and Leisan. The others are the Waraabeeye, the Ogaden and the Herti, and the Ashraf and Hawadle."

5 Para. 61
6 Para. 309, see also "The inclusion of Melili Ward which is predominantly occupied by the Purko clan, in Narok North, was intended to give the Ildamat and Keekonyikie clan a fair chance of representation within Narok County by delimiting Narok East."(Para. 365)
7 **Momanyi, Bernard, 2012:** "Kenya: Curfew Imposed in Wajir As Violence Spreads." *Capital FM*, 23 August 2012. http://allafrica.com/stories/201208240076.html; Gari, Alphonce. "Kenya: Massacre." *The Star*, 23 August 2012. http://allafrica.com/stories/201208231162.html; Gari, Calvin Onsarigo and Alphonce. "Kenya: Attackers Ferried to Tana - NSIS." *The Star*, 27 August 2012. http://allafrica.com/stories/201208280218.html
8 Baragoi IDPs languish in Maralal Camp, *KTN News*, 16 Dec. 2012.
9 Personal Communication from Jane Meriwas and Alyce Kureya, August 2012.
10 Supreme Court of Kenya, Reference No. 2 OF 2012, *In the Matter of the Principle of Gender Representation in the National Assembly and Senate* (Opinion of the majority delivered on 11 December 2012). See also, East African Standard, Court: Gender rule to be implemented progressively (11 December 2012) at http://www.standardmedia.co.ke/?articleID=2000072649&story_title=Kenya:%20Court:%20Gender%20rule%20to%20be%
11 National Gender and Equality Commission Act (2011), art. 8.
12 African Court Application 006/2012, *African Commission v Kenya*
13 Constitution (2010), art. 71.
14 Malindi High Court Petition No 06 of 2012, Mwalimu Baadi and Others v Attorney General and Others.
15 "Kenya Lake System in the Great Rift Valley" World Heritage site (to be inscribed in June 2011, see http://whc.unesco.org/en/tentativelists/5513/).
16 Environment and Land Court Act, 2011. See also, Capital FM, 16 nominated to serve on Environmental Land Court (22 September 2012) at http://www.capitalfm.co.ke/news/2012/09/16-nominated-to-serve-on-environmental-land-court.
17 Civil Case No. 154 of 2009 (Nyeri High Court), *Joseph Lekamario and Others v Daniel Arap Moi, African Wildlife Fund and Kenya Wildlife Services.*
18 **Laura A. Young, 2012:** *Kenya: Challenges at the intersection of gender and ethnicity* (MRG 2012).
19 *Silent Sacrifice* (Samburu Women Trust, 2012), http://awid.org/News-Analysis/New-Resources2/A-New-Report-Samburu-Women-Trust-SWT-Silent-Sacrifice-Girl-child-beading-in-the-Samburu-Community-of-Kenya
20 See http://www.goldmanprize.org/recipient/ikal-angelei

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UGANDA

Indigenous peoples in Uganda include the traditional hunter/gatherer Batwa communities, also known as *Twa*, and the *Benet* and pastoralist groups such as the *Karamojong* and the *Ik*. They are not specifically recognized as indigenous peoples by the government.

The *Benet*, who number around 20,000 people, live in the north-eastern part of Uganda and are former hunter/gatherers. The 6,700 or so *Batwa,* who live primarily in the south-western region of Uganda, are also former hunter/gatherers. They were dispossessed of their ancestral land when the Bwindi and Mgahinga forests were gazetted as national parks in 1991.[1] The *Ik* number about 1,600 people and live on the edge of the Karamoja – Turkana region along the Uganda – Kenya border. The *Karamojong* people live in the north-east of Uganda and number around 260,117 [2] people.

The 1995 Constitution offers no express protection for indigenous peoples but Article 32 places a mandatory duty on the state to take affirmative action in favour of groups who have been historically disadvantaged and discriminated against. This provision, while primarily designed or envisaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favour of indigenous peoples in Uganda.[3] The Land Act of 1998 and the National Environment Statute of 1995 protect customary interests in land and traditional uses of forests. However, these laws also authorize the government to exclude human activities in any forest area by declaring it a protected forest, thus nullifying the customary land rights of indigenous peoples.[4]

Uganda has never ratified ILO Convention 169, which guarantees the rights of indigenous and tribal peoples in independent states, and it was absent from the voting on the UN Declaration on the Rights of Indigenous Peoples in 2007.

Parliament passes new oil legislation

Access to natural resources continued to dominate the news and public debate in 2012. And, to cap this debate, towards the end of 2012, the Ugandan legislature passed new legislation aimed at regulating the country's oil sector. Although the law is meant to guarantee transparency, provide a clear management structure and institute environmental safety mechanisms, legislators across the bi-partisan aisle delayed passing the bill due to a key contentious clause (known as Clause 9) which granted powers to the minister in charge of oil to "grant" and "revoke" licenses as well as "negotiate petroleum agreements".[5]

Critics of Clause 9 wanted Parliament to play a crucial role in scrutinizing new oil deals before they are signed as well as vetting candidates for senior management positions in a new national oil company and sector regulator. They also thought that the clause vested a great deal of power in the minister and made him susceptible to manipulation from the executive. Missing from this national conversation on oil was the plight of affected minority and indigenous communities in some oil-rich areas in the western Ugandan districts of Buliisa and Hoima. In areas where oil was discovered back in 2006, the livelihood systems of minorities and indigenous peoples have been disrupted.

For instance, in Waisoke and Bugana villages of Buliisa district, where vast oil deposits have been found, Bagungu, a community of fishers, has been prevented from fishing due to ongoing oil production and they are now locked in a communal land dispute with migrant pastoralists.

The Bagungu claim communal ownership and want to cultivate cotton while the migrant pastoralists claim to have bought the land, according to some media reports. Following a Court of Appeal order that granted ownership to the Bagungu, in 2010 the government evicted over 600 pastoralist families and over 2,000 cattle using military and police. The pastoralists challenged the government in court and, in January 2013, the High Court in Masindi district declared the eviction of the pastoralists illegal and unconstitutional. The Court decided that the applicants (pastoralists) were entitled to compensation and general damages of Shs 2 million each from the government.[6]

Ethnic violence in south-western Uganda

The historical land injustice in south-western Uganda once again manifested itself in 2012 in the form of ethnic clashes among the pastoralist Basongora and Bakonjo farmers, causing at least 40 head of cattle to be killed. No arrests were reported but the army was deployed heavily in the area to curb further escalation.

Although the media reported that the fight had broken out as a result of the installation of a cultural leader of the Basongora, who they preferred to call their king, something that the dominant ethnic Bakonzo were vehemently opposed to under their Rwenzururu (Bukonjo) kingdom, the ethnic clashes point to a long and festering ethnic land issue that the government has not been keen to solve since 1955.

According to media reports, the pro-Rwenzururu kingdom youth allegedly attacked the Basongora and confiscated the royal drum and flag of the newly-installed king. Incensed, a group of more than 100 suspected Bakonzo armed with machetes, spears and arrows went and cut cattle belonging to the Basongora. The media quoted the Kasese District Police Commander, Mr. Jonathan Baroza, as saying that houses had been demolished and property torched as a result of the ethnic violence.[7]

Since their eviction from Maramagambo forest in western Uganda by colonialists to make way for the Queen Elizabeth National Park and the unfulfilled compensation and resettlement promises made by all subsequent post-colonial governments, land-related ethnically-induced clashes continue to blight Kasese district, often pitting Basongora against other groups such as the Bakonzo and Banyabindi.[8]

A land policy aimed at addressing some of these inequalities continues to be shelved by the Cabinet. The latest information is that, after 10 years of haggling, Uganda's Cabinet has finally allowed the Lands Ministry to publish a new land policy aimed at handing controlling rights over land to the government. The policy was approved in early February and it allows the government to appropriate land, something government officials say is meant to safeguard the interests of the peasant farmers; there are, however, worries that this amendment could encourage a land grabbing spree.[9] And although the draft land policy calls on the government to enact laws that safeguard vulnerable communities and protect minorities' and indigenous peoples' communal land ownership and access to resources, implementation is, with the benefit of hindsight, likely to become a major bottleneck.[10]

Batwa

In their quest to end the misery visited on them as a result of implementation of the 1990 Uganda government policy on biodiversity conservation, which saw them evicted from Echuya, Mgahinga and Bwindi forests in south-western Uganda without due provision for their resettlement and integration within the surrounding non-Batwa majority communities, the Batwa are - with support from like-minded organizations - about to petition the courts to compel the government to address the social injustice they have been suffering all this time. As the petition will soon be handed over, it is not possible to give more information on this specific case at the moment.

As a result of their exclusion from their ancestral forests and the subsequent loss of their forest-based livelihoods, the majority of Batwa in Uganda continue to suffer severe isolation, discrimination and socio-political exclusion. The Batwa's customary rights to land have not been recognized and they have received little or no compensation for their losses, resulting in a situation whereby almost half of the Batwa remain landless and virtually all live in absolute poverty.[11]

Almost half of the Batwa continue to squat on other people's land while working for their non-Batwa masters in bonded labour agreements. Those who live on land that has been donated by charities still continue to suffer poorer levels of healthcare, education and employment than their ethnic neighbours. Today, the Batwa's political situation, on the margins of Ugandan society, is analogous with their physical existence in settlements on the edges of their ancestral forests. ❍

Notes and references

1 **United Organisation of Batwa Development in Uganda (UOBDU), 2004:** *Report about Batwa data.* August 2004, Uganda, p.3.
2 **Minority Rights Group International (MRG), 2011:** Land, livelihoods and identities; inter-community conflicts in East Africa (p.6), http://www.minorityrights.org/download.php?id=1076
3 **Minority Rights Group International (MRG), 2001:** Uganda: The marginalization of Minorities (p.9), www.minorityrights.org/download.php?id=143
4 *Land Act (1998),* Articles 2, 32 and *National Environment Statute (1995)*, Article 46.
5 http://www.reuters.com/article/2012/12/07/us-uganda-oil-idUSBRE8B60ZP20121207
6 http://www.monitor.co.ug/News/National/Masindi-court-says-Balaalo-eviction-illegal/-/688334/1672654/-/10h7lg2z/-/index.html
7 http://mobile.monitor.co.ug/News/Cattle+attacked+in+fresh+Kasese+clashes/-/691252/1527438/-/format/xhtml/-/gfglnf/-/index.html
8 http://mobile.monitor.co.ug/News/Tribal-conflicts-engulf-Rwenzori-in-2012/-/691252/1656296/-/format/xhtml/-/khjtekz/-/index.html, editorial@ug.nationmedia.com
9 The East African Newspaper Feb 23-March 1, 2013, page 8
10 **State of the World's Minorities and Indigenous Peoples, 2012:** Minority Rights Group. Page 72 http://www.minorityrights.org/11374/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2012.html
11 Batwa Women Socio-economic Survey conducted in Kabale and Kisoro districts in December 2012 by Mohamed Matovu with support from Minority Rights Group International.

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TANZANIA

Tanzania is estimated to have a total of 125 – 130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as indigenous peoples, four groups have been organising themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Although accurate figures are hard to arrive at since ethnic groups are not included in the population census, population estimates[1] put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belongs at 87,978, the Hadzabe at 1,000[2] and the Akie (Ndorobo is derogatory) at 5,268.

While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalisation. They experience similar problems in relation to land tenure insecurity, poverty and inadequate political representation.

Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but does not recognize the existence of any indigenous peoples in the country and there is no specific national policy or legislation on indigenous peoples *per se*. On the contrary, a number of policies, strategies and programmes that do not reflect the interests of the indigenous peoples in terms of access to land and natural resources, basic social services and justice are continuously being developed, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.

Expansion of wildlife preservation areas

The creation of new wildlife preservation areas and the expansion of old ones was one of the major features of 2012 that affected the situation of indigenous peoples in Tanzania. Tanganyika[3] had only one national park in 1961, the 14,763

km² Serengeti Park.[4] However, today there are 16 national parks in the country, and Tanzania has set aside well over 40 per cent of its territory for wildlife conservation. No alternative land or compensation has been given to the indigenous people who have been evicted from their land due to the creation of national parks and conservation areas. For example, between 2006 and 2007, pastoralists were evicted from Mbarali District when the size of Ruaha National Park was doubled from 10,300 km² to 20,226 km². Pastoralists who were evicted were not compensated and still suffer gravely. As a direct consequence of this eviction, violent conflicts erupted in May 2012 between the evicted pastoralists and farmers in Rufiji District. The conflict left one person dead, many injured and property worth hundreds of millions of Tanzania Shillings destroyed, including the killing of

many livestock. Similar violent clashes have also occurred in other regions such as Coastal, Lindi, Mtwara, Katavi, Rukwa, Iringa and Mbeya, where pastoralists live. The main reason for these violent clashes is the strong negative perception of the government and non-pastoralist populations towards pastoralists. The pastoralists who are evicted and ordered to resettle elsewhere are viewed by the government and non-pastoralist populations as intruders and they are often asked to go back where they came from even if their original areas have been forcibly taken away from them.

Conflicts between the national parks and the pastoralists increased during 2012. In the second half of 2012, the Maasai pastoralists of Ololosokwan village removed beacons which the Serengeti National Park had illegally and arbitrarily planted on village land to mark the boundaries of the park. Twice in 2012, the Tarangire National Park wardens burned down houses in Kimotorok village, claiming that they were illegally built inside the park while in fact it is the park that has expanded into Kimotorok and other villages on the eastern side of the Park.[5] Throughout 2012, the villages bordering Saadani National Park, Kitulo National Park, Udzungwa Mountains National Park, Mikumi National Park, Lake Manyara National Park and others have been fighting against the expansion of these parks. Villages bordering Lake Manyara National Park which, in 2008, doubled in size from 330 km^2 to 649 km^2, are suffering similarly. Villages bordering Kilimanjaro, Mkomazi, Saadani, Udzungwa, Kitulo, Mikumi, Arusha, Ruaha, Katavi and many other parks are also experiencing similar problems.

Eviction of pastoralists from Kilombero

On October 29, 2012, Acting Morogoro Regional Commissioner, Said Meck Sadiq, officiated at the launch of the forcible eviction "Operation Save Kilombero Valley." [6] Joel Bendera, Morogoro Regional Commissioner, said, "The operation is also involving demolition of structures put up in the valley." He added that the operation was scheduled to last six days beginning October 31, 2012, but that it would be extended "because the valley floodplain is a very large area." [7] The evictions were carried out by the police, the Tanzania Defense Force (albeit in disguise), local militia groups (MGAMBO), park rangers and livestock and forestry officers.

The district authorities want to remove all pastoralists and livestock from the area. The official justification for the evictions is that livestock damages the wetlands

and water sources of the two districts (Kilombero and Ulanga districts), and that livestock and pastoralists must leave in order to ensure environmental conservation. It has been estimated that, by the end of November 2012, around 195,000 livestock had been seized by the police/district authorities (out of the 300,000 livestock estimated in the two districts) and that around 2,000 people had moved out of the districts due to the eviction exercise. The affected pastoralists include Sukuma and Tataru agro-pastoralists and Ilparakuyo Maasai and Barabaig pastoralists.

The livestock were taken by force and gathered in so-called "holding grounds", where they were kept under very bad conditions with insufficient food and water. The pastoralists were forced to pay "fees" for having their livestock in these holding camps (40,000 Tanzania Shilling per head), and thereafter they were forced to hire big trucks to transport their livestock to markets to sell them, notably the Puku market in Dar es Salaam. The pastoralists had to pay for the rent of the trucks. On their way to the market, the trucks were regularly stopped by police check points, where police officers asked another round of "fees" for letting the trucks pass (between 1 to 3 million Tanzania Shilling per truck, depending on the size of the truck). In order to pay all these fees and fines, many pastoralists ended up selling all of their livestock before even reaching the market. The evictions thus led to the complete impoverishment of most of the affected pastoralists. They lost most or all of their livestock, and thereby their only source of food and income. Particularly vulnerable are the elderly, children, those who are sick and pregnant women, all of whom were left without food or money.

When the pastoralists were forced to move, they were also rendered homeless since they had nowhere to go. The authorities who evicted them told them to go back where they had come from, but this is obviously not possible since that land is no longer available and returning and reclaiming it would lead to many other conflicts. The authorities conducted no consultations or dialogue with the people affected before the evictions and they are offering no plans for relocation, nor any compensation. Instead they are completely depriving the affected pastoralists of their livelihood and turning them into destitute people. The pastoralists feel that the government's plan is to completely eliminate pastoralism.

The evictions were carried out with great brutality. The confirmed number of pastoralists shot dead in the valley in 2012 is seven. The affected pastoralists are now living in great fear, and they are without any protection whatsoever. Those who dare to try to defend their rights and resist the evictions are afraid that false and fabricated charges will be made against them.

Pastoralists from Kilombero and Ulanga districts have filed two cases at the High Court of Tanzania, Land Division. In November 2012, the courts ordered the government to stop the eviction until the primary cases had been heard. The government ignored this court injunction, however, and continued to evict pastoralists throughout December 2012 and, indeed, even at the time of writing.

Morogoro Regional Commissioner, Joel Bendera, told the author of this article: "The eviction is going on. Today it is in its 29th day. We will not stop until all livestock keepers and their animals are flushed out from their hiding." [8] Although fully aware that the court had ordered the government to halt the evictions in Kilombero Valley, President Jakaya Mrisho Kikwete ordered the authorities to evict pastoralists from water catchment areas "including those in Kilombero Valley." [9]

Justification for evictions

The government uses environmental protection as a fig-leaf to justify the evictions in Kilombero and Ulanga.[10] The Tanzanian government has, time and again, claimed that pastoralists are destroying the Kilombero Valley Floodplain Ramsar Site, which is situated in Kilombero and Ulanga districts. The Kilombero Valley covers about 7,967 km^2 with a catchment area estimated at 40,000 km^2. The valley is said to be rare and unique because it comprises a myriad of rivers which make up the largest seasonally freshwater lowland floodplain in East Africa and one of the main water towers in the country.[11]

The Ramsar Convention on Wetlands came into being in 1971 in the Iranian town of Ramsar. Tanzania ratified the Ramsar Convention on Wetlands in August 2000 and on April 25, 2002, it designated the Kilombero Valley Floodplain a Ramsar Site. Since 2006, the Government of Belgium, through Belgian Technical Cooperation, has been pumping massive funds into a Kilombero Valley Floodplain Ramsar Site project.[12]

Belgium, however, is not alone in supporting environmental protection projects in Tanzania that negatively affect indigenous peoples. Norway is funding REDD+ projects through the Tanzanian Ministry of Natural Resources and Tourism and it is suspected that some of these projects may be used as justification for evicting indigenous peoples. In its National REDD Strategy, the Tanzanian government does affirm that the implementation of REDD+ activities will be in accordance with the safeguards in the Cancún Agreement, which include the full

and active participation of indigenous peoples. However, the Tanzanian government has failed to ensure indigenous participation in its REDD+ activities.

Another issue that may be behind the forced evictions of pastoralists in Kilombero and Ulanga is the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) initiative. The SAGCOT initiative was launched by President Kikwete at the World Economic Forum in Davos, Switzerland, in 2010. SAGCOT claims that, since its launch, it "has generated widespread interest and hope as a model for African agricultural development that can dramatically increase food supplies, reduce poverty, and stimulate economic development. The initiative has been featured prominently at major international forums including the UN Climate Change Convention Conference of the Parties and G8 Summit on Agriculture."[13]

Stretching from the Indian Ocean to the Zambian border, the SAGCOT Corridor encompasses nearly 300,000 square kilometers. It is situated in a region rich in natural resources and in which pastoralists also live. The SAGCOT Corridor also stretches into the Kilombero Valley, from where many pastoralists and their livestock have been evicted, and it is believed that such evictions have taken place to make room for the SAGCOT Corridor initiative, which is supported by a multitude of donors including the World Bank. Morogoro Regional Commissioner, Joel Bendera, has stressed that if livestock keepers are left to destroy the environment, "Morogoro will fail to attain its State-assigned goal of becoming the national grain reserve through SAGCOT."[14]

Hunger and starvation in Ngorongoro

Malnutrition has reportedly been killing pastoralist children living inside the Ngorongoro Conservation Area (NCA) in northern Tanzania. Authoritative information from Endulen Hospital confirms that 14 children were admitted to the hospital in November 2012 suffering from malnutrition, and there is no lack of evidence of the hunger and starvation in the area. In December 2012, the Ngorongoro District Commissioner wrote to the Country Representative of the World Food Programme requesting food relief because, "Ngorongoro District has a deficit of 15,557 tons of grain especially maize and 2,916 tonnes of legumes."[15] Yet the government is still denying there is a hunger situation.

NCA is known internationally for its unmatched scenic beauty, spectacular wildlife and its historical, archaeological and paleontological significance. It was in

recognition of its outstanding characteristics that the area was inscribed as a World Heritage site in 1979 as well as a Biosphere Reserve in 1981.

NCA receives more tourists than any other wildlife preservation area in Tanzania. The NCA Authority (NCAA), the government agency responsible for protecting and managing the NCA, earned over 52 billion Tanzania Shilling from gate entrance fees in the year ending June 2012. It gave a mere 1.5 billion Tanzania Shilling to the Pastoral Council (PC), a body representing the interests of local pastoralist communities in the area. The PC is supposed to cater for all the needs of the pastoral population in the NCA. However, the PC does not feel that it is in a position to do so with the limited income that it has. The PC depends entirely on funding from the NCAA and the NCAA has to approve all planned spending.

Hope for the Constitution

Tanzania is in the process of writing a new constitution. Pastoralists and hunter-gathers have taken this as an important window of opportunity. They have mobilized through a coalition called the Pastoralists and Hunter/Gatherers Katiba Initiative, hosted by PINGO's Forum, to articulate their issues and lobby for their inclusion in the new constitution.

Despite the fact that pastoralists and hunter/gatherers are largely illiterate, they have nevertheless managed to mobilize in their respective territories and to present their opinions to the Constitutional Review Commission. There is therefore some hope that the new constitution will, for the first time, address the land issue in a fair manner and in a way that can minimize - if not eliminate - land-induced conflicts. ❍

Notes and references

1 www.answers.com/Maasai ; www.answers.com/Datoga; www.answers.com/Hadza.

2 Other sources estimate the Hadzabe at between 1,000 – 1,500 people. See, for instance, **Madsen, Andrew, 2000:** *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community*. Copenhagen: IWGIA.

3 Tanganyika united with Zanzibar to make the United Republic of Tanzania in 1964.

4 **Shetler J. B., 2007:** *Imaging Serengeti: A History of Landscape Memory in Tanzania from Earliest Times to the Present,* Athens: Ohio University Press.

5 **Masara J.B., 2005:** Wildlife Areas Expansion and Local Land Rights, The Case of Kimotorok Village, Simanjiro District, Prepared for PINGO's Forum, May.
6 *ITV* [Dar es Salaam] October 31, 2012 & *Nipashe* [Dar es Salaam] November 6, 2012.
7 *Citizen* [Dar es Salaam] November 5, 2012.
8 Phone call from Navaya Ndaskoi to Joel Bendera, December 1, 2012.
9 *HabariLeo* Dar es Salaam January 11, 2013, *Majira* Dar es Salaam January 11, 2013 & *Mwananchi* Dar es Salaam January 11, 2013.
10 **Dowie, M., 2009:** *Conservation Refugees,* Cambridge Massachusetts & London: The MIT Press.
11 *Citizen* [Dar es Salaam] November 12, 2012.
12 *Citizen* [Dar es Salaam] August 12 & November 12, 2012.
13 **SAGCOT, (Southern Agricultural Growth Corridor of Tanzania), The SAGCOT Green Print, 2012:** A Green Growth Investment Framework for the Southern Agricultural Growth Corridor of Tanzania, August, draft.
14 *Habari Leo* [Dar es Salaam] December 1, 2012.
15 Letter dated December 5, 2012 with reference number DC/NGOR/F.6/1/VOL VI/11.

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CENTRAL AFRICA

BURUNDI

The Batwa are the indigenous people of Burundi. A census conducted by UNIPROBA (*Unissons-nous pour la Promotion des Batwa*) in 2008 estimated the number of Batwa in Burundi to be 78,071[1] or approximately 1% of the population. These people have traditionally lived by hunting and gathering alongside the Tutsi and Hutu farmers and ranchers, who represent 15% and 84% of the population respectively.

The Batwa live throughout the country's provinces and speak the national language, Kirundi, with an accent that distinguishes them from other ethnic groups. No longer able to live by hunting and gathering, they are now demanding land on which to live and farm. The census conducted by UNIPROBA in 2008 showed that, of the 20,155 Batwa households in Burundi, 2,959 were landless, or 14.7% of the total. And, of these landless households, 1,453 were working under a system of bonded labour, while the other 1,506 were living on borrowed land. It should, moreover, be noted that those households that do own land have very small areas, often no more than 200 m^2 in size.

Some positive actions are being undertaken in Burundi, aimed at encouraging the political integration of the Batwa. This integration is the result of the implementation of a number of laws and regulations in force in Burundi, including the Arusha Accord of 28 August 2000, the National Constitution of 18 March 2005 and the 2010 Electoral Code, which explicitly recognise the protection and inclusion of minority ethnic groups within the general system of government.[2] The 2005 Constitution sets aside three seats in the National Assembly and two seats in the Senate for Batwa. Burundi abstained from the vote on the UN Declaration on the Rights of Indigenous Peoples.

Batwa murders

The Batwa suffered many murders and human rights violations in Burundi over the course of 2012.

At Muramvya, in the centre of the country, a Mutwa was murdered and thrown in the Mubarazi River. He was returning from a festival and was murdered simply because he was suspected of having stolen food from neighbouring fields.

In Karuzi province, Gitaramuka commune, in the centre east of the country, murders, land problems and cases of arbitrary imprisonment of Batwa were all noted. For example, on 13 July 2012, a young 14-year-old Twa girl

was raped and murdered. She had previously been accused of stealing from neighbouring fields. Despite her family's request for an expert medical opinion, the doctor provided no report and the victim was buried in a common grave on the orders of the local authority, with police supervision and in the absence of her family for fear of reprisals against the perpetrator of the crime.

In Mutaho, Gitega province, in the centre of the country, a Mutwa (Pascal Mvuyekure) was murdered on 19 July 2012. Evidence gathered at the scene suggests that several people were involved. The victim was out looking for firewood when he was killed. Once again, this murder followed accusations of stealing from the fields. It is important to note that there is no evidence to back up these accusations. The police officer who investigated the case promised to send it on for consideration and a decision by 3 August 2012. However, the four people who were arrested following the murder have already been released without trial and are continuing to terrorise the victim's family with nothing being done to stop them.

In Mwumba commune, Ngozi province, a member of the Twa community (a certain Mwamba), was beaten to death on 25 June 2012 by a crowd that had gathered. The victim was suspected of aggravated burglary. He died in hospital following his injuries, having received no medical attention.

In the same commune, a young Twa girl, aged eight years of age, was raped by a man of more than 50 years while out searching for firewood with other children. The latest news in this regard is that the perpetrator is still being held within the commune even though the deadline for his transfer to the central prison has expired.

The most recent case was in Gisagara commune, in Cankuzo province, in the east of the country. Here, 43 community members ate poisoned food they had been given in exchange for firewood. Six of them died, on 21 and 22 December 2012; the others were taken to Camazi and Murore hospitals, in the same commune. It is reprehensible that neither the police authorities, the provincial authorities, nor the health and commune authorities, no-one, visited the site of the incident to reassure the other community members. The person responsible for selling this poisoned food has now been arrested.

Imprisonment of Batwa

The central prison in Mpimba currently holds 105 Batwa prisoners, most of them accused of theft. Many of these inmates have been held for years without any help in putting their cases before the different authorities. This situation is widespread throughout all of the country's prisons.

Education of Batwa in Burundi

The number of Batwa children attending primary and secondary school is very low; the number of Batwa students in the country's different universities is a significant indicator of the poverty suffered by this community: to date, only four Batwa have completed their university studies in Burundi (six more are currently enrolled).

Conclusion

In summary, although there have been some positive steps in Burundi in terms of positive discrimination aimed at ensuring the Batwa's political representation, this group remain widely marginalised and discriminated against and suffers from prejudice at all levels of society. Its members live in extreme poverty and their access to health services, education, land, justice and decision-making bodies is extremely limited. The Burundian government needs to continue its efforts to promote the rights of all Burundians but needs to focus particularly on the rights of indigenous Batwa. Education needs to be promoted for all Batwa, particularly young Batwa girls. The Batwa need to be ensured access to all decision-making bodies. They need support in registering the births of their children, and in legalising their marriages. They need to be aware that they can approach the courts to demand the protection of the law.

The practice of bonded labour should be completely prohibited and punished by legislation.

Finally, the justice system needs to be impartial when dealing with Batwa who are reporting violations of their rights, and the perpetrators of murders and any other violations of Batwa rights must be punished in accordance with the law. ❍

Notes and references

1 UNIPROBA, *Rapport sur la situation foncière des Batwa du Burundi*, August 2006 - January 2008, Bujumbura, p16.
2 See Law No. 1/10 of 18 March 2005 implementing the Constitution of the Republic of Burundi.

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DEMOCRATIC REPUBLIC OF CONGO

Indigenous Peoples is the term accepted by the government and civil society organisations when referring to the Pygmy people of the Democratic Republic of Congo (DRC). The Pygmy presence pre-dates that of other ethnic groups and they represent a vulnerable and threatened minority with human and socio-economic characteristics distinct from those of other local populations.

The government estimates that there are around 600,000 Pygmies in the DRC (1% of the Congolese population), while civil society organisations argue that there are up to 2,000,000 (3% of the population). They live in nomadic and semi-nomadic groups in ten of the country's eleven provinces and are divided into four main groups: the Bambuti (Mbuti), the Bacwa (Baka), the Batwa (Twa) of the west and of the east. The life of indigenous peoples in the DRC is closely linked to the forest and its resources: they live from hunting, gathering, collecting and fishing and they treat their illnesses with the help of their pharmacopoeia and medicinal plants. The forest forms the heart of their culture and their living environment.

The situation of the indigenous peoples in the DRC is alarming. In the face of external pressure they are increasingly being stripped of their ancestral land and forced to adopt a sedentary life under marginal conditions. This is leading to a weakening of their traditional economy, the irreparable abandonment of their cultural practices and increasing poverty. There is no law or policy for the promotion and protection of indigenous peoples' rights in the DRC. However, a draft law on the rights of indigenous peoples has now been developed by civil society organisations, in partnership with parliamentarians, and discussions are planned with indigenous communities and the Government of the DRC for its adoption in 2013. The DRC is a signatory to the UN Declaration on the Rights of Indigenous Peoples, but has not ratified ILO convention 169.

The challenges facing indigenous peoples during 2012

2012 was a dark year for the indigenous peoples of the Democratic Republic of Congo. The country is currently suffering a number of serious problems that are threatening its political and democratic stability, in particular: repeated wars and the illegal exploitation of natural resources, characterised by severe human rights violations (blood minerals), social divisions and ethnic tensions. The indigenous peoples rarely escape these problems. In 2012, deaths and mass displacements were recorded in four provinces: North Kivu, South Kivu, Orientale and Kasaï Occidental.

In North Kivu Province, the indigenous peoples who were evicted from the Virunga National Park, declared a World Heritage site by UNESCO in 1979, are now in a pitiful state. They are formally prohibited from entering the park. This led, in 2012, to altercations between indigenous groups and the park guards, in particular: unwarranted accusations of poaching or of burning of trees for charcoal, and arbitrary arrests. Moreover, the indigenous peoples have become easy prey for the armed militia in the wake of the multiple wars that broke out in the east of the country in 2012. Indigenous people are being used by these militia as arms bearers and forest trackers. Indigenous women are raped and their settlements pillaged.

In South Kivu Province, a massacre occurred in Cibanda village (Bagarula Group, Idjwi Territory) on 11 March 2012. A total of six indigenous individuals were murdered by the Bantu. The victims were ***Dori Lazaro, Habiragi Cuma, Wera Luzigirwa, Musa Side, Dunia Chisukuna and Umoja Byanwa.*** The following is an extract from an account of one survivor:

> *It was four in the morning on Sunday 11 March 2012. A crowd of Bahavu encircled our village. They knocked at our doors, one by one. A voice said it was the chief of the area so we opened our doors unconcerned, because we knew him and did not suspect any danger. But when we opened the door, people entered the house and took the man, tied him up and threw him to people waiting at the door. They had sticks, machetes, ropes, knives…. Meanwhile, Musanganya Marandura sent out a cry and shouted: come, all*

inhabitants of Kibanda, we have caught the thieves and now we are going to put an end to them. Come, we need to exterminate the Bambuti now! [1]

The sole pretext for this massacre was that some indigenous persons were suspected of stealing from the Bantu communities. The country's authorities were alerted, those presumed guilty arrested and investigations are now underway.

In Orientale Province, which has a high concentration of indigenous communities, especially in Mambassa and Isangi territories, the Okapi Wildlife Reserve (RFO) – in which several indigenous groups live - was attacked by an armed group seeking gold during May and June 2012. Several indigenous individuals were killed or displaced.

In Kasaï Occidental Province, in Tshiefu village (Bakwangombe Group, Lubi Sector, Dimbelenge Territory) an indigenous community holds the land title to a forest measuring more than 100,000 ha. in size. In June 2012, the chief of the community died. The sub-soil of this forest holds substantial resources, particularly diamonds, and these are much coveted by the neighbouring Bantu communities. Influential people from the Bantu community therefore did all they could to regain the title to this forest, resulting in the pillaging of indigenous settlements, the flight of many indigenous people into the depths of the forest, and acts of brutality. In fact, during November and December 2012, Mr **Tshibambe Takizala,** a head of household and father of six, was shot dead, and three more indigenous people, Mr **Bakolo Madjimba**, Mr **Bwetu Madjimba** and Mr **Bikatonda**, similarly injured. As these cases are very recent, a comprehensive file is still being put together and this will be submitted to the relevant authorities in the hope of a rapid resolution.

Progress made during 2012 with regard to indigenous issues in the DRC

These alarming cases aside, there has also been some quite significant progress made with regard to recognising indigenous rights in the DRC and indigenous involvement in the country's political life, among other things:

An official letter from the President of the DRC dated 9 January 2012[2] demanding that the Ministry of the Environment and Land Affairs observe and protect the land and forest rights of indigenous peoples in the DRC;

The creation of a Parliamentary Group for the Defence and Promotion of Indigenous Rights in the DRC in June 2012. This group has the objectives of: legislating in favour of indigenous peoples, ensuring their land and customary rights are taken into account in all processes underway, and encouraging the government to ratify ILO Convention 169;

The drafting of a specific bill of law on the promotion and protection of indigenous rights in the DRC.[3] The first draft of this bill was developed in 2012 by members of the parliamentary group and other civil society organisations involved in the *Dynamique des Groupes des Peuples Autochtones* ("Indigenous Peoples' Groups' Dynamic") network,[4] in association with the Office of the Chief Advisor to the Head of State on environmental and land issues. This bill of law synthesises

the surveys and studies carried out by the indigenous organisations in the field over the last five years. A consultation of all the parties, including the indigenous communities, is currently underway in order to feed into this bill of law before its anticipated submission to parliament at the end of December 2013, for adoption and enactment by the Head of State. ❍

Notes and references

1 *Report on the massacre of the Indigenous Pygmy Peoples of Idgwi.*
2 *Letter from the President, Our/Ref.; 00026/2011 on respect for the land and forest rights of Indigenous Peoples*, Office of the President 2011.
3 *Draft law on the promotion and protection of the rights of Indigenous Pygmy Peoples in the DRC* Collectif des Parlementaires /DGPA, 2012.
4 Internet site of the DGPA: www.dgpa.cd

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CAMEROON

Among Cameroon's more than 17 million inhabitants, some communities self-identify as indigenous. These include the hunter/gatherers (Pygmies), the Mbororo pastoralists and the Kirdi mountain communities.

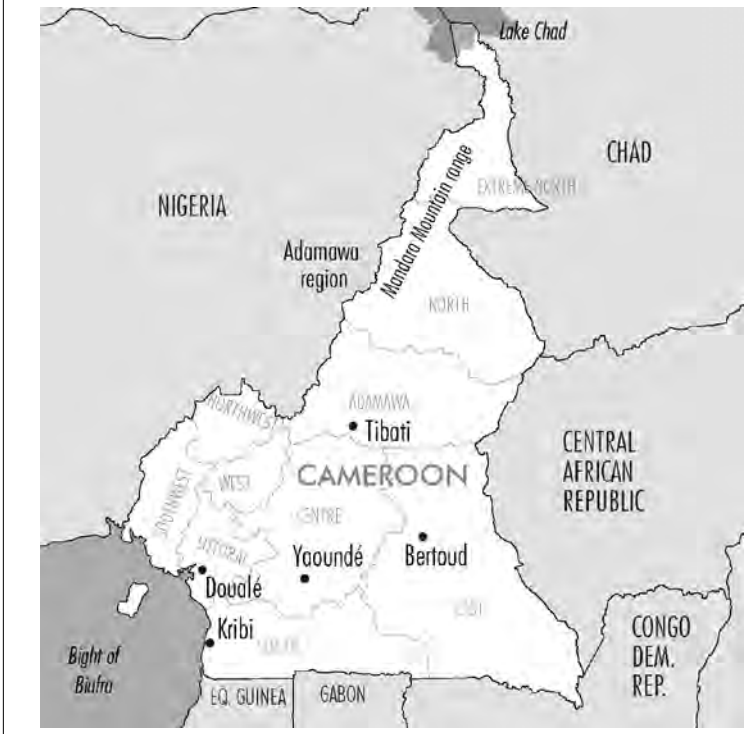
The Constitution of the Republic of Cameroon uses the terms indigenous and minorities in its preamble; however, it is not clear whom this refers to. Nevertheless, with the developments in international law, civil society and the government are increasingly using the term indigenous to refer to the above mentioned groups.

Together, the Pygmies represent around 0.4% of the total population of Cameroon. They can be further divided into three sub-groups, namely the Bagyeli or Bakola, who are estimated to number around 4,000 peoples, the Baka - estimated at around 40,000 - and the Bedzan, estimated at around 300 people. These communities live along the forested borders with Gabon, the Republic of Congo and the Central African Republic.

The Mbororo people living in Cameroon are estimated to number over 1 million people and they make up approx. 12% of the population. The Mbororo live primarily along the borders with Nigeria, Chad and the Central African Republic. Three groups of Mbororo are found in Cameroon: the Wodaabe in the Northern Region; the Jafun, who live primarily in the North West, West, Adamawa and Eastern Regions; and the Galegi, popularly known as the Aku, who live in the East, Adamawa, West and North West Regions.

The Kirdi communities live high up in the Mandara Mountain range, in the north of Cameroon. Their precise number is not known.

The country has adopted a Plan for the Development of the "Pygmy" Peoples within the context of its Poverty Reduction Strategy Paper. A Plan for Indigenous and Vulnerable Peoples has also been developed in the context of the oil pipeline carrying Chadian oil to the Cameroonian port of Kribi. Cameroon voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007, but has not ratified ILO Convention 169.



Legislative changes

There was no major progress in legislation for indigenous peoples in Cameroon in 2012. Most of the programs and reforms initiated in 2011 remained fruitless.

The Forest and Fauna law[1], which has been under revision since 2000, is still pending. The Parliamentary Network for the Protection of the Central African Ecosystem (REPAR) has taken over responsibility for advancing the revision process. A workshop for the validation of stakeholder contributions to the Forest Law, including contributions from indigenous peoples, took place on 8 November 2012 and the contributions were forwarded to the Department of Forest and Fauna.

At the initiative of the Ministry of Livestock, Fisheries and Animal Industries (MINEPIA), the Netherland Centre for Development (SNV) and civil society, including indigenous organizations, the Pastoral Code was validated in December 2012 and has now been forwarded to the Head of Government for submission to Parliament.

Policies and programs

The study entitled: "Study on the socio-professional integration of indigenous populations in Cameroon and conformity of the legal and institutional framework with international standards" (translation of the author from French) was initiated by the Parliamentary Network for the Protection of the Central African Ecosystem (REPAR) and funded by the International Labour Organization (ILO) in Yaoundé. The study is the outcome of the recommendations of the Parliament/Government dialogue that was initiated by REPAR in September 2011in the National Assembly on the problems of the indigenous peoples of Cameroon. The study, carried out by an NGO called *Planet Survey*, *Environment and Sustainable Development,* was finalized and pre-validated in December 2012. The conclusions of the study clearly highlight the total absence of indigenous peoples in the formal socio-professional sectors in Cameroon. The recommendations should be followed up in 2013.

Celebrating International Day of the World's Indigenous Peoples

The official celebrations for International Day of the World's Indigenous Peoples in Cameroon were decreed by the government in 2008 thanks to the relentless lobbying efforts of the ILO and indigenous organizations.

Initially, the Ministry of Social Affairs (MINAS) worked in close collaboration with indigenous organizations and UN agencies to organize these celebrations. Unfortunately, more recently the consultation procedure has not been respected by the Ministry in this regard. The choice of the locations and the way this choice is made is no longer transparent. The choice of location depends on the presence of a significant indigenous community or communities in the area.

Indigenous peoples' organizations affiliated to MINAS and the UN agencies are invited to participate while the local administration hosts the activities. Increasingly, however, non-indigenous persons want to host the day for personal interests, not respecting the criterion of a sizeable indigenous population in the area.

Elections

Cameroon is preparing for senatorial, local and legislative elections, which will take place in 2013. These elections have now been postponed several times. To ensure better preparation, a seminar was organized on party politics and elections in 2012 by the Minority Rights Group UK, in partnership with local non-governmental organizations. This was attended by many indigenous organizations and leaders. Numerous feedback seminars have taken place in different areas of the country. These seminars have enhanced the negotiations skills of those indigenous peoples considering standing for election.

Access to land and resources

Land grabbing remained a major concern in 2012. Agro-industrial companies are taking over large expanses of grazing lands in Cameroon. Two sites in the eastern region, Kadey and Lom and Djerem Divisions, are examples of such areas of massive land takeover by Asian companies for sugar plantations. This is done without the free, prior and informed consent of the local communities, including indigenous peoples.

In 2012, Ntakamanda National Park in Akwaya division, South West Region and protected areas in Poli division, North Region, were established, heralding the threat of an imminent expulsion of hundreds of Mbororo families along with thousands of livestock, the source of their livelihood. These families have traditionally occupied these lands for over a century. Ranching in the Adamawa Region is also a major concern for the Mbororo and their traditional herding is being threatened.

The 1st Africa Land Forum was held in Yaoundé from 6 to 8 November 2012 and was co-organized by International Land Coalition and MBOSCUDA. Impor-

tant recommendations such as the need for urgent land tenure reforms as well as gender and indigenous peoples' access to land rights were some of the major outputs of the forum. The recommendations were handed to the Prime Minister by a delegation of participants from different countries.

Access to justice

An illegal ban on the sale of horse in North West region imposed by the billionaire rancher, Baba Ahmadou Danpullo, remained effective in 2012. All horses intended for sale are seized and taken to his ranch and the traders are arrested and detained. Since the beginning of 2012, more than 200 horses have been seized and 20 Mbororo horse traders have been detained for many months in cells and prisons in Nkongsamba, in the Littoral Region and Dschang in the West Region. Despite an Administrative Order declaring this private decision null and void, officers from the Gendarmerie continue this seizure and harassment, impoverishing many Mbororo families. MBOSCUDA and other human rights organizations have continuously denounced these acts. Lawyers have done all they can to release both men and animals, to no avail.

Some human rights organizations complained about these violations on the part of Baba Ahmadou Danpullo to the UN Human Rights Council in mid-2012. An urgent communication was sent to the Cameroon government in December 2012 by the Special Rapporteur on the rights of indigenous peoples, asking for clarification on the allegations raised by the complainants. Through the Ministry for External Relations (MINREX), the government mobilized all services concerned to carry out inquiries into the different issues raised. They also called upon MBOSCUDA and Baba Danpullo to give their versions of the events.

MBOSCUDA mobilized leaders' victims and documentation for the meeting with the Director of the UN Affairs of MINREX at a meeting on 22 February 2013 that lasted for over six hours. This will be the second time that the Special Rapporteurs has written to the government with regard to the Mbororo/ Baba Ahmadou Danpullo affair. There are high hopes among the Mbororo community that this time the matter will be resolved once and for all.

Climate change

Through the Ministry for the Environment and Nature Protection, the Government of Cameroon is finalizing the new National Biodiversity Strategic Action Plan (NBSAP). This is to be in line with the Convention on Biological Diversity (CBD) and its article 8j, which touches upon traditional knowledge, access and benefit sharing principles. Indigenous peoples and local communities are involved in these consultations through their organizations.

An inter-ministerial committee has been put in place by the Ministry of Environment to follow up the REDD+ process in Cameroon. Indigenous peoples are participating in the actions related to the Framework Convention on Climate Change and the Doha summit (COP18).

Mobilization of indigenous peoples

On 15 December 2012, MBOSCUDA celebrated its 20th anniversary. More than 2,000 Mbororo peoples gathered in the Yaoundé city conference centre. Numerous activities were organized. Members of government, civil society and national and international organizations were in attendance. Activity reports were presented to the participants and a large number of cultural activities graced the occasion. The ceremony was widely covered by the public and private media. It was an occasion for the MBOSCUDA leadership to reaffirm its determination to continue working for the rights of indigenous peoples in Cameroon. ❍

Notes and references

1 Law of 20 January 1994

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CENTRAL AFRICAN REPUBLIC

There are two groups of indigenous people in the Central African Republic (CAR), the Mbororo and the Aka. The indigenous Mbororo are essentially nomadic pastoralists in constant search of pastureland. They can be found in the prefectures of Ouaka, in the centre-west region; M'bomou, in the south; Nana-Mambéré in the north-west; and Ombella-Mpoko and Lobaye in the south-west. The 2003 census gave an estimated Mbororo population of 39,299 individuals, or 1% of the total population (accounting for 1.4% of the rural and only 0.2% of the urban population respectively). The Aka is also known by the pejorative name of Pygmies. The exact size of the Aka population is not known but it is estimated at several tens of thousands of people. The Aka live primarily (90%) in the forests, which they consider their home and where they are able to carry out their traditional activities of hunting, gathering and fishing. The Aka are found in the following prefectures: Lobaye and Ombella M'poko in the south-west; Sangha Mbaéré in the south-west; and Mambéré Kadîe in the west.

The Central African Republic voted in favour of the UN Declaration on the Rights of Indigenous Peoples in September 2007 and ratified ILO Convention 169 on tribal and indigenous peoples in August 2010. It is the first and only African state to have ratified this Convention which, under the terms of the ILO Constitution, entered into force on 11 August 2011. Since then, the country has been in the process of implementing it.

Implementation of Convention 169

Under the terms of the International Labour Organization's (ILO) Constitution, Convention 169 has now entered into force in the Central African Republic. In 2012, the government was to submit the first report on implementation of the Convention 169 to the ILO. The High Commission for Human Rights and Good

Governance (the Governmental institution responsible for human rights matters) is now up and running but as of January 2013, the report has yet to be submitted.

In October 2012, a session was organised in Bangui, with the participation of various stakeholders, including a strong contingent of indigenous peoples, to provide feedback on the study[1] into the CAR's legislation for implementing ILO Convention 169, produced by the international NGO, Rainforest Foundation UK. The study revealed that the country's legislation only very insufficiently and partially incorporates indigenous rights. The study therefore recommends:

- a reform and strengthening of the country's legislation with a view to bringing it into line with ILO Convention 169,

- the adoption of a framework law on the rights of indigenous peoples, and
- a review of projects, programmes and policies to ensure that they comply with the provisions of the Convention.

Legal reforms favouring indigenous peoples

The United Nations Population Fund (UNFPA) and the ILO, in partnership with the High Commission for Human Rights and Good Governance, have designed a project entitled "Support for the Promotion of Indigenous Peoples' Rights in the Central African Republic" (APPACA), which has received funding from the Secretariat of the United Nations Indigenous Peoples' Partnership (UNIPP). The project commenced in September 2012. Its overall objective is to improve indigenous peoples' enjoyment of their rights, as enshrined in national and international legislation, by supporting legal and institutional reforms and capacity building for different actors on indigenous issues. The project will be implemented jointly by the High Commission for Human Rights and Good Governance, UN agencies, indigenous peoples, unions and NGOs.

In 2007, the High Commission for Human Rights and Good Governance introduced a draft bill of law on the promotion and protection of indigenous peoples' rights. This is now in its pre-validation phase and the draft has to be approved by the National Assembly. Indigenous peoples, however, have still not been consulted on this bill of law and have not participated in its production.

In addition, in December 2012, the government officially launched the process for harmonising legal instruments relating to land in the CAR. One major concern relates to the recognition and incorporation of customary and community land law, to the benefit of indigenous peoples.

Representation and participation of indigenous peoples

No major measure, either political or legal, has thus far been taken by the CAR government to promote the representation and participation of indigenous peoples in decision-making bodies. The only exception is a number of national policy processes where they are involved in the governance structures, particularly the Climate Change and Reducing Emissions from Deforestation and Forest Degra-

dation (REDD). Their complete absence from other policy processes must be noted, however, in particular the Forest Law Enforcement Governance and Trade (FLEGT) initiative.

With the support of NGOs, indigenous peoples are increasingly establishing their own organisations and participating in national and international meetings during the course of which they express their own points of view with complete freedom and jointly sign statements of national and international importance. These organisations include for exemple: Maison de l'Enfant et de la Femme Pygmées (MEFP) and Association pour la Défense des Intérêts des Bakas de Centrafrique (ADIBAC). Indigenous civil society still remains very weak, however.

It has to be acknowledged that very many indigenous people are still not aware of the interest being shown in them by the international and national community through various legal instruments. Widespread information, awareness raising and education actions are thus still needed for these people. ❍

Note and Reference

1 **Gilbert, Jérémie, 2012:** «Étude de la législation de la République Centrafricaine au vu de la Convention 169 de l'Organisation internationale du travail relative aux peuples indigènes et tribaux». Rainforest Foundation UK, High Commission for Human Rights and Good Governance of the Central African Republic and Centre for Pygmy Children and Women. February 2012. http://www.rainforestfoundationuk.org/files/Etude%20l%E9gale%20C169%20RCA.pdf

***Jean Jacques Urbain MATHAMALE**, a jurist by training and human rights activist, has been working for the promotion and protection of indigenous rights in CAR since 2008. He participated in the publication "*Rapport sur la situation des peuples autochtones des forêts en RCA" ("*Report on the situation of the CAR's indigenous forest peoples") in 2009. He is a member of the drafting committee for the bill of law on the promotion and protection of indigenous rights and ILO consultant to the CAR's High Commission for Human Rights and Good Governance for the drafting of, among other things, a national action plan for implementation of ILO Convention 169. He is the coordinator of the NGO,* Centre pour l'Information Environnementale et le Développement Durable *(CIEDD), one of the objectives of which is to lobby on behalf of indigenous communities for the implementation of projects, programmes and policies in their areas.*


SOUTHERN AFRICA

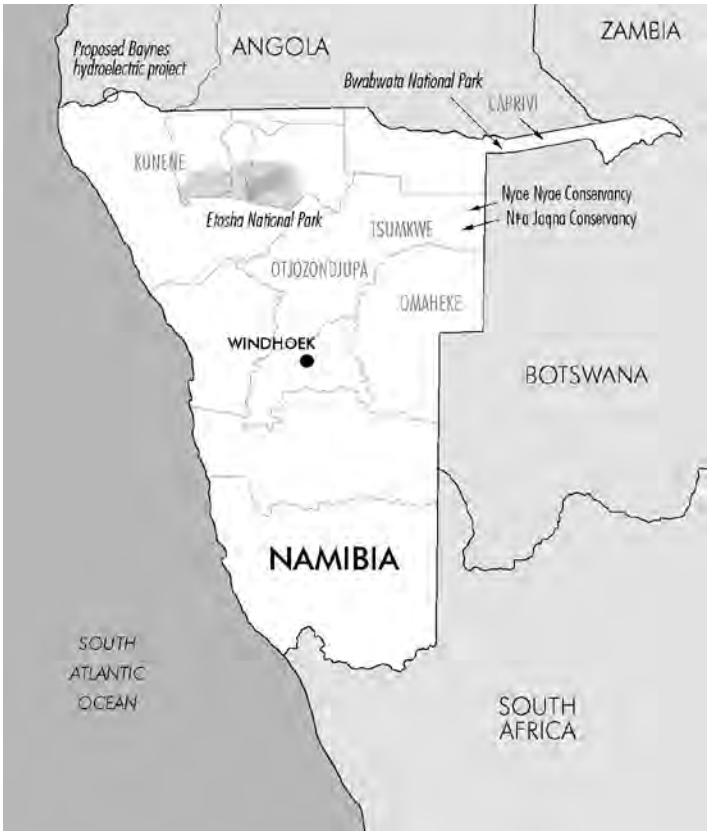
NAMIBIA

The indigenous peoples of Namibia include the San, the Himba and the Nama.

The San (Bushmen), number between 27,000 and 34,000,[1] and represent between 1.3% and 1.6% of the national population. Each of the different San groups speak their own language and have distinct customs, traditions and histories. They include the Khwe, mainly in Caprivi and Kavango Regions, the Hai||om in the Etosha area of north-central Namibia, the Ju|'hoansi ,who live mainly in Tsumkwe District East in the Otjozondjupa and the Omaheke Regions, the !Xun in the Kavango and Otjozondjupa regions, the Naro and the !Xoo in the Omaheke region.[2] The San were, in the past, mainly hunter-gatherers but, today, many have diversified livelihoods, working as domestic servants or farm labourers, growing crops and raising livestock, doing odd jobs in rural and urban areas and engaging in small-scale businesses and services. Over 80% of the San have been dispossessed of their ancestral lands and resources, and today they are some of the poorest and most marginalized peoples in the country.[3]

The Himba number some 25,000 and reside mainly in the semi-arid north-west (Kunene Region). The Nama, a Khoe-speaking group, number some 70,000. The Himba are pastoral peoples who have close ties to the Herero, also pastoralists who live in central and eastern Namibia. The Nama include the Topnaars of the Kuiseb River valley and the Walvis Bay area in west-central Namibia, a group of some 1,800 people who live in a dozen small settlements and in Walvis Bay and depend on small-scale livestock production, use of !*nara* melons (*Acanthosicyos horrida*), tourism and low-paid jobs in Walvis Bay.

Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples but has no national legislation dealing directly with indigenous peoples nor are they mentioned in the Constitution. In 2010, the Namibian cabinet approved a Division for San Development under the



Office of the Prime Minister (OPM),[4] which is an important milestone in promoting the rights of indigenous peoples/marginalised communities in Namibia. In September 2012, the United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya, visited Namibia to examine the situation of the minority indigenous peoples in the country.[5]

Political voice and representation

In order to ensure that San are involved at all levels of the decision-making processes that affect them, it is necessary to have recognized and representative leaders at the local and national levels. Unfortunately, there is a general lack of leadership and organization among the San. There are no San Members of Parliament, nor any high level political appointments in any central or local ministries. In 2012, the highest San political figure, a regional councillor for Tsumkwe district, passed away suddenly, making the vulnerability of San leadership status painfully obvious.

The Traditional Authority Act (25 of 2000) establishes the legal framework for recognizing traditional leadership. One limitation of the Traditional Authority Act for San groups is that it is structured according to the traditional leadership systems of the Bantu-speaking agro-pastoralist groups of northern and eastern Namibia. This model offers no space for the traditional leadership structures of the San communities. Nevertheless, San communities believe the institution of traditional authorities to be an important tool for making their voices heard. Five of the six San traditional authorities (Hai||om, !Kung, Ju|'hoansi, Omaheke North and Omaheke South) have been recognized. In 2012, the chief of the !Xun in Otjozondjupa passed away and the appointment of a new chief is still outstanding.

Of the five recognised San traditional authorities, three have faced serious complaints from their communities in recent years, on issues including a lack of communication, inappropriate behaviour, corruption, a lack of transparency and favouritism/nepotism. Government institutions, however, negotiate mainly with the traditional authorities of the respective San communities, ignoring issues regarding the legitimacy of those authorities and the existence of other community-based organisations.

Land

One of the primary factors creating dependency and marginalization among the San of Namibia today is their widespread loss of land and access to natural resources. More than two decades after Namibian's independence, many San com-

munities are still facing difficulties with regard to securing their land rights. Amongst the most urgent land issues are the following:

Hai||om – and the Etosha National Park

The Etosha National Park was once the dominion of the Hai||om San, who hunted and gathered around the Etosha pan. The German colonial administration established the park in 1907. The Hai||om remained in the park for almost another half century until, in 1954, they were finally forced from their ancestral home.

Within the last four years, nine commercial farms in the area south of Etosha National Park have either been purchased or are in the process of being purchased by the government through the efforts of the Office of the Prime Minister (OPM) and the Ministry of Lands and Resettlement. There are thus far, however, basically no livelihood options on the resettlement farms. At present there are around 620 Hai||om residents on the resettlement farms,[6] out of a total Hai||om population of around 11,000.

In September 2012, the Ministry of Environment and Tourism granted the residents of the resettlement farms a tourism concession within the south-eastern segment of Etosha National Park (!Gobaub concession). However, Hai||om who are still living in Etosha or in other parts of northern-central Namibia were neither consulted in the planning process nor are they included in the group of beneficiaries, which is a huge concern for them.

Bwabwata National Park – Khwe

The Kyaramacan Association was formed in 2005 in order to represent the residents of the Bwabwata National Park, the vast majority of whom are Khwe. When the association was recognised by the government in 2006, the residents were given user and benefit rights through the association. The user and benefit rights currently include tourism concession rights, currently two trophy hunting concessions, one high-value tourism lodge concession, one high-value plant harvesting agreement and a quota of 25 tons for the harvesting of Devil's Claw, access to veld food and plant material for household use. However, the Khwe still have no *de jure* right to be resident in the park, and their traditional authority is not recognized.

San on resettlement farms

San people were, in the early and mid-1990s, resettled on various farms across the country. Some of these farms were acquired by the Ministry of Lands and Resettlement (MLR) with the aim of providing access to land for marginalised and vulnerable groups in Namibian society, including San. Most of the resettled San are living on group resettlement projects, which are usually densely populated and often overstocked with animals, and without sustainable and realistic livelihood strategies. Initially, the government provided many free services (including food rations, diesel, fencing materials, other farming equipment and small stock). By providing the services for free over a fairly long period of time, the government has created a relatively high level of dependency and a focus on continuous government support amongst the resettled people. In addition, none of the resettled San beneficiaries have ever received any title deed in their individual name. The influx of family members, evicted farm workers, or other passers-by has proved hard to control and regulate; in fact, many resettlement projects are acknowledged as safe havens for anyone who is out of work, with growing numbers of beneficiaries in these projects and increasing pressure on often over-utilised resources as a result.

Gender, poverty and exclusion

San women and girls are the most vulnerable amongst the San and face multiple discriminations. In some San communities, the inheritance practices leave widows without anything once their husband has died. San girls often drop out of school because of teenage pregnancy or marriage.

San women often remain alone on the resettlement farms with their children and grandchildren while their husbands seek employment on nearby farms; others rely on infrequent wage remittances from husbands or boyfriends who earn money doing odd jobs in towns.

In many regions, un- and underemployment, poverty and racial sexualisation collude to push San women into sex work, either for food, alcohol or a small amount of money. In many – perhaps most – cases, gender-based violence is not reported.

It is common practice in some regions (Omaheke, Ohangwana, Kavango) for San children to be taken by families from other neighbouring groups. These children may, in some cases, go to school; in others, they are used as manual labour. In some cases, the San family is paid; in others, the only benefit is one less mouth to feed in the household. To date, the government has never tried to tackle this problem and the San Division of the OPM does not pay special attention to women. There is an urgent need to look specifically at the situation of indigenous women and girls.

Education

International agreements on indigenous rights and educational rights have been ratified by the Namibian government, and these have informed the government's efforts to provide Education for All in Namibia. However, San, Topnaar and Himba communities present educational levels and literacy rates that are significantly below the national average and this contributes to their on-going poverty and marginalisation.

The main challenges to quality education for indigenous peoples are an interconnected complex of issues related to distance from schools, language and cultural differences, poverty and stigma.

Main events relating to indigenous peoples and indigenous peoples' rights in Namibia in 2012

The ILO programme "Promoting & Implementing the Rights of the San Peoples of the Republic of Namibia",[7] continued its activities in 2012. Within the programme, a Guide to Indigenous Peoples' Rights in Namibia was launched by the Office of the Ombudsman. The Namibian San Council received two workshops on institutional strengthening and capacity building, with more to follow in 2013. Furthermore, a training workshop on Indigenous Peoples' Rights in Namibia was implemented for the office of the Ombudsman and other line ministries. If continued, this process of capacity building, awareness raising and policy development could ultimately result in stronger San leadership, along with better human rights and indigenous rights awareness on the part of communities, public servants and

others. It is envisaged that the process to develop a policy framework for marginalised communities in Namibia will make progress in 2013.

In cooperation with the Desert Research Foundation in Namibia (DRFN), the Legal Assistance Centre (LAC) continued its study into the living conditions of San in Namibia. The objective of the study is to provide information on the livelihoods of the different San communities in Namibia in order to assist stakeholders such as OPM, line ministries, Regional Councils, NGOs and development partners to improve the design and implementation of projects aimed at improving the living conditions of the San. The results of the research will be published in 2013.

Additionally, the Working Group of Indigenous Minorities in Southern Africa (WIMSA) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) Windhoek Office, convened a sub-regional conference entitled "Indigenous Education in a Changing World". The purpose of the conference was to determine what efforts have been made to improve formal education for San communities, and also to identify alternative learning options that could help San communities to meet their educational aspirations.

Furthermore, the San Support Organisations' Association of Namibia (SSOAN) was officially established, bringing together international, national and community-based NGOs, multilateral and bilateral donors, and research and training institutions to promote the rights of the San in Namibia, improve coordination of the various San support initiatives and harmonize the approaches to San development.

In October, WIMSA, the Open Society Initiative of Southern Africa (OSISA) and Norwegian Church AID (NCA) organised a conference entitled "Indigenous Voices for Good Governance and Human Rights". More than 50 indigenous participants, as well as other stakeholders from Botswana, South Africa, Angola and Namibia, attended the conference. It was aimed at facilitating better cooperation among the indigenous peoples of the subcontinent.

Later in the year, WIMSA, supported by Terre des Hommes, convened the Southern Africa Regional San Rights Conference in Namibia. At the conference, the San delegates issued a declaration on the rights and responsibilities of the San People in Southern Africa.

Most importantly, in September 2012, the United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya, visited Namibia to examine the situation of the minority indigenous peoples in the country. In his press release, he stated that he had detected a lack of coherent government policy as-

signing a positive value to the distinctive identities and practices of the indigenous peoples or promoting their ability to survive as peoples with their distinct cultures intact in the fullest sense, including in relation to their traditional lands, authorities and languages. In particular, he noted the challenges facing the indigenous peoples in Namibia with regard to land, education and recognition of their traditional authorities. However, he also recognised that the government had entered into some innovative arrangements with the San (e.g. the conservancy arrangements), which should be expanded and strengthened.[8]

In sum, there are many activities taking place with regard to improving indigenous peoples' lives in Namibia. However, indigenous peoples in Namibia still face severe discrimination and lack of access to basic services, and to the decision-making processes that affect them. Although the policies and laws are in place to allow for an improvement in their situation and for them to access their basic human rights, in practice these are often either not implemented, or are implemented in ways that continue to exclude indigenous communities. There is a lack of a coordinated and systematic approach and a lack of effective and engaged consultation with indigenous communities as to their needs and aspiratio ns. ❍

Notes and references

1 **Suzman, James, 2001b:** *An Introduction to the Regional Assessment of the Status of the San in Southern Africa.* Windhoek: Legal Assistance Centre. Report Series. April 2001:xvii, **NSA 2012**: Namibia Household Income and Expenditure Survey (NHIES) 2009/2010: 27. Biesele, Megan & Hitchcock, Robert K. 2011: The Ju/'hoan San of Nyae Nyae and Namibian independence: development, democracy, and indigenous voices in Southern Africa. New York and Oxford: Berghahn Books: 6.

2 The most comprehensive data on the number of San in Namibia is the National Census, undertaken every ten years. Publication of the 2011 census results is still outstanding. However, the census only distinguishes between language groups and not ethnic groups. This obscures the actual number of San because a considerable number of them now speak the language of the dominant neighboring groups.

3 The extent of San marginalisation is clearly evident in the United Nations Development Programme's (UNDP) socio-economic indicators of human development, where the situation of the San is consistently worse than for other groups in Namibia – see **UNDP. 2007.** *Trends in Human Development and Human Poverty in Namibia: Background paper to the Namibia Human Development Report.* Windhoek: UNDP.

4 http://www.sandevelopment.gov.na/index.htm.

5 The author would like to thank Jennifer Hays for her input to the article.

6 **Lawry, Steven, Begbie-Clench, Ben & Robert K. Hitchcock, 2012:** Hai||om Resettlement Farms Strategy and Action Plan. Report compiled for the Millennium Challenge Corporation and Ministry of Environment and Tourism. September 2012: 7.

7 The Namibia component of the Indigenous Peoples' Programme under the 2008/12 partnership programme of the Spanish Agency for International Development Cooperation and the International Labour Organisation, in cooperation with the Office of the Prime Minister.

8 http://unsr.jamesanaya.org/statements/statement-of-the-special-rapporteur-on-the-rights-of-indigenous-peoples-james-anaya-upon-concluding-his-visit-to-namibia-from-20-28-september-2012.

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BOTSWANA

The Botswana government does not recognize any specific groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous. 3.4% of the population, however, identifies as belonging to indigenous groups, including the San (known in Botswana as the Basarwa) who, in July 2012, numbered some 57,000.

The San in Botswana have been traditionally seen as hunter-gatherers but, in fact, the vast majority are small-scale agro-pastoralists and cattle post workers and people with mixed economies who reside both in rural and urban areas, especially in the Kalahari Desert and in the eastern part of the country. The San in Botswana are sub-divided into a large number of named groups, most of whom speak their own mother tongue. Some of these groups include the Ju/'hoansi, Bugakhwe, //Anikhwe, Tsexakhwe, !Xoo, Naro, G/ui, G//ana, Tsasi, Deti, ǂKhomani, ǂHoa, //'Xauǂesi, Shua, Tshwa, Danisi and /Xaisa. The San are among the most underprivileged people in Botswana, with a high percentage of them living below the poverty line.

In the south of the country are the Balala, who number some 1,600 in Southern (Ngwaketse) District and extending into Kgalagadi District, and the Nama, a Khoekhoe-speaking people who number 1,900 and who are also found in the south, extending into Namibia and South Africa. The majority of the San, Nama and Balala reside in the Kalahari Desert region of Botswana.

Botswana is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples but there are no specific laws on indigenous peoples' rights in the country nor is the concept of indigenous peoples included in the Botswana Constitution.

Rights to water

In late July 2012, at Xere, one of the Central Kalahari Game Reserve (CKGR) resettlement sites, residents said that they were facing a severe water crisis. They pointed out that the fact that the government's water deliveries had been taken over by private companies had led to a severe reduction in the availability of water. Similar complaints were heard in Ranyane and other remote area settlements in Botswana.

The water problems in the Central Kalahari, which have been reported in previous issues of *The Indigenous World,* continued. Efforts were made by a non-government organization to obtain water at several of the CKGR communities but the boreholes yielded only salty water which people could not drink. As of the end of 2012, water was only available at one community in the CKGR, Mothomelo, and the pump there was experiencing difficulties. What this meant was that people from all five of the currently occupied communities in the CKGR were having to travel to Mothomelo to obtain water or leave the reserve to fetch water from the resettlement locations, with little or no guarantee that they would be allowed to return to the CKGR. On-going problems continue, with the government not giving permits to people to enter the Central Kalahari, even if they have relatives there.

Rights to land and natural resources

Issues relating to indigenous peoples' rights continued to form a focal point of public discussions and debates in Botswana in 2012.

A new Botswana Draft Land Policy was unveiled in January 2012 by the Ministry of Lands and Housing (MLH). The policy was presented to the House of Chiefs in January, and it was debated in the Botswana Parliament in July 2012.[1] The principles of the new land policy are: first, in order for people to obtain land, they have to demonstrate financial and management capability; second, land will be put up for auction and sold to the highest bidder; and third, land for residences will be given to all who apply for it.[2] Botswana is 581,720 km^2 in size, and is divided into categories, including freehold land (private) (5.7 per cent of the country), state land (17.4 per cent of the country) and what is known as tribal land (71

per cent of the country). The draft land policy applies to tribal land, leasehold land within the tribal land areas, and what are known as Wildlife Management Areas.

It is uncertain as to what will happen to settlements in remote areas, where sizable numbers of indigenous people reside. Remote Area Dweller settlements currently make up 3,523 km^2, which is less than 0.6 per cent of Botswana. Indigenous people in remote area settlements in north-western, western, and eastern Botswana were told in 2012 that they had to leave the places where they had lived, in many cases for generations, and resettle elsewhere. In one case, Ranyane in Ghanzi District, the government shut down their only water point in order to get them to leave. The residents of Ranyane have not had any compensation nor have they been told where they should resettle.

On 5 May 2012, the Government of Botswana sent Special Support Group (Botswana Police) officers to a camp at Metsiamanong in the Central Kalahari Game Reserve (CKGR). This decision was taken by the Botswana government in order to control what was seen as illegal hunting in the reserve. The SSG spent time searching people and arresting them. By the end of the year, over 20 people, some of them children, had been arrested in the CKGR and in the resettlement sites of New Xade and Kaudwane. There were allegations of mistreatment, torture and brutalization of people who were suspected of having illegal wildlife products. Some of these individuals were later brought for trial and had to pay substantial fines.

On 18 July 2012, a consultation was held by Hana Mining Company at Mothomelo in the Central Kalahari to gain feedback from residents of the CKGR about the proposed copper/silver mine it was planning in Ghanzi and Ngamiland. Reactions from the CKGR communities to the new mine plans were mixed. If the mine gets the go-ahead, the mining activities will directly affect a portion of the northwestern part of the reserve near Tau Gate. CKGR residents are already coping with a diamond mine owned by Gem Diamonds at Gope (Ghaghoo) in the southeastern portion of the reserve, which has been under exploitation for several years. The Gem Diamonds mine has employed a few people from the CKGR resettlement community of Kaudwane but the people from Ghaghoo say that they have gained no employment opportunities from the mine.

Threats to community-based natural resource management programs in Botswana

In May 2012, the Botswana government announced that it would be taking steps to address problems in the management of the community trusts established under the government's community-based natural resource management programs. The government said that there were problems with the financial management of the trusts and unfair benefit distributions, which had led to some community trust members "being impoverished". Community trust members, for their part, said that the government wanted to take over their enterprises and give them to private companies, relocating people away from the community areas.[3]

Some of the community trusts, such as Khwai Development Trust (KDT) near Moremi Game Reserve, make substantial returns from leasing out hunting rights

to private safari operators. The Khwai Development Trust operates a luxury game lodge, Tsaro Lodge, on the Khwai River, which generates over a million Pula a year and provides dozens of jobs and a substantial income for community members. Khwai community members were told that they would no longer be able to oversee the trust. Similar comments were made to the members of the Mababe Zokotsama Community Development Trust (MZCDT), and the residents of the Mababe community were told that they would have to move to another place in Ngamiland. No reasons were given by the central government or the North-West District Council for the relocation of Mababe.

As of the end of 2012, at least 17 communities in western and central Botswana, including those in the Central Kalahari, had been told by district council and government officials that they would have to relocate to other places. When asked by community members where they should go, whether they would receive relocation allowances and compensation, and whether new services would be provided at alternative locations, government officials refused to answer. Some community residents were told that they had to leave their areas because they were "in a wildlife corridor" and their livestock would disturb the breeding of wild animals.[4]

Some of Botswana's tribal land is in the hands of local people, some of them indigenous, but an increasing percentage of the land is held by private companies or individuals who have leases from the district land boards. There were indications that individuals, including some foreigners, were making arrangements to take over leasehold ranches in exchange for cash.[5] A number of the new land holders were putting up fences that affected wildlife movements, which in turn affected the viability of nearby community-based natural resource management areas. The new landlords were also allegedly allowing hunters to come on to their property to hunt in exchange for sizable fees.

In the case of the 72 leasehold ranches in the Hainaveld region of North-West district (Ngamiland), just to the north of the Central Kalahari Game Reserve, some of the ranch lessees have formed conservancies (a block of ranches with a common management plan aimed at conservation, game ranching and commercial wildlife management). As advertised on the web for willing buyers, the price for the conservancy in 2012 was over US$3,951,150.00 for a conservancy area of 26,341 hectares in size.[6] Foreign companies were seeking to purchase this land, as they were leasehold land in various parts of Botswana.

It is unclear whether or not people who have leasehold and freehold (private) land will be able to have the right to bring in people to hunt on their land in the

future. The Government of Botswana announced in July 2012 that it would impose a hunting ban in the country beginning in January 2014.[7] Such a ban will affect not only safari companies and their clients but also the community trusts which have joint agreements with safari companies. It will also affect those people, many of them indigenous and poor, who in the past had the right to obtain Special Game Licenses (SGLs), permits aimed at providing people dependent on hunting for part of their subsistence.[8]

There were fears expressed by indigenous peoples and others that the hunting ban would lead to job losses in community trusts such as that of Sankuyu in Ngamiland.[9] The government's position is that the hunting ban will reverse what it says is a steep decline in the wildlife population in the country, although some local people say that animal numbers are stable or increasing in some areas. It is interesting to note that no Special Game Licenses or hunting permits have been issued to the people in the Central Kalahari, despite 186 formal applications having been made by CKGR and resettlement site residents to the Minister of Environment, Wildlife and Tourism over the past six years. Requests for Special Game Licenses in other parts of the country have also not received responses from the Department of Wildlife and National Parks. No Special Game Licenses or hunting permits were issued to people in the Central Kalahari or in remote area dweller settlements, as compared to hundreds of licenses issued to non-citizen hunters entering the country through safari companies.

International advocacy

Ditshwanelo, the Botswana Center for Human Rights, and San advocacy organizations First People of the Kalahari (FPK) and the Botswana Khwedom Council (BKC) raised concerns about the treatment of people in the Central Kalahari during 2012. A report was filed regarding these issues with the U.N. Human Rights Council, which was due for discussion when Botswana came up for the Universal Periodic Review (UPR) in January 2013.

Two Botswana San, one from the Botswana Khwedom Council and the other from the Kuru Family of Organizations (KFO), attended the eleventh annual meeting of the United Nations Permanent Forum on Indigenous Issues in New York from 7-18 May 2012. Together with some San from Namibia, they helped form the

San Caucus. The San Caucus is an informal organization that brings together all San in southern Africa to represent their interests.

Economic, social and cultural rights

Indigenous women and youth were very active in the various San and minority advocacy and development organizations in Botswana in 2012. San and others in the Kuru Family of Organizations worked on oral history projects and the documentation of indigenous knowledge.[10] The Centre for San Studies at the University of Botswana continued to assist San and other students and to provide a source of support for people working on San-related issues.

The University of Botswana has several dozen San students, who are studying subjects as diverse as linguistics, sociology, history and environmental science. There are several San in high-level positions in the Botswana government. The Botswana government, for its part, has committed to employing San in government ministries, schools, the police, the military and the Department of Wildlife and National Parks.

San and other indigenous people in Botswana took part in research and development projects throughout the country, some of them in association with Botswana civil society organizations and local and international academic institutions. San, Nama and other groups continued to press for the teaching of mother-tongue languages in Botswana schools, in addition to Setswana and English.

The Kuru San Dance Festival was held on 1 August 2012 at Dqae Qare in Ghanzi District. The newly-appointed Vice-President of Botswana, Dr. Ponatshego Honorius Kefhaeng Kedikilwe, was in attendance along with several hundred others. This dance festival brought together San, Herero, Mbukushu, Wayeyi and others from throughout southern Africa, and provided opportunities for San and other groups to promote their cultural heritage. ❍

Notes and references

1 The Botswana House of Chiefs, known officially as *Ntlo ya Dikgosi*, is part of the Botswana Parliament and is primarily an advisory body, having little in the way of legislative involvement and no veto power. See Republic of Botswana. 2012. *Botswana Land Policy*. Gaborone, Botswana: Government of Botswana.

2 **Gaotlhobogwe, M., 2012a:** "Botswana Land Up for Auction." *Mmegi wa Dikang*, Vol. 13, no. 32, 27 August 2012.
3 **Keakabetse, B., 2012:** "Basarwa Trusts under Threat." *Mmegi wa Dikang*, Vol. 29, no. 70, 12 May 2012.
4 **Gaotlhobogwe, M., 2012b:** "Basarwa, Bakgalagadi in another Forced Relocation." *Mmegi wa Dikang*, Vol. 29, no. 40, 15 March 2012.
5 **Keoreng, E., 2012:** "How Foreigners are Buying Land like Magwinya." *Mmegi Wa Dikgang*, Vol. 13, no. 46, 1 June 2012 and interviews of land board officials in North West District.
6 www.bestrealestate.com/go/en, accessed on January 18, 2013.
7 **Gaotlhobogwe, M., 2011c:** "Wildlife Hunting to Cease in Botswana." *Mmegi wa Dikang*, Vol. 28, no. 4, 15 July 2011.
8 See "Subsistence Hunting and Social Justice Issues in Botswana". www.justconservation.org, accessed on 25 January 2013.
9 **Morula, M., 2012:** "Hunting Ban will lead to Job Losses." *Sunday Standard, online edition*, 6 December 2012.
10 See **Letloa Custodian Committee, 2012:** *Naro San Values*. D'Kar: Custodian Unit, Kuru Family of Organizations and Letloa Trust.

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ZIMBABWE

The Government of Zimbabwe does not identify any specific group as indigenous, arguing that all black Zimbabweans are indigenous peoples. However, among the black Zimbabwean groups, the people who identify themselves as indigenous peoples are the San peoples who live in Tsholotsho and Bulilima Districts on the edges of South-Western Zimbabwe, adjacent to the Botswana – Zimbabwe boundary. The San in Zimbabwe were traditionally semi-nomadic hunter gatherers but the majority have now become small-scale communal farmers. The San are part of the estimated 14% minority groups in Zimbabwe and they constitute about 0.1% of the total Zimbabwean population. Major international organizations documenting minority and indigenous peoples, however, have neither documentation nor statistics on the San peoples of Zimbabwe.

The San in Zimbabwe consist mainly of Tsharatshawo language speakers. Major challenges faced by the San include discrimination, language rights, control over land, poor service delivery, cultural assimilation, lack of political and traditional representation as well as exclusion.

At the moment, Zimbabwe does not have any specific legislation governing indigenous or minority peoples. However, the new Draft Constitution seeks to recognize the San language as one of the official languages. Zimbabwe voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

Constitutional and legislative recognition

The Zimbabwean Constitution has no provisions for and does not recognize the San people. The current constitution does not even recognize the San language as an official language. However, the 2012 Draft Constitution recognizes the Khoisan language as one of 16 official languages in the country (Section 1.6:1 of the 2012 Draft Constitution).[1]

Section 62:1-3 of the Education Act[2] stipulates that children below grade 3 should be taught in either Shona or IsiNdebele as the medium of instruction. The use of other languages in schools is left to the discretion of the Minister of Education, as Section 62:4 says that, in the case of minority languages, the Minister may prescribe the use of such languages in schools where the general community uses the minority language.

Zimbabwe is poor in transposing international laws and obligations. Although the country signs and accepts many international instruments, such as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the Declaration on the Rights of Indigenous Peoples, there is no political will to ensure that such provisions are transposed into national law, policies and programmes.

Although the Zimbabwean Inclusive Government adopted the Human Rights Act in 2012 and subsequently established the Human Rights Commission, the Commission has not yet become operational owing to "financial and technical constraints".

Representation

The San in Zimbabwe are grossly underrepresented at traditional, political and technical levels. Traditionally, the San only have Village Heads who are in the lower strata of traditional leadership. Efforts on the part of the San to have a San Headman and Chief have been fruitless as government officials have not been cooperative. Politically, the San have not had any of their leaders/activists elected to public office in Ward Development Committees, or as councillors. Technically, due to a lack of education, the San have none of their people employed in any government or decision-making position.

Such lack of representation has ensured that the San do not develop on a par with other communities and their interests are not taken into account at the decision-making level.

Service delivery

Service delivery in Zimbabwe's rural communities is generally very poor. The situation is highly critical in the San communities as children travel 8-10 kilometres to

school. This has resulted in most San children dropping out of school before grade 7. Unpublished research by the NGO, Tsoro-o-tso San Development Trust, revealed that in 2011 there was only one San child in grade 7, four in grade 6 and only three at secondary school in Zimbabwe. The research also established that there are generally high numbers of San children in grades 1-3 and that the numbers drop drastically from grade 4 upwards. This is mainly attributed to the long distances travelled to school, high levels of discrimination and exclusion in schools and high poverty levels.

San people generally have to travel about 20 kilometres to the nearest clinic and 80 kilometres to the nearest government hospital.

Access to clean water is also a major factor affecting the San peoples. For example, in one ward where the San live, there are eight boreholes but only two are functional. People have to resort to open dam water for drinking, which they share with wild and domestic animals. During the dry months of August to December, most San people have to abandon their homes and settle in the bushes close to the Hwange National Park in search of water sources. Some have to travel 15 kilometres to access water. An incident of this kind was published in

Minority Voices[3] where it was stated that, in November 2012, due to the continuing drought situation in Matabeleland, the dams that were used by the San people had totally dried up, leaving them no option but to settle in the bush along the banks of Manzamnyama River, some 20 to 30 km away.[4]

Community-led initiatives

Tsoro-o-tso San Development Trust

Community leaders established the Tsoro-o-tso San Development Trust, an organization that seeks to empower the indigenous, highly marginalized and discriminated San people in Matabeleland to advocate for their rights and other critical issues affecting them through advocacy, research, capacity building and information dissemination. Through this organization, the San have lobbied government ministers such as the Minister in the Organ for National Healing, Reconciliation and Re-integration. The community has also involved the inclusive government's Joint Operations, Monitoring and Implementation Committee, established under article 22 of the Global Political Agreement,[5] on issues of political violence and intimidation against San activists/leaders, such as when the San chairperson was threatened by ZANU PF Tsholotsho District members for advancing San issues, claiming that by doing so he "brings MDC people into the community". The organization also advocates for San representation in decision-making, natural resource management and discrimination processes.

Early Childhood Development and Adult Literacy Centre

In 2012, the community also initiated a communal Early Childhood Development and Adult Literacy Centre aimed at promoting the cultural and educational needs of the San peoples.

San Language Project

Since 2011, the San have been initiating a project to revive and promote their language as there are currently only ten people who can speak the San language fluently. The project also seeks to ensure that, by 2014, there will be books in the San language and, by 2015, the San language will be taught in schools up to grade 3.

Conclusion

The San people have been re-organizing and asserting themselves over the past year. They have established an institution to pursue their issues, lobbied government and district officials and initiated self-determination projects that will ensure that children can access education, that the community can access health services and adequate water and have control over their resources. The initiatives also ensure that all forms of discrimination against San women and youths are addressed. ❍

Notes and references

1 The draft Constitution can be found on this website: http://www.copac.org.zw/index.php?option=com_content&view=section&id=7&Itemid=154
2 The Education Act (2005) can be found on this website: http://www.parlzim.gov.zw/attachments/article/112/EDUCATION_ACT_25_04.pdf
3 www.minorityvoices.org
4 http://www.minorityvoices.org/news.php/en/1309/zimbabwe-san-people-forced-to-abandon-their-homes-in-search-of-water
5 The Global Political Agreement can be found on this website: http://www.copac.org.zw/index.php?option=com_content&view=article&id=19&Itemid=128

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SOUTH AFRICA

South Africa's total population is around 50 million, with the indigenous groups arguably comprising just over 1%. The various First Indigenous Peoples groups in South Africa are collectively known as Khoe-San comprising the San people and the Khoekhoe. The San groups include the ǂKhomani San residing mainly in the Kalahari region, and the Khwe and !Xun residing mainly in Platfontein, Kimberley. The Khoekhoe include the Nama residing mainly in the Northern Cape Province, the Koranna mainly in Kimberley and Free State Province, the Griqua residing in the Western Cape, Eastern Cape, Northern Cape, Free State and Kwa-Zulu-Natal provinces and the Cape Khoekhoe residing in the Western Cape and Eastern Cape, with growing pockets in Gauteng and Free State Provinces. In contemporary South Africa, Khoe-San communities exhibit a range of socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have created the space for a deconstruction of the racially determined apartheid social categories such as the Coloureds. Many previously so-called Coloured people are now exercising their right to self-identification and identify as San and Khoekhoe or Khoe-San. First Nations indigenous San and Khoekhoe peoples are not recognized in the 1996 Constitution but they are being accommodated in the National Traditional Affairs Bill of 2011.

South Africa voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples, but has still not ratified ILO Convention 169.

National Khoi-San Council

The National Khoi-San Council (NKC) is an ad hoc negotiating forum representing the Khoe khoe and San indigenous peoples in South Africa. The South African government formed the NKC in 1999 to ensure the liaison between

the Khoe and San peoples and the government whilst negotiating their constitutional accommodation and Khoe-San identity.[1] To qualify for representation on the NKC, Status Quo reports[2] were compiled which made recommendations to the government on the historical legitimacy of the claimant tribes. Based on the recommendations of these reports, the following peoples were qualified for representation on the NKC: the San, Griqua, Koranna, Cape Khoi and Nama.

In July 2012, the Indigenous Peoples of Africa Coordinating Committee (IPACC) hosted a workshop on the effectiveness of the NKC over the last 17 years. During the workshop, the NKC chairperson, Mr. Cecil Le Fleur, extended an invitation to external partners to assist the NKC in addressing their key human rights matters. Since its inception, the NKC has been implementing its activities largely without any form of independent support or technical assistance. The main outcomes of the workshop were the following:

External partners offered support: NKC entered into a Memorandum of Understanding with a team of environmental lawyers called Natural Justice based in Cape Town. They have since started to offer their legal support services to the NKC. This process will include developing a *Community Protocol* [3] setting out the vision and aspirations of the Khoe khoe and San in South Africa. The Community Protocol will address thematic areas such as land, heritage, intellectual property rights, education, identity, culture and education. The Community Protocol has been developed in a participatory manner that articulates the specific aspirations of the Khoe khoe and San. This will be used to assist national and international advocacy. The NKC also identified an endogenous advisory team to act as advisors to them. Key international academic institutions also offered their assistance in this regard.

During November 2012, the San Council (the body representing the San communities located in the Northern Cape) entered into a Memorandum of Understanding with the NKC on the issue of intellectual property rights, with specific reference to the plant 'rooibos' and ' buchu'. The NKC and the San Council agreed to form a negotiating team comprising representatives of the Khoe khoe and San in relation to all intellectual property rights matters. Their legal representatives, Roger Chennels and Natural Justice, will work collectively on these matters. The San Council and NKC also initiated Access and Benefit Sharing (ABS) processes as set out in the Nagoya Protocol[4] on indigenous plants such as rooibos and buchu. The expectation is that these ABS processes will take off during 2013 with due consultation of all affected Khoe khoe and San farming communities.

The government, in cooperation with the NKC, ran country-wide consultations with groupings outside the NKC structure. This was after a long call from these groupings, who did not feel represented on the government-recognized structure. Elections took place within the different groupings and the NKC expanded its membership from 21 to 30 representatives within the structure. This was the first time in approximately 15 years that the membership of the NKC had been opened up to new members.

The South African President, Jacob Zuma, announced at an official ceremony in Beaufort West that the South African government was in the 'process of finalizing its position with respect to the signing and ratification of the ILO 169 Convention on Traditional and Indigenous peoples.' [5] The South African government had planned to hold a national dialogue with international partners such as ILO around this matter in Bloemfontein in November 2012.The meeting was, however, postponed.

Legislation

National Traditional Affairs Bill (NTAB)

The forthcoming NTAB on South African traditional communities, which includes the Khoe khoe and San, is an amalgamation of Traditional Leadership Governance Framework No. 41 of 2003 and the National House of Traditional Leadership Act 2009.[6] The NTBA will recognize the Khoe khoe and San as traditional communities on a par with other already recognized dominant South African traditional groupings. This Bill unfortunately does not address issues of restoration and reparations for the Khoe khoe and San indigenous communities. The expectation was that the Bill would pass before Parliament during 2012. At this stage, however, there is no certainty when this Bill will be enacted.

Small-Scale Fisheries Policy

During June 2012, the South African Parliament passed a Small-Scale Fisheries Policy. The aim of this policy is to recognize the rights of small-scale fishing communities in South Africa, as well as redress previously marginalized and discriminated groups that were harmed by racially exclusionary laws and policies, the individualized permit system of resource allocation and the insensitive imposition of conservation-regulation. The policy recognizes that marine living resources were historically harvested for economic, cultural and spiritual purposes. It recognizes an ecosystem approach to marine living resources and traditional fishing communities' rights to these resources. The policy refers to indigenous people but does not specify who this refers to. The policy refers to people that are 'black' and 'coloured' as the historically disadvantaged groupings affected by the colonial/apartheid laws around fisheries in South Africa.

Hout Bay – Hangberg residents

The land dispute continues in Hout Bay between the Khoe-San community, which is mainly an inter-generational fishing community, and the City of Cape Town. The Khoe-San community also has a special attachment to Sentinel Mountain. The Provincial government, along with the City of Cape Town, has issued several residents with eviction orders for housing structures erected in fire break areas on

Sentinel Mountain. In December 2012, the Hout Bay residents wrote an official letter to the City of Cape Town/local municipality requesting a dialogue process in order to prevent a recurrence of the 2010 violence that broke out.[7] There has been no response as yet from the City of Cape Town to this request for a meeting on the part of the affected residents. The socio-economic situation of this mainly traditional fishing community remains unaddressed. ❍

Notes and references

1 http://www.iwgia.org/human-rights/un-mechanisms-and-processes/un-special-rapporteur/country-visits/visit-to-south-africa-2005
2 Ibid.
3 http://www.community-protocols.org/
4 The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity* is a supplementary agreement to the Convention on Biological Diversity that was adopted in October 2010. It provides a transparent legal framework for the effective implementation of one of the three objectives of the CBD: the fair and equitable sharing of benefits arising out of the utilization of genetic resources.
5 The Presidency, South Africa (http://www.thepresidency.gov.za/pebble.asp?relid=4612&t=79)
6 http://www.info.gov.za/aboutgovt/tradlead.htm
7 During September 2010, clashes erupted between the police and Hangberg residents in Hout Bay. This was at the initiative of the City of Cape Town. The Hangberg residents put up a fight as police moved into their area to demolish shacks built on the fire break area on Sentinel mountain. The police were criticised for the extreme violence used. Several of the residents had to have glass eyes fitted after this incident. It was also extremely traumatic for the residents affected. A Peace Accord was thereafter signed by community representatives from Hangberg and the City of Cape Town and the Western Cape Premier. Under the terms of this Peace Accord, the parties agree to address the issues of the community, in partnership with all the players from government side. (http://www.iol.co.za/capetimes/violence-flares-as-police-raid-hangberg-1.1261510) (http://www.youtube.com/watch?v=bRjMB3znA2E)

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PART II

INTERNATIONAL PROCESSES

UN WORLD CONFERENCE ON INDIGENOUS PEOPLES 2014

On 16 November 2010, the Third Committee of the United Nations General Assembly adopted a resolution (A/C.3/65/L.22/Rev.1) to organize a high-level plenary meeting of the General Assembly to be known as the World Conference on Indigenous Peoples. This meeting will be held in New York, 22-23 September 2014. The purpose of the meeting is to share perspectives and best practices on the realization of the rights of Indigenous peoples, including pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. This meeting is not a complete World Conference such as the World Conference on Racism 2001 held in Durban; rather it is a high level plenary session of the General Assembly *to be known as* the World Conference on Indigenous peoples. As such it is subject to the rules and procedures of the General Assembly and the interpretation of those rules and procedures by States. There has never before been a UN meeting at this level that will focus solely on Indigenous peoples' rights. As such there are huge expectations amongst Indigenous peoples for this meeting both in terms of their participation and its outcomes. There is also a fair amount of skepticism as to what it will actually deliver. Given the opportunity it presents to raise awareness about the rights of Indigenous peoples and to push for greater recognition of those rights at the international level, it would be remiss of Indigenous peoples not to leverage it for their benefit.

Initial indigenous responses

In response to the GA resolution Indigenous peoples have developed a number of initiatives aimed at ensuring Indigenous peoples are able to participate in this meeting including both the preparatory and post Conference processes. For example during the 10th session of the Permanent Forum on Indigenous Issues, the Sami Parliament of Norway offered to host a preparatory meeting of Indigenous

peoples in June 2013 to consolidate Indigenous people's strategies and inputs. A concept paper was written by Indigenous peoples outlining the keys areas where Indigenous peoples should focus their attention in order to maximize the opportunity this meeting offers and in January 2012 an open-ended Indigenous Peoples' Brainstorming Meeting on the World Conference on Indigenous Peoples 2014 was held in Copenhagen. The meeting was organized by the Greenland Self Rule Representation in Copenhagen, the Sami Parliament of Norway and the International Work Group for Indigenous Affairs, IWGIA and was attended by 30 indigenous representatives from all over the world and invited UN Experts.

The outcome of the Copenhagen meeting was a resolution affirming the importance of maintaining the standards established in the United Nations Declaration on the Rights of Indigenous Peoples and outlining a set of minimum terms regarding indigenous peoples' participation in the process, including the appointment by the UN of an indigenous co-facilitator who should work together with the State appointed Ambassador and the formation of an Indigenous Global Coordinating Group (GCG).

The GCG is comprised of the 7 Indigenous regions of the world – the Arctic, Africa, Asia, Latin America, North America, the Pacific and Russia as well as the Indigenous women's and Indigenous youth caucuses. Each group has the right to have two members and one alternate. The current members of the GCG are Joseph Ole Simel and Saoudata Aboubacrine for Africa, Hjalmar Dahl, John Henriksen and Sara Larsson (alternate) for the Arctic, Joan Carling, Binota Moy Dhamai and Ang Kaji Sherpa (alternate) for Asia, Florina Lopez, Marta Sánchez and Nancy Iza (alternate) for Latin America, Kenneth Deer, Debra Harry and Art Manuel (alternate) for North America, Ghazali Ohorella and Menase Kaisiepo (alternate) for the Pacific, Rodion Sulyandziga and Dmitry Berezhkov (alternate) for Russia, Tarcila Rivera Zea, Alyssa Macy, Vicky Tauli-Corpuz (alternate) and Kamira Nait Sid (alternate) for the women's caucus and Tania Pariona, Tomas Aslak Juuso and Eleanor Goroh (alternate) for the youth caucus. The GCG is supported by its Secretariat, Tracey Castro Whare and Inger Johanne Mudenia.

The GCG is primarily responsible for lobbying for the full and effective participation of Indigenous peoples in the preparatory processes leading up to, during and after the meeting. Fundraising is also a major focus of the GCG. This is undertaken by the fundraising committee as well as by the individual GCG members to ensure that the indigenous preparatory process is realized. GCG members are also responsible for disseminating timely and relevant information to

their respective regions and caucuses. For more information on the work of the GCG see www.wcip2914.org

Modalities resolution

On 17 September 2012 the GA adopted a modalities resolution which sets out the framework for the World Conference.

Key components are:

- Meeting will be held in New York on Monday 22 September and the afternoon of Tuesday 23 September 2014.
- There will be two plenary sessions, the opening and closing sessions.
- There will be 3 interactive roundtables and one informal panel discussion.

The modalities resolution provides that summaries of the roundtables and the panel discussion will be presented by the co-chairs at the closing session. Participants in the roundtables and the informal panel discussion will include States, UN agencies, Indigenous peoples, civil society and national human rights institutions.

Interactive hearing

The modalities resolution requires the President of the General Assembly to organize an informal interactive hearing no later than June 2014 in order to provide input into the preparatory process. Indigenous peoples, UN agencies, academia, national human rights institutions, parliamentarians, civil society and States are encouraged to participate.

Outcome document

The modalities resolution states that the meeting should result in an action orientated outcome document. The President of the General Assembly will prepare the draft text on the basis of consultations with States and Indigenous peoples. The President will take into account the views emerging from the preparatory pro-

cesses and the interactive hearing. They will then convene a consultation process to provide input for sufficient consideration by States and agreement by the General Assembly prior to the meeting itself.

The resolution makes particular note of Indigenous peoples' participation as follows:

- 3 indigenous representatives will speak at the opening session;
- The informal round tables and the interactive panel session will be co-chaired by States representatives and Indigenous peoples' representatives;
- The accreditation of indigenous organizations and institutions to the meeting will be based on existing practice such as accreditation procedures used by the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues;
- States are to consider the inclusion of Indigenous peoples in their delegations;
- There is special mention of the participation of indigenous women, youth, elders and persons with disabilities;
- Indigenous peoples will be able to participate in the informal interactive hearing;
- Indigenous peoples will be consulted in the preparation of the outcome document in two ways, firstly from their input into the preparatory processes and secondly through a process of consultation; and
- Indigenous peoples are encouraged to disseminate the results of their international, regional and thematic conferences.

The expectations of Indigenous peoples for the modalities resolution was that it would give effect to the rights enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This would include an accreditation process that catered for Indigenous governments both traditional and contemporary as well as the myriad of ways that Indigenous peoples organize themselves collectively. Coupled with that there was also a clear expectation that Indigenous peoples' participation in the meeting would be unfettered thereby realizing the right of full and effective participation in decisions affecting them. Given the modalities resolution was negotiated within the confines of the rules and procedures of the General Assembly, some States chose to take a strict interpretation of those rules and procedures giving them greater weight than the rights enshrined in the UNDRIP.

The GCG met with States in New York during the negotiations of the modalities resolution. Given that the decision making did not lie with Indigenous peoples but resided solely with States, the only strategic and viable option was to lobby States. The GCG was able to lobby for language that addressed the views and positions expressed by Indigenous peoples. Their presence and active participation in the process also provided an opportunity to see how States were positioning themselves in relation to the implementation of Indigenous peoples' rights within the UN system. Whilst seeking to uphold these rights, it became clear to the GCG that the larger ongoing political tensions as well as the reluctance by some States to give real meaning to Indigenous peoples' rights were going to be key factors. Language specifically drafted by the GCG that captured all the ways that Indigenous peoples choose to organize themselves was omitted. National policies such as China's rejection of Taiwanese independence, the US desire to only include federally recognized tribes and Russia's position of not wanting to recognize any rights for Indigenous peoples within the confines of the General Assembly all influenced the negotiations of the modalities resolution. Despite these challenges, the GCG continued to call for strong inclusive language. Their efforts also helped John Henriksen and Ambassador de Alba of Mexico in their roles as co-facilitator to the President of the General Assembly to push for stronger language and to rebut the more negative amendments that were proposed.

Upon the adoption of the modalities resolution there were some Indigenous organizations and peoples who expressed their unhappiness with its content noting that it provided a lesser standard than the rights set out in the Declaration and therefore limited Indigenous Peoples right to participate effectively. However the majority of views expressed by the members of the GCG was that whilst a stronger modalities resolution had been preferred, the language as adopted was workable.

Indigenous preparatory processes

The GCG has put together a road map flagging all potential activities leading up to the World Conference. It is clear that Indigenous peoples need to meet and strategize. To that end each region and the two caucuses have agreed to hold preparatory meetings with the objective of bringing together their concerns, recommendations and potential themes for the meeting. A global meeting of Indigenous peoples is also planned in Alta, Norway 8 -13 June 2013. This will seek to

bring together all the regional and caucus declarations and create a common platform upon which Indigenous peoples as a collective can all agree. This common platform can then be used to lobby for specific recommendations and outcomes in the outcome document of the World Conference.

Future work

In 2013, the remaining indigenous regional and caucus preparatory meetings will be held. The global indigenous preparatory conference will also be held in Alta, Norway and the Mexican government has offered to hold a regional meeting for Latin America that will include both Indigenous peoples and States. The UN needs to appoint a Secretariat who will be responsible for organizing the World Conference. This is likely to include the Secretariat of the Permanent Forum on Indigenous Issues, the office of the President of the General Assembly and the deputy Secretary General. To date Indigenous peoples have been far more organized and active in their preparation towards the World Conference than States or the UN have despite financial constraints and working globally. The UN must prioritize resources to bring this meeting to fruition. This will require constant lobbying by Indigenous peoples to ensure the meeting remains a priority.

Indigenous sentiment

Whilst the World Conference is an opportunity to raise awareness of indigenous peoples' rights and push for their greater recognition, Indigenous peoples are under no illusion that it will meet all of their concerns and needs. Many years of experience within the UN have taught Indigenous peoples that the realization of rights and access to justice cannot be provided solely by the UN however it is clear that this meeting should be utilized to its full extent. It is a testing time to see how States will implement the Declaration on the Rights of Indigenous Peoples in practice at the international level both in the organization of the meeting as well as its substantive outcomes. ❍

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UN PERMANENT FORUM ON INDIGENOUS ISSUES

The United Nations Permanent Forum on Indigenous Issues (Permanent Forum) provides expert advice to the United Nations Economic and Social Council (ECOSOC) and to United Nations programmes, funds and agencies; raises awareness of indigenous peoples' issues; and promotes the integration and coordination of activities relating to indigenous peoples' issues within the United Nations system. The Permanent Forum is one of three United Nations bodies that are mandated to deal specifically with indigenous peoples' issues. The others are the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples.

Established in 2000, the Permanent Forum is an advisory body to ECOSOC and is composed of 16 independent experts functioning in a personal capacity, who serve for a term of three years. Eight of the members are nominated by governments and eight are nominated by indigenous peoples' organizations. Following its adoption in September 2007, the Permanent Forum also included promotion of and respect for the full application and implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in its mandate.

A key feature of the Permanent Forum is its two-week session that is usually held in April or May at the United Nations Headquarters in New York. The Permanent Forum sessions provide an opportunity for indigenous peoples from around the world to enter into direct dialogue with members of the Forum, the UN system and the Special Rapporteur on the rights of indigenous peoples, as well as other Human Rights Special Rapporteurs, other expert bodies and Member States. The outcome of the session is a report containing recommendations for attention and adoption by ECOSOC.

Combating violence against indigenous women and girls: international expert group meeting

The Permanent Forum's annual international expert group meetings gather indigenous experts from each of the seven socio-cultural regions to present on relevant global topics decided by the Permanent Forum members. In 2012, the topic of the meeting was *Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples,* which took place from 18 - 20 January 2012 at the UN Headquarters.

The experts outlined the multiple forms of discrimination that indigenous women and girls face, which are associated with their indigenous identity, their gender, culture, religion and language. This is a significant obstacle to the capacity and potential of indigenous women and girls to exercise their rights to participate fully in society. It also limits their access to opportunities to equal and better education, healthcare and justice along with their participation in socio-economic, cultural and political decision-making and capacity-building processes. As a result, many indigenous women and girls live in precarious conditions and, in many cases, extreme poverty. Throughout the world, indigenous women and girls are exposed to diverse forms of physical, psychological and sexual violence.

Indigenous peoples' organizations around the world have long spoken out against an epidemic of violence against indigenous women and children. The UNDRIP specifies a state obligation to guarantee and protect indigenous women and girls, whether the violence is perpetrated by private or public actors. While states have a responsibility to uphold standards of due diligence and take steps to fulfil their responsibility to protect their citizens from human rights abuses, there is still an urgent need for state officials to better understand and address violence against indigenous women and girls.

Participants at the expert group meeting called upon the United Nations system, Member States and indigenous peoples' organizations to recognize the rights and special needs of indigenous women and girls. Member States were urged to adopt measures, in conjunction with indigenous peoples, to ensure that indigenous women and girls enjoy full protection from and guarantees against all forms of violence and discrimination. The United Nations system was urged to support efforts and initiatives that provide support and protection to indigenous women and girls. It was further recommended that indigenous communities seri-

ously consider the problem of violence against indigenous women and girls in their communities by recognizing and dismantling existing patriarchal social relations, eliminating discriminatory policies and showing a continuous commitment to indigenous women's rights in all indigenous institutions and at all levels.

In addition to being presented at the 11th UNPFII session, the report of the meeting was presented to the 56th session of the Commission on the Status of Women (CSW), where a resolution was adopted on "Indigenous women: key actors in poverty and hunger eradication" (page 22 in E/CN.6/2012/16) – a landmark achievement in recognizing the role of indigenous women and their traditional knowledge in the development process towards poverty eradication.

Eleventh Session of the Permanent Forum on Indigenous Issues

The theme of the eleventh annual session of the Permanent Forum was *The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples).* The session was attended by over 1,200 indigenous peoples' representatives, some 50 Member States, UN system agencies, funds and programmes, and NGOs. Moreover, high-level ministers attended the session from Bolivia, the Republic of Congo, Ecuador, Guatemala and the USA. One of the highlights of the opening of the eleventh session was the UN Deputy Secretary-General, who described the Forum as "uniting different voices and different languages in one single demand: recognizing, respecting and promoting indigenous people's rights". She highlighted the 16-member expert body's catalytic role in helping indigenous peoples worldwide achieve their goals and the right to self-determination, working alongside UN agencies and civil society groups.

Main Outcomes of the 11th Session

Discussion of the theme, the Doctrine of Discovery, was considered in light of the legal and political justification for the dispossession of indigenous peoples from their lands, their disenfranchisement and the abrogation of their rights. Indigenous peoples were constructed as "savages", "barbarians", "backward" and "inferior and uncivilized" by the colonizers, who used such constructs to subjugate, dominate and exploit indigenous peoples.

Ongoing manifestations of such doctrines are evident in indigenous communities, including in the areas of: health; psychological and social well-being; denial of rights and titles to land, resources and medicines; conceptual and behavioural forms of violence against indigenous women; youth suicide; and the hopelessness that many indigenous peoples experience, in particular indigenous youth. Other manifestations can be found in the regulations, policies and court decisions by which states have purportedly "extinguished" the rights of indigenous peoples to their lands, territories and resources, their right to self-determination, their languages, religions and even their identities and existence. The Permanent Forum has previously emphasized that redefining the relationship between indigenous peoples and the State is an important way of understanding the doctrine of discovery and a way of developing a vision of the future. To that end, the UN Declaration provides a strong human rights framework and standards for the redress of such false doctrines, notably in articles 3, 28 and 37.

Building on the outcome of the Permanent Forum's international expert group meeting on Combating Violence against Indigenous Women and Girls, the Permanent Forum urged states to implement and strengthen national censuses and data collection on socio-economic and well-being indicators to include data disaggregation in relation to violence against indigenous women and girls and reiterated the importance of peace and security to the lives of indigenous women and children. Indigenous communities also need to create and support initiatives to monitor and assess the situation of violence against indigenous women and girls and present regular reports to the Permanent Forum on violence against this group. Further, United Nations agencies, bodies and other entities support the development of protocols for police practices involving missing person's cases of indigenous women and girls, and that indigenous peoples and states should work in partnership to implement these protocols in order to increase their effectiveness and ensure consistency with international human rights laws, norms and standards.

Regional focus

Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia was the regional focus of the Permanent Forum's session. Experts and speakers described the region's ethnic and cultural diversity, and the threats to its fragile natural ecosystems, along with the reindeer herding and other traditional

livelihoods they support. While there has been some economic progress, indigenous peoples' lands, languages and cultural heritage remain vulnerable. The Permanent Forum took note of the fact that indigenous youth in the region are often forced to leave their homes and lands to receive an education, which can pose an obstacle to the right to education. The Permanent Forum urged states in Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia to take measures to ensure that indigenous youth are able to enjoy the right to education.

Dialogue with the World Intellectual Property Organization

The Permanent Forum also held an in-depth dialogue with the World Intellectual Property Organization (WIPO**).** The Permanent Forum has a strong interest in the work of WIPO as there are many areas of work that focus on indigenous peoples, in particular the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The Forum also noted that there are initiatives that enable indigenous peoples to participate in the work of WIPO, such as the Voluntary Fund for Accredited Indigenous and Local Communities (which facilitates the attendance of indigenous people at meetings), the Indigenous Intellectual Property Law Fellowship Programme and capacity-building workshops.

The Permanent Forum recommended that WIPO seek the participation of experts on international human rights law specifically concerning indigenous peoples so that they can provide input into the substantive consultation process, in particular with reference to the language in the draft text where indigenous peoples are "beneficiaries" and other language that refers to indigenous peoples as "communities". It also recommended that WIPO recognize and respect the applicability and relevance of the UNDRIP as a significant international human rights instrument that must inform the Intergovernmental Committee process and the overall work of WIPO.

The right to food and food sovereignty

A half-day event took place with discussions on the right to food and food sovereignty of indigenous peoples. It comprised a panel with the UN Special Rapporteur on the right to food security, the Food and Agriculture Organization, indigenous peoples' representatives from Africa and Asia, and the Permanent Repre-

sentative of Brazil to the United Nations. The Permanent Forum noted that indigenous peoples' right to food and food sovereignty is inextricably linked with the collective recognition of rights to land and territories and resources, culture, values and social organization. Subsistence activities such as hunting, fishing, traditional herding, shifting cultivation and gathering are essential not only to the right to food but to nurturing their cultures, languages, social life and identity. The right to food depends on access to and control over their lands and other natural resources in their territories. The Forum also noted that displacement, resource development such as mining, monoculture, natural disasters etc. have an impact on food sovereignty; article 10 of the UNDRIP is relevant to food sovereignty because, without indigenous peoples' access to forests, oceans, rivers, lakes and lands for cultivation and food source sustainability, food sovereignty is impossible to achieve. The levels of hunger and malnutrition among indigenous peoples are often disproportionately higher than among the non-indigenous population yet they often do not benefit from programmes designed to fight hunger and malnutrition or to promote development.

Fifth anniversary of the adoption of the UNDRIP

On the occasion of the fifth anniversary of the adoption of the UNDRIP, the UN General Assembly held a high-level commemorative event at the UN Headquarters in New York on 17 May. Statements were made by the UN Secretary-General, the President of the UN General Assembly, the Minister for Foreign Affairs of the Plurinational State of Bolivia, representatives of Indigenous Peoples' caucuses and several governments.

The Chair of the Permanent Forum stated that, from the moment the UNDRIP was adopted, it had become a unique international instrument on a range of issues and set standards that would be the foundation for the continued survival of indigenous peoples and protection of their dignity and well-being. Even as indigenous peoples commemorated this historic moment, however, they had to remember that there was still a great deal of work to be done.

The former Chair of the Global Indigenous Peoples' Caucus noted that when the UNDRIP was adopted it was the end of a long, hard journey by indigenous peoples that had lasted for at least 70 years, as they tried to find recognition as peoples and to regain control of their lives, their territories and their future.

World Conference on Indigenous Peoples (2014)

General Assembly resolution A/RES/65/198 relates to organizing a high-level plenary meeting of the General Assembly in 2014, to be known as the World Conference on Indigenous Peoples. The main objective of the World Conference on Indigenous Peoples is to share perspectives and best practices on the realization of the rights of indigenous peoples and to pursue the objectives of the UN Declaration on the Rights of Indigenous Peoples.

The Permanent Forum welcomes the opportunity and responsibility of playing a central role in the preparations of the World Conference as the only substantive unit at UN Headquarters dealing with indigenous peoples' issues. At its 10th and 11th sessions, plenary meetings were held to discuss the views and participation of indigenous peoples at the World Conference. The recommendations from those sessions are contained in documents E/2011/43 and E/2012/43. The World Conference will also be discussed in detail at the May 2013 session of the Permanent Forum.

Meeting of UN Special Mechanisms in Guatemala

To commemorate the Oxlajuj B'aqtun, a new era for the Maya people and the world, the Permanent Forum, UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the UN Special Rapporteur on the rights of indigenous peoples met in Guatemala to prepare for the World Conference on Indigenous Peoples. During the event, Permanent Forum and EMRIP members also met with the President of Guatemala, ministers and other high-level officials, indigenous peoples' organizations, donors and partners, the UN Country Team in Guatemala and civil society.

On this occasion, indigenous peoples expressed concerns about a range of issues, including human rights violations and proposed legislation on rural development and telecommunications in the country, as well as the global need for the full and effective implementation of the UNDRIP and other international standards such as ILO Convention No. 169 on Indigenous and Tribal Peoples. The meeting was organized by the United Nations System in Guatemala, with support from other partners.

Key events

The Inter-Agency Support Group on Indigenous Peoples' Issues

The Inter-Agency Support Group on Indigenous Peoples' Issues (IASG) is a mechanism for inter-agency cooperation on indigenous peoples' issues in relation to the Permanent Forum. The IASG is composed of focal points/units or representatives as identified by the heads of departments or organizations of the UN system whose work is relevant to indigenous peoples' issues. The IASG meets at least once a year for a substantive meeting, with follow-up meetings as necessary. Responsibility for hosting and convening meetings is rotated among the participating organizations and bodies.

In 2012, the annual meeting of the IASG was hosted by the Secretariat of the Convention on Biological Diversity and was held in Montreal from 28 to 30 November 2012. The focus of the meeting was on addressing the implementation of the Permanent Forum's recommendations aimed at UN Agencies; to maintaining and improving communication between the IASG members and the Permanent Forum; and facilitating engagement between Permanent Forum members and Heads of Agencies regarding the work with indigenous peoples. There was also a focus on the collaborative work between UN agencies, as well as the UN agencies' role in the World Conference on Indigenous Peoples and input into the Post-2015 Sustainable Development Goals regarding indigenous peoples.

Coordination meeting of the three UN Mechanisms on Indigenous Peoples

Coordination and cooperation between the three UN Mechanisms on Indigenous Peoples is an issue of great importance in terms of their ability to best serve the indigenous peoples of the world and to fulfil their mandates. It is also an issue that is clearly important to states, and which states have raised a number of times.

The concept of coordination has always been critical and the Permanent Forum and Special Rapporteur worked together in a number of ways during the early years of their mandates. Cooperation at that time included the Special Rapporteur's participation in Permanent Forum sessions and discussions where the Permanent Forum was asked to comment or involve itself in country-specific situations. The creation of the Expert Mechanism and the adoption of the UNDRIP have made cooperation among the three mandates even more important. The

members of the EMRIP and members of the Permanent Forum now attend and speak at each other's annual sessions. The coordination meetings allow participants to informally exchange ideas and experiences, with the aim of finding ways of interacting and cooperating that could promote the more efficient performance of the three UN mechanisms. ❍

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UN SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

According to United Nations Human Rights Council resolution 15/14, the Special Rapporteur on the Rights of Indigenous Peoples has the mandate to gather information and communications from all relevant sources – including governments, indigenous peoples and their communities and organisations – on violations of human rights of indigenous peoples; to formulate recommendations and proposals on measures and activities to prevent and remedy violations of the rights of indigenous peoples; and to work in coordination with other special procedures and subsidiary organs of the Human Rights Council, relevant U.N. bodies and regional human rights organizations.

In accordance with this mandate, the Special Rapporteur can receive and investigate complaints from indigenous individuals, groups or communities: undertake country visits; and make recommendations to governments on steps needed to remedy possible violations or to prevent future violations.

The first Special Rapporteur, Dr. Rodolfo Stavenhagen, was appointed by the then Commission on Human Rights in 2001, serving two three-year periods which ended in 2008. The current Special Rapporteur, Professor James Anaya, was appointed by the Human Rights Council in 2008, and his mandate was renewed in 2010 for another three-year period ending in 2014.

This year marked the fifth year of Professor James Anaya's mandate as United Nations Special Rapporteur on the Rights of Indigenous Peoples. As in previous years, his work has concentrated on four principal areas: promotion of good practices; responding to specific cases of alleged human rights violations; country assessments; and thematic studies. In addition, he also works in collaboration with other U.N. mechanisms dealing with indigenous peoples.[1]

Promotion of good practices

The Special Rapporteur has continued to provide technical assistance to State governments and agencies on legal, administrative and programmatic reforms at the domestic and international levels concerning indigenous peoples. For example, in March 2012, he visited Peru and Brazil to take part in discussions between government officials and indigenous representatives concerning the development of laws and regulations on consultation with indigenous peoples. The Special Rapporteur also provided comments to a draft regulation on indigenous consultation and participation developed by the government of Chile, and discussed his comments with a Chilean government delegation in a meeting held in Tucson, Arizona in November 2012.

In addition, the Special Rapporteur participated in meetings and conferences in Spain, Sàpmi territory (encompassing parts of Finland, Norway, Sweden and the Russian Federation) and Australia, which provided an opportunity to promote further understanding of indigenous rights in the context of extractive industry operations, through discussions with representatives of governments and business enterprises from each of these countries, as well as to gather the perspectives of indigenous representatives in the case of Australia and Sàpmi territory.

Specific cases of alleged human rights violations

As in previous years, the Special Rapporteur's examination of specific cases of alleged human rights violations has resulted in letters of allegation or urgent appeal letters being issued to governments regarding those situations, as well as follow-up observations and recommendations in some cases. The full texts of these communications and replies sent to the governments are available in the joint communication reports periodically released by U.N. special procedures mandate holders (A/HRC/20/30, A/HRC/21/49 and A/HRC/22/67) and in the separate communications report of the Special Rapporteur (A/HRC/21/47/Add.3).[2]

In 2012, the Special Rapporteur sent communications on situations in Argentina, Australia, Brazil, Cameroon, Chile, Colombia, Costa Rica, Guatemala, Ethiopia, Finland, Indonesia, Kenya, Mexico, Nepal, New Zealand, Panama, Peru, Philippines, Russian Federation, Suriname, United States and Venezuela. In

various cases examined, the Special Rapporteur issued follow-up communications and observations. These included, for example, the situation of indigenous peoples affected by the Phulbari coal mine in Bangladesh; the situation of indigenous protests against a proposed road construction project through the TIPNIS reserve in Bolivia; the social and economic conditions of the Attawapiskat First Nation in Canada; the human rights effects of the Gibe III hydroelectric dam in Ethiopia; the situation of alleged diminishment of Sami self-determination resulting from a decision by the Finland Supreme Administrative Court; the social conflicts surrounding the construction of a cement plant in the predominantly indigenous municipality of San Juan Sacatepéquez, Guatemala; and the health situation of Leonard Peltier, an indigenous activist in the United States serving consecutive life sentences in prison.

On occasion, the Special Rapporteur also conducts on-site visits to examine specific issues brought to his attention. In March 2012, he travelled to Costa Rica to follow-up on his earlier examination of the situation of the indigenous peoples that could be affected by the Diquís hydroelectric project. During this visit, he participated in the first meeting between government officials and affected indigenous peoples, at which consultation procedures were discussed. He recognized the importance of this meeting and emphasized that the consultation process needed to be legitimate and not based on predetermined outcomes, and should provide an opportunity for indigenous peoples to freely express their views about the project and to consider all options, including whether to proceed with the project or not.

In 2012, the Special Rapporteur also issued public statements about situations of immediate concern. These included statements regarding protests against proposed mining and hydroelectric projects on indigenous territories in Panama; the impact of large-scale agro-industrial development projects on indigenous peoples in South-East Asia; indigenous protests over the militarization of their territories in Cauca, Colombia; concerns over a proposed land sale affecting a site of spiritual significance to indigenous peoples in South Dakota, United States; and the death of indigenous protesters in Santa Catarina Ixtahuacán, Guatemala.

Country assessments

In July 2012, the Special Rapporteur published his report on the situation of the indigenous peoples of Argentina, following his country visit in late 2011. The main

issues covered in the report include land and natural resource rights, extractive and commercial agricultural activities, the eviction of indigenous communities and the socio-economic concerns of indigenous peoples. Among its findings, the report noted that the state of Argentina, both at the federal and provincial levels, needed to prioritize and devote greater efforts to ensuring the rights of indigenous peoples.

In 2012, the Special Rapporteur carried out an official visit to the United States. In his report published in September 2012, the Special Rapporteur noted the need for the United States government authorities to address persistent deep-seated problems arising from historical wrongs and past failed policies as a way of advancing towards reconciliation with indigenous peoples. The report also stressed that the U.N. Declaration on the Rights of Indigenous Peoples represented an important guide for improving existing measures aimed at addressing the concerns of indigenous peoples and for developing new measures aimed at reconciliation, and outlined the ways in which this instrument could be promoted by the various branches of government.

The Special Rapporteur also visited El Salvador in August 2012 and Namibia in September 2012, and reports on those visits are forthcoming. In his press statement on concluding his visit to El Salvador, the Special Rapporteur urged the government to establish participatory mechanisms for indigenous peoples within the decision-making structures of the state, and to adopt new measures to help them recover their ancestral cultures which, in many cases, have been eroded due to past historical oppression of indigenous peoples and the expressions of their identity. In his press statement on concluding his Namibia visit, the Special Rapporteur noted the need for greater inclusion of indigenous minority groups at all levels of decision-making, for full recognition of their traditional authorities, and for a strengthening of their rights to lands and natural resources.

Thematic issues

Report to the Human Rights Council

In his last annual report to the Human Rights Council, the Special Rapporteur provided comments on the issue of violence against indigenous women and girls, and provided updates on his ongoing thematic study on the issue of extractive industries that are affecting indigenous peoples.[3]

With respect to violence affecting indigenous women and children, the Special Rapporteur emphasized the need for a holistic approach that takes into account the interdependency and interconnectedness of their rights as women and children, and of the rights of the indigenous peoples to which they belong. The Special Rapporteur stressed that the Declaration on the Rights of Indigenous Peoples should be implemented within programmes targeting violence against indigenous women and girls in order to address the underlying structural causes of this problem. In this sense, efforts to prevent and punish violence against indigenous women and girls must also work towards enhancing indigenous self-determination and cultural integrity.

Regarding extractive industries that are affecting indigenous peoples, the Special Rapporteur continued to engage with indigenous, government and business representatives in various countries in order to understand their views and perspectives on this issue. He noted that discussions on this issue have concentrated almost exclusively on the content of the rights of indigenous peoples to consultation and free, prior and informed consent. The Special Rapporteur considers that this issue needs to be addressed from a more comprehensive understanding of the substantive rights of indigenous peoples that may be implicated in natural resource extraction. These substantive rights include rights to lands and natural resources, culture, religion, health and the pursuit of their own development priorities and self-determination.

In his view, consultation and free, prior and informed consent should be conceptualized as a safeguard against measures that may affect indigenous peoples' rights, along with other safeguards, including the undertaking of prior impact assessments, compensation, mitigation and benefit-sharing. The Special Rapporteur also emphasized that, where it is foreseeable that an extractive industry activity will have significant impacts on rights that are essential to the indigenous people's survival, then indigenous consent to those impacts is required, beyond a simple consultation objective. The Special Rapporteur also provided observations on the relevance of the "protect, respect and remedy" framework incorporated in the Guiding Principles on Business and Human Rights endorsed by the Human Rights Council.

Lastly, he noted the need for changes in the current dominant model of natural resource extraction whereby indigenous peoples have been excluded from decision-making and participation related to extractive industry projects. New models and business practices therefore need to be identified that are more con-

ducive to indigenous peoples' self-determination and development priorities. The Special Rapporteur's future work in this area will focus on an examination of various models of natural resource extraction worldwide that provide greater control and benefits for indigenous peoples than is the case in the prevailing natural extraction model.

Report to the General Assembly

In his annual report to the General Assembly, the Special Rapporteur also elaborated on the need to harmonize the myriad activities within the United Nations system that affect indigenous peoples.[4] In the report, specific U.N. agencies, institutions and programmes were reviewed, and recommendations made to ensure that any action they undertake which affects indigenous peoples is in harmony with their rights, particularly the Declaration on the Rights of Indigenous Peoples.

Coordination with other United Nations mechanisms

The Special Rapporteur has continued to collaborate with the other U.N. mechanisms dealing with indigenous peoples - the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. This has included participation in annual coordination meetings to discuss and exchange information on their respective agendas and activities. He has continued to participate in the annual sessions of the Permanent Forum and the Expert Mechanism, during which he has continued to hold parallel meetings with representatives of indigenous peoples, states and other U.N. agencies to discuss issues pertinent to his mandate.

The Special Rapporteur has also contributed to thematic issues examined by these mechanisms, including during an expert meeting on combating violence against indigenous women and girls convened by the Permanent Forum in January 2012, and ongoing discussions with the Expert Mechanism regarding extractive industries. In January and December 2012, the Special Rapporteur also met with members of both these mechanisms to discuss preparations for the World Conference on Indigenous Peoples, which will be a high-level plenary meeting of the General Assembly to be held in 2014. The Special Rapporteur has empha-

sized the need to ensure adequate participation of indigenous peoples during this conference and that it further strengthens the rights of indigenous peoples. ❍

Notes and references

1 For more information on specific activities undertaken within these areas in the past year, see the Special Rapporteur's 2012 annual report to the United Nations Human Rights Council (A/HRC/21/47) and the General Assembly (A/HRC/67/301). All documents related to the work of the Special Rapporteur are available at http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx and http://www.unsr.jamesanaya.org/.

2 A listing of the Special Rapporteur's communications reports can be accessed at: http://www.unsr.jamesanaya.org/list/communications-cases-examined.

3 A/HRC/21/47. Available at: http://www.unsr.jamesanaya.org/docs/annual/2012_hrc_annual_report_en.pdf

4 A/67/301. Available at: http://www.unsr.jamesanaya.org/docs/annual/2012-ga-annual-report-en.pdf

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HUMAN RIGHTS COUNCIL

The Human Rights Council was created by the General Assembly in 2006 as the principal human rights political body of the United Nations. The Council is composed of 47 elected member states that must. Its mandate is to promote universal respect for the protection of all human rights and fundamental freedoms for all, to address situations of human rights violations and to promote the effective coordination and mainstreaming of human rights within the United Nations system. The current mechanisms under the HRC that are specifically mandated to deal with the promotion and the protection of indigenous peoples' rights are the UN Special Rapporteur on indigenous peoples' rights (Special Procedures) and the Expert Mechanism on Rights of Indigenous Peoples (Advisory body). However, human rights mechanisms and bodies such as the Universal Periodic Review (UPR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR) and others are also relevant for indigenous peoples. The Human Rights Council meets three times a year for three weeks in Geneva.

On 18 September 2012, during its 21st ordinary session,[1] the UN Human Rights Council (HRC) turned its attention to the rights of indigenous peoples. The session began with a presentation of reports from the Special Rapporteur (SR) on the rights of indigenous peoples, James Anaya, the Chair of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Chief Wilton Littlechild, and Dalee Sambo Dorough, member of the Board of Trustees of the Voluntary Fund for Indigenous Populations. An interactive dialogue followed these presentations. As part of the session, a panel was organised to consider the issue of indigenous peoples and access to justice. The session concluded with a number of final observations from the Council's two specialised mechanisms. Alongside the HRC meeting, negotiations were also taking place around a resolution to be presented by Mexico and Guatemala on human rights and indigenous populations, and this was adopted during the session.

Presentation of reports

The Special Rapporteur summarised the content of his report, which covered his activities since September 2011 and included his visits to the USA, Argentina and El Salvador.[2] The report also referred to two substantive issues: violence against indigenous women and girls and the impact of the extractive industries on indigenous rights. With regard to violence against indigenous women, the SR emphasised the importance of this issue and the need to address it holistically within the framework of the Declaration, indicating the negative impacts that any actions might have if they were implemented without respect for the rights of indigenous peoples. He emphasised that the problem could not be dissociated from the marginalisation and oppression suffered by indigenous peoples. With regard to the extractive industries, he stated that too much attention was being given to narrow concepts of consultation and participation and that there was a need for an approach based around the substantive rights of indigenous peoples that are being affected by extractive companies' actions, such as the right to land and resources, the right to culture, religion and health or the right to establish their own development priorities as part of their fundamental right to self-determination. He spoke of the lack of participation of indigenous peoples in the current extractive models. He concluded by indicating that, despite positive steps in the right direction, he remained concerned at the violations of indigenous rights that were continuing throughout the world.

The Chair of the EMRIP,[3] Chief Wilton Littlechild, presented the conclusions of the study on the role of languages and culture in promoting and protecting the rights and identity of indigenous peoples, including the obstacles indigenous peoples face to enjoying their right to their own culture. He also referred to the 2014 World Conference on Indigenous Peoples, emphasising the importance of supporting indigenous participation in all aspects of this. He summarised the results of the survey being conducted with states on implementation of the Declaration, indicating that very few replies had been received.. He referred to the EMRIP's cooperation with the treaty bodies and the resolution being negotiated in the HRC.

Dalee Sambo Dorough spoke of the work and importance of the UN Voluntary Fund in ensuring indigenous participation within the United Nations system. She noted its worrying financial situation, which was occurring at a time when its mandate was being expanded to support indigenous peoples' participation in

more of the system's meetings. She called on governments and civil society to contribute to the Fund and support indigenous peoples' participation in the forthcoming World Conference.

Following the presentations, the United States and Argentina spoke first, as countries concerned. The USA recognised the marginalisation and disadvantage suffered by Native Americans in the USA and explained the steps being taken to remedy this situation, with larger budgets going to programmes benefiting these communities. Argentina noted the legislative progress taking place in its country with regard to recognising indigenous rights and the intercultural dialogue ongoing with indigenous peoples since 2003, including the creation of the Indigenous Participation Council and other administrative bodies. It indicated the reform of the Civil Code as a step towards indigenous recognition[4] and, while acknowledging that much still had to be done, felt that significant progress had been made.
Various participating states then spoke. Guatemala noted the importance of the issues under consideration and commented on the need to adopt a decision with regard to the Secretary-General's report on indigenous peoples participation at the United Nations of indigenous peoples representatives; Mexico referred to the issues under consideration and affirmed the right of indigenous peoples to self-determination and to preserve the integrity of their lands. The European Union underscored the importance of the issue of violence against indigenous women; with regard to the extractive industries, it stated that it was placing particular emphasis on corporate social responsibility and that a new European policy had been adopted in this regard. In the second part of the interactive dialogue, Peru, Australia, Norway, Russia, Venezuela, Chile, Bolivia, Sweden and others all referred to the extractive industries, noting national progress and highlighting the importance of the framework of principles adopted by the Council in this regard. A number focused on the problem of violence against indigenous women (Peru, Australia, Venezuela, Bolivia, Nepal, Finland, Paraguay, Austria, Malaysia). Brazil and Colombia noted the progress made on the issue of consultation and of their success in dialoguing with indigenous peoples . Some referred to the forthcoming World Conference on Indigenous Peoples (Norway, Bolivia, USA, Denmark). Many states noted the importance of languages and cultures in preserving indigenous identity and noted the actions being taken for their protection. Ecuador commented on its national policy on protecting peoples living in voluntary isolation and the Republic of Congo referred to its new legislation on indigenous peoples, Law No. 5-2011 of 25 February 2011, stating its commitment to apply this.

Once the states had spoken, a number of observer NGOs took the floor.

In his final observations, the SR responded to some of these interventions. With regard to Argentina, he noted the progress made and underscored the concerns expressed with regard to the reform of the Civil Code; he indicated that he would like more information on how indigenous peoples had been consulted about this reform. He also stated that he would particularly bear in mind the issue of violence against indigenous women and girls and that he would include the impact on women in his forthcoming report on the extractive industries. He emphasised that governments had to make serious efforts to protect the rights of indigenous peoples in the context of extractive industry activity. The Chair of the EMRIP referred to access to justice, noting that, unfortunately, courts and court rulings very often formed obstacles to indigenous access to justice. He referred to the Secretary-General›s report on participation, which he also considered to be an issue of access to justice. He proposed writing a handbook for justice system staff.

Panel on access to justice

Since last year, as part of the official HRC session, it has become established practice to organise an expert panel on issues related to the rights of indigenous peoples. This year, the theme was that of indigenous peoples' access to justice.[5] The panel was chaired by the Special Rapporteur with the participation of the following experts: Ramy Bulan (Professor of Law at the University of Malaysia), Megan Davies (Professor of Law at the University of New South Wales, Australia and PFII member), Vladimir Kryazhov (Professor of Law at Moscow State University, Russia); Casilda de Ovando López Morín (Mexican National Commission for Indigenous Peoples' Development) and Abraham Korir Sing'oei (human rights lawyer, Kenya). Mona Rishmawi, from the Office of the High Commissioner for Human Rights, also spoke. All the speakers referred to indigenous peoples' difficulties with regard to accessing national justice systems and getting their own systems of law and justice recognised. Issues of racism and structural discrimination were raised, of a lack of knowledge of indigenous rights on the part of judges, of the need for specialist lawyers and the need to overcome barriers of language and culture in court, of the lack of resources with which to obtain legal aid and the progress and difficulties encountered in recognising legal pluralism. A brief interactive dialogue followed in which both states and observers intervened. In his

closing statement and summary of the meeting, the SR indicated that the issue had both an individual and a collective dimension. In terms of an individual's access to justice and the protection of individual rights, indigenous justice systems could provide a response to indigenous peoples' concerns. Alongside this, however, it was important that indigenous peoples also had access to the ordinary justice system. With regard to the collective dimension, he said that indigenous peoples had the right to maintain their own justice systems as part of their integral right to self-determination and that recognition of those systems was therefore essential as a way of affirming their collective rights. The ordinary justice system needed to aspire to a better integration of traditional and indigenous justice systems, including the issue of land ownership and other questions. He commented that some people had referred to the ordinary justice system as simply being another intercultural option. Education was very important, he said, and this was also a means for overcoming discrimination. The enforcement of indigenous peoples' individual and collective rights was necessary at all levels, and this underpinned the importance of the Declaration on the Rights of Indigenous Peoples.

Negotiation of the resolution on indigenous peoples

Every year, the Human Rights Council adopts a resolution entitled 'Human Rights and indigenous peoples',[6] which refers to the work that has been presented and to the future of the SR and the EMRIP, along with other issues brought to its attention. The resolution this year, presented by Mexico and Guatemala, referred among other things to the reports, recommendations and future work of the EMRIP, calling on it to prepare a study on the issue of access to justice for the coming year. It also asked the EMRIP to continue its survey, aimed at states and indigenous peoples, on measures and strategies for implementing the Declaration. With regard to the Secretary-General's report on indigenous participation in the UN system,[7] it invited the General Assembly to consider the proposals given in the report for improving indigenous participation. It suggested that the Declaration be taken into account within the context of the UPR mechanism and welcomed General Assembly resolution 66/L.61 on the 2014 World Conference on Indigenous Peoples. It also called on the states to ratify ILO Convention 169 and adopt measures to take the Declaration's objectives forward. It referred to the role of the national human rights institutions and called for greater attention to be paid to indig-

enous peoples with disabilities. It thanked the SR for his reports and requested that he report back to the General Assembly, and continue his cooperation and coordination with the EMRIP and the FPII. ❍

Notes and references

1 http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session21/Pages/21RegularSession.aspx

2 General report to the Council, doc. UN A/HRC/21/47; mission to the United States of America, doc. ONU A/HRC/21/47/Add.1; mission to Argentina doc. UN: A/HRC/21/47/Add.2. With regard to communications, these are currently published in regular joint reports of all special procedures. The most recent reports published, including Rapporteur Anaya's communications, can be accessed at: http://unsr.jamesanaya.org/list/communications-cases-examined. The SR's observations on communications will be available on the Council's documentation page.

3 Report of its fifth session, doc. UN A/HRC/21/52; Role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples, doc. UN A/HRC/21/53; Summary of responses from the questionnaire seeking the views of states on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples, doc. UN A/HRC/21/54; Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, doc. UN A/HRC/21/55. Available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session21/Pages/ListReports.aspx

4 Despite receiving heavy criticism, due both to its lack of consultation and its content, from indigenous organisations in Argentina. More information: http://odhpi.org/2012/09/naciones-unidas-explicito-las-deudas-del-estado-con-los-pueblos-indigenas/

5 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/PanelDiscussionIndigenousPeoples.doc

6 Doc. UN A/HRC/RES/21/24, adopted on 28 September without a vote, available from: http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/80/PDF/G1217480.pdf?OpenElement

7 As part of the documentation for this session, the HRC was presented with *Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them - Report of the Secretary-General* (A/HRC/21/24). This report is the result of a request made by the Human Rights Council last year, at the suggestion of the EMRIP, for accreditation and other procedures to be examined with the aim of facilitating the appropriate representation of indigenous peoples' representative institutions within the UN. Another available document was the *Report of the United Nations High Commissioner for Human Rights on the Rights of Indigenous Peoples* (A/HRC/21/23), which summarises the activities of the Office in this regard. All available from: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session21/Pages/ListReports.aspx

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BUSINESS AND HUMAN RIGHTS

In June 2011, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (hereafter: "the Guiding Principles"). That was the first time a UN intergovernmental body had endorsed a normative document on the previously divisive issue of business and human rights. The Council's endorsement effectively established the Guiding Principles as the authoritative global standard for preventing and addressing adverse impacts on human rights arising from business-related activity.

The Council also decided to establish a Working Group on the issue of human rights and transnational corporations and other business enterprises (the Working Group) with a mandate, inter alia, to promote the effective and comprehensive dissemination and implementation of the Guiding Principles worldwide. At its 18th session in September 2011, the Council appointed five independent experts, of balanced geographical representation, for a period of three years, as members of the Working Group. The Working Group formed in January 2012. The Working Group meets three times a year in closed sessions within which it can organise stakeholder consultations. Furthermore, it has the responsibility for organising a yearly Forum on Business and Human Rights. The Working Group's mandate and strategy of work can be found on its website.[1]

During its first year of work, the Working Group discussed the issue of indigenous peoples on several occasions, including, in particular, violations of their rights in connection with extractive industries operations and other types of business activities as well as challenges regarding the implementation of the Guiding Principles in this sphere.

Work during 2012

During two of its sessions, the Working Group organised stakeholder meetings. These consultations typically last around 3 hours and take place at the UN in Geneva. They are announced only 2-3 weeks ahead of the meetings. Of course this limits participation possibilities for organisations with no base in Geneva or Europe. Another way of providing input to the Working Group is through written submissions for which there are usually deadlines.

The first consultation in January 2012 provided for general information by the Working Group members about its mandate and its work plan. During the session, participants had the opportunity to read statements reflecting their priorities for the operation of the Working Group. A number of statements mentioned the importance of focusing on indigenous peoples and local communities, not only seeing the Guiding Principles as a business tool but rather focus on human rights violations and on the people that experience the severe impact of business operations on their lives.

The stakeholder consultation during the second session of the Working Group focused on the theme for the first Forum on Business and Human Rights.

In October 2012, the Working Group also carried out a country visit to Mongolia. In the future, the Working Group will carry out 2 country visits per year.

Indigenous preparatory meeting for the first UN Forum on Business and Human Rights

In November 2012, the Working Group, in cooperation with IWGIA and the Forum for Development Cooperation with Indigenous Peoples of the University of Tromsø, Norway, and with funding from the Norwegian Agency for Development Cooperation (Norad), organized a meeting of indigenous experts in Copenhagen where specific challenges regarding the implementation of the UN Guiding Principles with regards to indigenous peoples and possible next steps were discussed. The meeting was attended by around 10 indigenous experts, including the chair of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and a member of the UN Permanent Forum on Indigenous Issues (UNPFII) and

resulted in a briefing note that was presented to the UN Forum on Business and Human Rights and included the recommendations that the Working Group:

- Uses the UNDRIP as a framework for implementation of the Guiding Principles and for its work;
- Builds strong cooperation with other UN bodies and mechanisms on indigenous issues, such as the Special Rapporteur, the EMRIP and the UN Permanent Forum on Indigenous Issues;
- Includes Indigenous Peoples as a standing agenda item in its meetings;
- During the next meeting of the UN Permanent Forum on the Rights of Indigenous Peoples, organises a meeting between its members and UN bodies and mechanisms dealing with indigenous issues, along with indigenous representatives;
- Builds awareness of its work among Indigenous Peoples, thereby contributing to promoting the effective and comprehensive dissemination and implementation of the Guiding Principles;
- Builds awareness of the rights of Indigenous Peoples among States, business and other stakeholders and provides guidance on how the Guiding Principles could be implemented with full respect for such rights as enshrined in the UNDRIP;
- Assesses the need for capacity building of Indigenous Peoples on the UN Guiding Principles;
- Provides guidance or mechanisms on how Indigenous Peoples can engage in all aspects of its work, including their effective participation in country visits;
- Requests States develop their domestic legislation and policies to implement the Guiding Principles with the full and effective participation of Indigenous Peoples.[2]

The first UN Forum on Business and Human Rights

In December 2012, during the first annual Forum on Business and Human Rights in Geneva the Working Group organized a panel discussion entitled "Business Affecting Indigenous Peoples – what are the critical implementation challenges for the Guiding Principles in the context of indigenous peoples?" During the panel,

participants expressed their concerns with the perceived weakness of existing remedies and emphasized that indigenous peoples are collective rights-holders under international law, entitled to self-determination and pointed out the pivotal importance of the concept of Free, Prior and Informed Consent (FPIC), stemming from this right. Furthermore, there was broad agreement that building the capacity and empowering indigenous communities to make effective use of the UN Guiding Principles is paramount.

Based on the outcomes of these discussions, the Working Group decided unanimously to declare the issue of indigenous peoples a priority in the work of the implementation of the Guiding Principles and to prepare its first thematic report to the UN General Assembly in 2013 on the topic of indigenous peoples' human rights and business. Mr. Pavel Sulyandziga, member of the Working Group, would lead on the preparation of this report. He is an indigenous Udege from the Russian Federation and a well-known expert on indigenous peoples' rights, who served two terms as a member of the UNPFII. In 2010 he was the author of a Permanent Forum's Study on indigenous peoples and corporations.

The Working Group report will be discussed in the fall session of the General Assembly. ❍

Notes and references

1 http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx

2 Find the full briefing note on IWGIA's website: http://www.iwgia.org/publications/search-pubs?publication_id=602

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WORLD HERITAGE CONVENTION

The Convention concerning the Protection of the World Cultural and Natural Heritage ("World Heritage Convention") is a multilateral treaty adopted by UNESCO's General Conference in 1972. With 190 States Parties, it is today one of the most widely ratified international instruments. Its main purpose is the identification and collective protection of the world's cultural and natural heritage of "outstanding universal value". The Convention embodies the idea that some places are so special and important that their protection is not only the responsibility of the states in which they are located but also a duty of the international community as a whole. The Convention only concerns tangible, immovable heritage, i.e. natural and cultural heritage "sites".

The implementation of the Convention is governed by the World Heritage Committee (WHC), an intergovernmental committee consisting of 21 States Parties. The WHC keeps a list of sites which it considers as being of outstanding universal value ("World Heritage List") and ensures that these sites are adequately protected and safeguarded for future generations. Sites can only be listed following a formal nomination by the State Party in whose territory they are situated. Although a large number of World Heritage sites are located in indigenous territories, indigenous peoples' involvement in the work of the WHC has been very limited, as there are no mechanisms in place that allow for their meaningful participation.

The WHC is supported by three advisory bodies. The International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature (IUCN) provide technical evaluations of World Heritage nominations and help in monitoring the state of conservation of World Heritage sites; the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) provides advice and training related to the preservation of cultural sites. An indigenous proposal to establish a "World Heritage Indigenous Peoples Council of Experts" (WHIPCOE) as an additional advisory body to the WHC was rejected by the Committee in 2001.

40th Anniversary of the World Heritage Convention

The year 2012 marked the 40th Anniversary of the World Heritage Convention, which was celebrated by UNESCO and the States Parties with a series of activities and events throughout the world. The official theme of the anniversary was "World Heritage and Sustainable Development: the Role of Local Communities" and was meant to provide a framework for focusing on "issues pertaining to the well-being and responsibilities of local communities".[1] In advance of the anniversary, the WHC expressly noted that considerations related to indigenous peoples "should be included in the theme of the 40th anniversary".[2] Additionally, , during the 10th session of the UN Permanent Forum on Indigenous Issues (UNPFII), UNESCO underlined the fact that the anniversary would "provide an excellent opportunity for indigenous peoples to engage with UNESCO and the Committee and its Secretariat, in order to address concerns that have been raised within the framework of the Permanent Forum and to work towards a constructive solution to the challenges that the United Nations Declaration on the Rights of Indigenous Peoples brings to the international community as a whole".[3]

Joint submission of indigenous organizations to the WHC, May 2012

In May 2012, a group of over 70 indigenous organizations submitted a joint statement to the WHC on the lack of implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the context of the World Heritage Convention.[4] The joint statement was also presented to the UNPFII and was a follow-up to a similar joint statement submitted in 2011.[5] It expressed deep concern at the working processes through which the World Heritage Convention is implemented and the lack of transparency of the existing procedures, in particular in relation to the processing of World Heritage nominations:

> *We are concerned that effective consultation and consent processes are neither required nor recommended by the Convention's Operational Guidelines, nor are such processes consistently carried out by States parties or by the advisory bodies. There is not even a requirement for World Heritage nominations to be made publicly available before the WHC takes a decision.*

We are also deeply concerned that there is no effective way for Indigenous peoples to bring concerns regarding World Heritage nominations directly to the attention of the WHC... The existing participation procedures are not in accordance with international standards related to the right of Indigenous peoples to participate in decision-making in matters that would affect their rights.

The joint statement followed up on three World Heritage nominations that had been criticized in the 2011 statement: the nominations of the "Kenya Lake System" (Kenya), "Western Ghats" (India) and "Trinational de la Sangha" (Cameroon, Central African Republic, Congo). It denounced the WHC's 2011 designation of the "Kenya Lake System" as a World Heritage Site, which happened without the free, prior and informed consent (FPIC) of the indigenous Endorois people and in complete disregard of their repeated objections.[6] As regards the nominations of "Western Ghats" and "Trinational de la Sangha", the statement underlined that there had still not been any adequate involvement and consultation of the affected indigenous peoples and that their FPIC had still not been obtained. In both cases, the submitted nomination documents had not even been disclosed to the public or the indigenous peoples concerned. The statement therefore again urged the WHC to defer these nominations.[7]

The joint statement welcomed the WHC's adoption in 2011 of Decision 35COM 12E, which encourages States Parties to involve indigenous peoples in decision-making and to respect their rights when nominating, managing and reporting on World Heritage sites in indigenous peoples' territories. It stressed, however, that this decision would "need to be followed up with adequate, stringent changes to the WHC's procedures and Operational Guidelines in order to have a practical effect".

36th session of the WHC, Saint Petersburg, June 2012

Chairperson Eleonora Mitrofanova opened the WHC's 36th session "pleading for the credibility of the World Heritage Convention. 'We must keep in mind the indisputable reality that the outstanding universal value of World Heritage sites is based on local values, local experience and most importantly on local conservation efforts. In one word, local and indigenous peoples are the key actors who

make this global heritage possible,' she said." [8] UNESCO Director-General Irina Bokova also expressed concern for the credibility of the Convention: "In recent years, some developments within the inscription process have weakened the principles of scientific excellence and impartiality that are at the heart of the Convention. It is my responsibility to ring the bell. The credibility of the inscription process must be absolute at all stages of the proceedings..." [9] Regrettably, many of the WHC's decisions at the 36th session contradicted these aspirations and appeared to be motivated by politics rather than conservation considerations.[10]

A case in point was the decision on the Western Ghats nomination. The WHC inscribed Western Ghats on the World Heritage List, disregarding not only the objections of indigenous organizations but also the technical advice of its official Advisory Body, IUCN. Like the indigenous organizations, IUCN had called for a deferral of the nomination, among other things to allow the State Party to "undertake a further consultation to facilitate increased engagement to ensure the views of all stakeholders, including local indigenous groups are considered". IUCN's report pointed out that there were "continued significant concerns about the nomination and rights issues from sections of the indigenous local community".[11] The WHC also ignored the recommendations of the Western Ghats Ecology Expert Panel (WGEEP), a panel of eminent experts constituted by the Indian Ministry of Environment and Forests to make recommendations for the conservation of the Western Ghats. The WGEEP had found in its final report that greater input from and participation of local communities was necessary for fine-tuning the nomination and had underlined the need to "overcome the serious and quite genuine objections raised at the UN Permanent Forum on Indigenous Issues to the Indian proposals".[12]

The Committee also designated the Trinational de la Sangha (TNS) as a World Heritage Site, despite the concerns expressed by indigenous organizations over the inadequacy of consultations with the affected indigenous peoples and their lack of involvement in the development of the nomination. In this case, the WHC followed the advice of IUCN, which had recommended an inscription. The TNS was inscribed only because of its natural values – no recognition was accorded to the rich indigenous cultural heritage of the area, although the WHC had previously hinted at its outstanding universal value and encouraged nomination of the TNS as a mixed cultural/natural site.[13] However, noting that indigenous resource use is not permitted in most of the World Heritage area and that this affects local livelihoods and creates the potential for conflict, the WHC requested

the relevant States Parties to "increase further the involvement and representation of local and indigenous communities in the future conservation and management of the TNS landscape in recognition of the rich cultural heritage of the region, the legitimacy of their rights to maintain traditional resource use and their rich local knowledge".[14]

Credibility concerns also arise from a number of the WHC's decisions on the state of conservation of already inscribed World Heritage sites. For example, IUCN had recommended that Lake Turkana National Parks (Kenya), Dja Faunal Reserve (Cameroon), Virgin Komi Forests (Russia) and Pitons Management Area (Saint Lucia) be added to the List of World Heritage in Danger. In what IUCN describes as a "blow for conservation", the WHC rejected all four recommendations.[15] The four sites face significant threats from major infrastructure projects, the extractive industry and property speculation. Lake Turkana is endangered by the construction of the controversial Gibe III dam on Ethiopia's Omo River, which severely threatens the livelihoods of the indigenous communities in the region.

Another controversial issue was the Committee's decision to cut 40,000 hectares from the Selous Game Reserve World Heritage Site (Tanzania) to facilitate a uranium mine.[16]

5th session of EMRIP, July 2012

During its 5th session, the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was informed by observers that the WHC had once again designated indigenous peoples' territories as World Heritage sites without the FPIC of the indigenous peoples concerned. This led EMRIP to adopt a proposal, specifically addressed to the WHC, in which it encourages the Committee "to establish a process to elaborate, with the full and effective participation of indigenous peoples, changes to the current procedures and operational guidelines and other appropriate measures to ensure that the implementation of the World Heritage Convention is consistent with the UNDRIP and that indigenous peoples can effectively participate in the World Heritage Convention's decision-making processes." The Expert Mechanism further called on the Committee to establish "robust procedures and mechanisms… to ensure that indigenous peoples are adequately consulted and involved in the management and protection of World Heritage

sites, and that their FPIC is obtained when their territories are being nominated and inscribed as World Heritage sites".[17]

UN Special Rapporteur on the rights of indigenous peoples

The UN Special Rapporteur on the rights of indigenous peoples, James Anaya, devoted a whole section of his 2012 report to the UN General Assembly to the "recurring issue" of World Heritage sites negatively impacting on indigenous peoples, citing the concerns expressed by indigenous peoples "over their lack of participation in the nomination, declaration and management of World Heritage sites, as well as concerns about the negative impact these sites have had on their substantive rights, especially their rights to lands and resources." The Special Rapporteur criticized the fact that "there is still no specific policy or procedure which ensures that indigenous peoples can participate in the nomination and management of these sites" and that the Operational Guidelines "provide only that States parties to the Convention are encouraged to ensure the participation of a wide variety of stakeholders in the identification, nomination and protection of World Heritage properties".[18]

IUCN World Conservation Congress, Jeju, September 2012

The disregard for indigenous rights in the implementation of the World Heritage Convention was also a focus of attention during the World Conservation Congress (WCC) in Jeju, Korea.[19] A number of technical events centred on issues related to World Heritage and indigenous peoples. The WCC adopted a resolution on the implementation of the UNDRIP in the context of the World Heritage Convention (Resolution 47),[20] which requests IUCN's Council and Director-General to develop clear policy and practical guidelines to ensure that the principles of UNDRIP are respected in IUCN's work as an Advisory Body, and to fully inform and consult with indigenous peoples when sites are evaluated or missions are undertaken on their territories. The resolution also urges the WHC to revise its procedures and Operational Guidelines to ensure that indigenous peoples' rights are upheld and implemented in the management and protection of World Heritage sites, and that no World Heritage sites are established in indigenous peoples'

territories without their FPIC. It further calls on the WHC to establish a mechanism through which indigenous peoples can provide direct advice to the Committee in its decision-making processes, in accordance with their right to participate in decision-making.[21]

International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, September 2012

In September 2012, the Danish Agency for Culture, the Greenland government and IWGIA together hosted an International Expert Workshop on the World Heritage Convention and Indigenous Peoples as part of the Convention's 40th Anniversary. The workshop involved indigenous experts and representatives from around the world (including from several World Heritage areas), human rights experts and actors in the World Heritage system, and resulted in a Call to Action containing recommendations to the WHC, UNESCO and states on how to align the implementation of the World Heritage Convention with the UNDRIP. Workshop participants also produced proposed amendments to the Convention's Operational Guidelines aimed at ensuring respect for indigenous peoples' right to FPIC in the context of World Heritage designations.[22]

Closing Event of the 40th Anniversary, Kyoto, November 2012

Two participants of the Copenhagen expert workshop participated in the Closing Event of the 40th Anniversary in Kyoto, Japan, in order to formally present the workshop's recommendations to UNESCO. However, despite the anniversary's focus on "the role of local communities", the report on the Copenhagen workshop was not included in the official agenda of the Closing Event, which was marked by an absence of presentations by indigenous representatives. Mr Max Ooft of the Association of Indigenous Village Leaders in Suriname (VIDS) was, however, able to make a short statement during a question and answer session, in which he summarized the workshop's main recommendations.

Several presenters also commented on the need to enhance the role of indigenous peoples in the Convention. Notably, the Director of the World Heritage Centre, Kishore Rao, stated: "The UNPFII has... appealed for the principle of

'FPIC' to be introduced within the World Heritage Operational Guidelines, as is the case already under the Operational Directives of the 2003 Intangible Heritage Convention. I feel that this is an issue that the WHC will have to seriously consider."[23] UNESCO's Assistant Director-General for Culture, Francesco Bandarin, remarked: "One issue we will certainly have to deal with in the future is the issue of Indigenous peoples. Ten years ago the Committee rejected the proposal to create an Indigenous Council of Experts, but five years ago the United Nations passed the Declaration on the Rights of Indigenous Peoples – I think it is time for the Committee to reconsider this issue."[24]

Ngorongoro Conservation Area

In December 2012, Tanzanian pastoralists' organizations released a statement on the state of hunger and starvation in the Ngorongoro Conservation Area (NCA) entitled "Hunger in a World Heritage Site? Where is the World?" [25] According to the statement, local people in the NCA face a multiplicity of hunger-related complications and both children and adults have died of hunger and malnutrition. The statement expresses outrage over the fact that this is happening in the NCA, a globally renowned World Heritage Site and premier tourist destination that brings unmatched revenue to Tanzania.

The interests of the Maasai pastoralist population have increasingly been subordinated to conservation and tourism interests in the NCA. Numerous land-use restrictions have been imposed that contribute to economic stress and food insecurity among the pastoralists. According to the pastoralists' statement, the present hunger situation is directly linked to the NCA's World Heritage status. It can be attributed to a ban on cultivation that the government imposed in 2009 without providing an alternative means of livelihood and food security for the local community in the NCA. "UNESCO and IUCN cannot deny culpability in the present hunger situation since they are known to have pressurized the government to re-impose the ban on cultivation owing to a perceived deterioration of the integrity of the NCA as World Heritage Site." ❍

Notes and references

1 "Progress report on the preparation of the 40th Anniversary", Doc. WHC-10/35.COM/12D (2011).
2 Decision 35 COM 12D (2011).
3 Statement by UNESCO at the 10th Session of the UNPFII, 17 May 2011. Available at: http://www.docip.org/gsdl/collect/cendocdo/index/assoc/HASHbefc/9a7a182d.dir/PF11douglas071.pdf.
4 Available at: http://www.forestpeoples.org/sites/fpp/files/publication/2012/05/joint-submission-unpfii.pdf.
5 Available at: http://www.iwgia.org/iwgia_files_news_files/0314_UNPFII_2011_Joint_Statement_on_FPIC_and_orld_Heritage.pdf.
6 The objections of the Endorois were expressed in several submissions to the WHC and/or its Secretariat. "Kenya Lake System" includes the Lake Bogoria National Reserve, which was the subject of the landmark 2010 ruling of the African Commission on Human and Peoples' Rights in the *Endorois* case. The *Endorois* decision affirmed the rights of ownership of the Endorois to their ancestral lands around Lake Bogoria.
7 The WHC had referred both nominations back to the respective States Parties in 2011 for additional information but they were resubmitted for the WHC's consideration at its 36th session in 2012.
8 Quoted from: http://whc.unesco.org/en/news/887, "36th session of World Heritage Committee opens with focus on sustainable development", 24 June 2012.
9 UNESCODoc.DG/2012/096,availableat:http://unesdoc.unesco.org/images/0021/002167/216700e.pdf.
10 In more than half of its decisions on World Heritage nominations, the WHC did not follow the Advisory Bodies' advice on whether to inscribe, defer, refer or not to inscribe. Where the Advisory Bodies did not recommend an inscription, the Committee's decision deviated in 89% of the cases (16 out of 18 decisions).
11 IUCN World Heritage Evaluations 2012, Doc. WHC-12/36.COM/INF.8B2, pp. 57, 59.
12 Report of the WGEEP (2011), Part I, p. 40, and Part II, pp. 121, 322.
13 See Decision 35 COM 8B.4 (2011).
14 Decision 36 COM 8B.8 (2012).
15 See http://www.iucn.org/media/news_releases/?uNewsID=10279.
16 For details, see http://www.minesandcommunities.org/article.php?a=11846.
17 EMRIP, "Proposal 9: World Heritage Committee", Doc. A/HRC/21/52, p. 7.
18 UN Doc. A/67/301, 13 August 2012, paras. 33-40. The Special Rapporteur also highlighted the issue of World Heritage sites in his report to the UN Human Rights Council, Doc. A/HRC/21/47.
19 Held every four years, the WCC is the world's largest and most important conservation event. The central part of the congress is the IUCN Members' Assembly, where IUCN's programme is discussed and resolutions and recommendations on important conservation issues are adopted. IUCN members include both governments and NGOs, both of whom can vote in the Assembly.
20 88% of governments and 99% of NGOs voted in favour of the resolution.
21 Additionally, Res. 46 requests the WHC to develop, as soon as possible, new processes and standards to ensure that the Convention appropriately recognizes indigenous rights.
22 The outcome documents of the expert workshop are available at http://www.iwgia.org/news/search-news?news_id=678 and http://whc.unesco.org/en/events/906/.
23 Speech on 7 November 2012.

See http://whc.unesco.org/uploads/events/documents/event-789-3.pdf.

24 Speech on 6 November 2012, Session 2. Recording available at: http://whc.unesco.org/en/events/789.

25 Available at: http://www.iwgia.org/news/search-news?news_id=732.

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RIO+20

The UN Conference on Environment and Development (UNCED), popularly known as the "Earth Summit", was held in 1992 in Rio de Janeiro. This groundbreaking UN meeting led to the establishment of a number of international environmental conventions and processes, such as the Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change (UNFCCC), as well as to the establishment of the Commission on Sustainable Development (CSD). One of the major outcomes for indigenous peoples was their recognition as a major group by the Rio Conference, thus providing for the political participation of indigenous peoples in various processes relating to sustainable development.

In 2002, the World Summit on Sustainable Development (WSSD) was held in Johannesburg, South Africa. During the WSSD, representatives of the indigenous peoples submitted a document known as the "Kimberly Declaration" and defined a Plan of Implementation for the next decade. In these documents, indigenous peoples committed to contribute to achieving the human and environmental sustainability of the world. At the same time, the WSSD acknowledged the potential of indigenous peoples to act as "stewards" of national and global natural resources, and reaffirmed the important role of indigenous peoples in sustainable development. The Johannesburg Declaration of 2002 states: "We reaffirm the vital role of the indigenous peoples in sustainable development." However, translating this political recognition into concrete advances locally, nationally, regionally and internationally remains a huge challenge for indigenous peoples. Twenty years on from the first Rio Conference, indigenous peoples are still facing problems and the non-implementation of conditions and rights pertaining to indigenous peoples in relation to sustainable development. The United Nations Conference on Sustainable Development (UNCSD) was organized in accordance with General Assembly Resolution 64/236 (A/RES/64/236) to mark the 20th anniversary of the 1992 Rio Conference and the 10th anniversary of the 2002 WSSD. The

Conference focused on two themes: (a) a green economy in the context of sustainable development and poverty eradication; and (b) the institutional framework for sustainable development. It resulted in a political document entitled "The future we want".

Preparing for Rio+20

In August 2011, indigenous representatives met in Manaus, Brazil, to develop a strategy and process for Rio+20, resulting in the Manaus Declaration. An Indigenous Global Coordinating Committee was established in order to coordinate the activities leading up to the Rio+20 conference. Following the meeting in Manaus, and as one of the official organizing partners of indigenous peoples as a major group in Rio+20,[1] Tebtebba was given the task of compiling a contribution for an indigenous submission to the Rio+20 Zero Draft document, the document that would constitute the basis for the negotiations. This indigenous zero draft document was submitted on 1 November 2011, and contained five key messages:

1. Recognition of culture as the fourth pillar of sustainable development.
2. Recognition of the UN Declaration on the Rights of Indigenous Peoples as a standard in the implementation of sustainable development at all levels.
3. The cornerstones of green economies are diverse local economies, in the context of poverty eradication and sustainable development, biodiversity loss and climate change.
4. Safeguarding of the lands, territories and resources, and associated customary management and sustainable use systems.
5. Indigenous and traditional knowledge as distinct and special contributions to 21st century learning and action.

These five key messages constituted the basis for further negotiations and advocacy work by indigenous peoples, and for the inter-sessional and preparatory meetings which took place from January 2012 – June 2012 in New York. Indigenous representatives lobbied heavily for the five key messages to be included in

the official document. Furthermore, they built alliances with other major groups and pushed for common concerns.

Through the global steering committee, indigenous representatives met on several occasions during the preparatory process to discuss their strategies, agree on their presence at the Rio+20 conference and update each other on regional processes. Furthermore, indigenous peoples organized several regional preparatory meetings for Rio+20. The regional positions and strategies consolidated at those meetings were ultimately fed into the global process and indigenous peoples' positions.[2]

Indigenous peoples at Rio+20

The official Rio+20 conference took place in June in Rio de Janeiro. A large number of indigenous representatives participated in the Rio+20 official meeting, as well as in the Peoples' Summit (the parallel event organized by civil society). They engaged in the official negotiations, organized side events and participated in events and roundtables organized by governments, business, NGOs, etc.[3] Outside the official conference, indigenous peoples organized three events:

The Kari-Oca II, the World Indigenous Peoples' Conference on Territories, Rights and Sustainable Development, organized by the Brazilian Inter Tribal Committee in cooperation with other indigenous organizations from around the world such as the Cordillera Peoples' Alliance, the Indigenous Environmental Network and others. The event was entitled Kari-Oca II in reference to the indigenous peoples' event that took place parallel to the official meeting in 1992. The meeting reaffirmed the key role of indigenous peoples' cultures and values, and the right of Mother Earth, and also rejected the push to "commodify" nature and ecosystems, in contrast with the current "capitalist" model. Over 500 indigenous leaders signed the Kari-Oca II Declaration, which was subsequently delivered to the Brazilian government.[4]

The **Campamento Tierra Libre y Vida Plena** took place during the Peoples' Summit. It brought together indigenous representatives from the Amazon region to call for recognition of indigenous peoples' rights to land, territories and resources and to reject the increasing encroachment onto their land by the extractive industries, in collaboration with national governments. Many activities took

place around this event and more than 1,800 participants took part in these. The outcomes declaration was delivered to the Rio+20 Secretariat together with the Declaration from the Indigenous Peoples' International Conference on Sustainable Development.

The **Indigenous Peoples' International Conference on Sustainable Development** met with the goal of sharing indigenous peoples' experiences, perspectives and practices with regard to sustainable development. The conference was organized by the Global Coordination Committee, based in Manaus, and included approx. 200 indigenous participants and support organizations from around the world. The conference ended with the official adoption of a Declaration.[5] The Declaration was launched at a side event to the official meeting, organized by Tebtebba, with presentations from each of the seven indigenous regions of the world.[6]

Outcomes

The outcome of Rio+20 is a document entitled "The future we want".[7] A further 700 plus voluntary commitments were made by governments, UN institutions, inter-governmental organizations, civil society, the private sector, etc.[8] In light of the strong disagreements between developing and developed states throughout the negotiations, many see as a success the fact that governments managed to agree on an outcome document and on some processes that should herald the way forward. Many representatives from civil society, however, expressed their strong disappointment at the weak outcome of the conference.

The following is a short overview of the text of "The Future We Want" in relation to indigenous peoples' issues.

The future we want

The outcome document of the Rio+20 conference, "The Future We Want" is divided into six chapters. Each chapter includes paragraphs relevant to indigenous issues. Those included below are only a few examples and many may find other paragraphs equally relevant.

1. Our common vision
   § 9 reaffirms the importance of the Universal Declaration of Human Rights and emphasizes the responsibilities of all states to respect, protect and promote human rights and fundamental freedoms for all.

2. Renewing political commitment
   § 49 recognizes the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This is the first time an international agreement "recognizes the UNDRIP" and not only "notes" it; **§ 52** recognizes local livelihoods as important contributions to sustainable development, referring to small-scale farmers, fishers, pastoralists and foresters. This is the first time that pastoralism has been recognized in a UN document. Hunters and gatherers, who often constitute the most marginalized and weakest indigenous peoples, are however not mentioned.

3. Green economy
   §58 (j) recognizes indigenous peoples' contribution to sustainable development by stating a commitment to "*enhance the welfare of indigenous peoples and their communities, other local and traditional communities, and ethnic minorities, recognize and supporting their identity, culture and interests and avoid endangering their cultural heritage, practices and traditional knowledge, preserving and respecting non-market approaches that contribute to the eradication of poverty*".

4. Institutional framework
   §84-86 set out the framework for a high-level political forum on sustainable development that should replace the Commission on Sustainable Development. **§88** commits to strengthening UNEP and provides for a procedural plan. In **§88(h),** the active participation of all relevant stakeholders is ensured.

5. Framework for action
   §109 includes a reference to indigenous peoples and particularly mentions enhanced access to secure land tenure, knowledge and appropriate and affordable technologies, among others. Furthermore, the paragraph recognizes "*the importance of traditional sustainable agricultural practices, including traditional seed supply systems, including for many indigenous peoples and lo-*

cal communities". **§111** is important, as it reaffirms the need to promote more sustainable agriculture such as crops, livestock, forestry, fisheries and aquaculture and **§112** stresses the need to enhance sustainable livestock production systems, including through the improvement of pasture land. Furthermore, this paragraph recognizes the interlinkage between the livelihoods of farmers, including pastoralists, and the health of livestock. **§130 - 131** stress the importance of sustainable tourism and refer to indigenous peoples in terms of their access to finance for creating tourism enterprises. **§175** commits "*to observe the need to ensure access to fisheries and the importance of access to markets by subsistence, small-scale and artisanal fisherfolk and women fish workers, as well as indigenous peoples and their communities,...*". **§197** recognizes the role of the traditional knowledge, innovations and practices of indigenous peoples in conservation and sustainable use of biodiversity, as well as indigenous peoples' dependency on biodiversity. **§211** recognizes the sustainable use of mountain resources by indigenous peoples and local communities and also their marginalization. **§229** stresses the need for equal access to education, including for indigenous peoples. **§238** commits to "*an enabling environment for improving the situation of women and girls, including among indigenous peoples"*.

However, for indigenous peoples, the most negative sections of the document are those on mining and forests. Some indigenous representatives present at Rio strongly questioned the fact that a document on sustainable development included a section on mining at all. The rights language was deleted entirely from the mining section, as well as any reference to indigenous peoples in general. The section on forests includes no reference to indigenous peoples and refers to people and communities, rather than peoples (with an "s"). There is no reference to safeguards. **§193,** for example, promotes secure land tenure in relation to improving the livelihoods of people and communities but only in accordance with national legislation and priorities.

Way forward

The Rio meeting also decided to develop Sustainable Development Goals (SDGs), the implementation of which should begin in 2015. Monitoring of the inter-governmental process on SDGs is important. A working group will be consti-

tuted at the UN General Assembly (in 2012), comprising 30 representatives nominated by Member States. It will decide on its methods of work, including developing modalities to ensure the full involvement of relevant stakeholders and expertise from civil society, the scientific community and the UN system. It will submit its report to the 68th session of the General Assembly in 2013. The development of the SDGs will be closely linked to the MDG process. This puts a certain pressure on the negotiations, as the MDG process is in its evaluation phase and due to come to an end in 2015, when the implementation of the SDGs should start.

There is much work ahead for indigenous peoples to ensure that the efforts leading up to this conference and the positive elements of the outcome document are not forgotten in further global efforts for sustainable development. Some of the decisions from Rio+20 need to be monitored and indigenous peoples need to play a role in the implementation of these decisions. ❍

Notes and references

1 Within the official set-up of Rio+20, every major group has two organizing partners, i.e. organizations that are responsible for the communication between the major group and the UN Secretariat. In the case of the indigenous peoples, the organizing partners are Tebtebba and the Indigenous Environmental Network.
2 In Africa, the indigenous peoples signed the Arusha Declaration: http://www.uncsd2012.org/index.php?page=view&nr=1151&type=230&menu=38
3 Major groups were also able to make an intervention at the 1st plenary. All statements can be found here: http://www.uncsd2012.org/statementsrio20.html
4 More information about this event, as well as the declaration, can be found at: http://karioca-caravana.org and http://indigenous4motherearthrioplus20.org/kari-oca-2-declaration/
5 More information can be found on IWGIA's website or at http://www.tebtebba.org/index.php/content/200-indigenous-peoples-and-rio-20
6 http://www.uncsd2012.org/index.php?page=view&type=88&nr=6&menu=54#
7 http://www.uncsd2012.org/thefuturewewant.html
8 http://www.uncsd2012.org/voluntarycommitments.html).

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UN FREMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty created at the Earth Summit in Rio in 1992 to tackle the growing problem of global warming and related harmful changes in the climate, such as more frequent droughts, storms and hurricanes, melting of ice, rising sea levels, flooding, forest fires, etc. The UNFCCC entered into force in 1994, and has near universal membership, with 192 countries as ratifying parties. In 1997, the Convention established its Kyoto Protocol, ratified by 184 parties, by which a number of industrialized countries have committed to reducing their greenhouse gas emissions in line with legally binding targets.[1]

In 2007, the Convention's governing body, the Conference of the Parties (COP), adopted the Bali Action Plan. The elements of the Bali Action Plan (a shared vision, mitigation, adaptation, technology development and transfer, provision of financial resources and investments)[2] were negotiated in the Ad-Hoc Working Group on Long-Term Cooperative Action (AWG-LCA). Apart from the Kyoto Protocol's working group (AWG-KP) and the AWG-LCA, the Convention has two permanent subsidiary bodies, namely the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).[3] In December 2012, during the COP18 in Doha, the Ad-Hoc working group AWG-LCA concluded its work and most discussions were terminated or moved to the SBSTA and SBI. COP18 adopted the Durban Platform for Enhanced Action (ADP) that will lead the COP discussions towards an overall binding agreement on emissions reductions in 2015.

Indigenous peoples are organised in the International Indigenous Peoples Forum on Climate Change (IIPFCC). Indigenous rights issues cut across almost all areas of negotiation but have been high-

lighted most significantly within the negotiations on forest conservation, known as REDD+ (Reduced Emissions from Deforestation and Forest Degradation), one of the mitigation measures negotiated under the AWG-LCA.

The bigger picture and main developments in the UNFCCC

In December 2012, the 18th COP to the UNFCCC took place in Doha, Qatar. The COP was not expected to provide ground-breaking results but rather to lay out the roadmap for the negotiations towards a globally-binding agreement on emissions reductions that aims to be finalised in 2015. Parties to the COP approved the so-called "Doha Climate Gateway", in which they formally agreed on three main assignments: 1) a second commitment period of the Kyoto Protocol; 2) the termination of the AWG-LCA and AWG-KP; and 3) the operationalization of the Durban Platform for Enhanced Action (ADP).

The second commitment period of the Kyoto Protocol, which is an eight-year extension from 2013-2020, was signed by the EU, Norway, Switzerland, Australia, Monaco and Lichtenstein. Many criticised the fact that only a small group of states entered the second commitment period and that they are in fact only responsible for 15% of GHG emissions. The big emitters, such as the US, China, Canada, Russia, etc. are not included. Furthermore, the level of ambition (i.e. how much countries will reduce their GHG) is very low.

The Ad-Hoc Working Group on Long-Term Cooperative Action AWG – LCA had to conclude its work, consisting of negotiations on adaptation, mitigation, finance, capacity building, shared vision and technology transfer, in Doha. A final agreement was reached on some issues, while other topics were moved to the subsidiary bodies or established committees and institutions. The termination of the AWG – LCA was cause for bigger disagreements between some developing countries and developed countries, as a number of developing countries felt that the issues discussed under the LCA had not been concluded and hence the Bali Action Plan had not been implemented.

ADP – The new negotiation path for a global emissions agreement in 2015

The third main issue of negotiation in Doha was the operationalization of the ADP, which was negotiated at COP17 in Durban in 2011 and represents the key negotiation path for a new binding agreement on emission reductions in 2015 – effective from 2020. The two work streams agreed on are: 1) reaching the agreed goal of adopting an overall binding agreement on emission reductions in 2015"Future framework beyond 2020" ; 2) working on increasing the ambition level for reducing greenhouse gas emissions by 2020"Enhancing mitigation ambition by 2020".

For indigenous peoples, efforts will have to be made to ensure that the new agreement takes into account the importance of a human rights-based approach to climate change. It should be noted that the preamble to the COP 16 decision in Cancún reiterated the need to ensure the full and effective engagement of affected stakeholders, such as indigenous peoples, in any climate-related programme and actions, as well as to ensure that these do not adversely impact on their rights. Indigenous peoples need to highlight and underscore this innovative and extraordinary reference to international instruments, such as the UNDRIP, in any outcome document of the ADP. In fact, indigenous people have already stressed three pillars on which any climate programme and policy should be based, notably:

1. Recognition of the rights of indigenous peoples in accordance with international standards and instruments such as the UNDRIP, including Free, Prior and Informed Consent;
2. Respect for traditional knowledge and recognition of the key role of indigenous people in adaptation and mitigation;
3. Respect for indigenous peoples' right to full and effective participation.

Indigenous peoples have always stressed that all aspects of climate change and climate change measures - adaptation, mitigation – are ultimately rights issues, as they directly affect their lives and livelihoods. A human rights-based approach is therefore crucial and their demands are key to their involvement. It is therefore positive to note that a number of actors in the UNFCCC context have started to raise human rights issues.

During the COP18, for example, indigenous peoples held a meeting with former Human Rights Commissioner Mary Robinson. Ms Robinson has established the Mary Robinson Foundation on Climate Justice and has already done excellent work to promote the role of women in the climate change negotiations. Furthermore, the youth constituency under the UNFCCC has increased its focus on human rights and climate change.

Green Climate Fund (GCF)

The Green Climate Fund was established at COP17 in 2011. During the negotiations in Doha, indigenous peoples expressed concern at the current modalities practised by the Board in terms of civil society and indigenous peoples' participation and consultation.

The IIPFCC called on the Board of the Green Climate Fund and its Co-Chairs to provide for indigenous peoples' participation and access as active observers in Board meetings, as is the case in other climate funds (such as UN REDD and the Climate Investment Fund). Furthermore, it called on the Board to establish an Indigenous Peoples' Advisory Body to engage indigenous peoples in the decision-making processes and to ensure ownership and success of GCF activities.

As far as safeguards are concerned, indigenous peoples stressed that any safeguard systems need to be anchored in a rights-based approach. Section X of the GCF Governing Instrument states that the GCF should have safeguard policies which are consistent with existing internationally-accepted environmental and social standards. During a press conference of indigenous peoples in Doha, Vicky Tauli-Corpuz from Tebtebba stressed: "We interpret this to mean that the rights of indigenous peoples enshrined in the UN Declaration on the Rights of Indigenous Peoples will be respected and environmental standards that have been agreed upon under environmental conventions such as the Convention on Biological Diversity and the UNFCCC should be adhered to."

Finally, indigenous peoples urged the Board to ensure financing so that indigenous peoples are able to participate in meetings under the GCF and to set up an Indigenous Peoples Fund which will allow indigenous people, women and local communities to have direct access to dedicated financing to implement mitigation and adaptation projects that truly reflect their needs.

Loss and damage

An important agreement was reached in Doha to consider loss and damage, such as an institutional mechanism to address loss and damage in developing countries that are particularly vulnerable to the adverse effects of climate change. This means that developing countries will be compensated for loss and damage caused by slow onset events such as sea-level rise. Of course, it is not clear where the compensation for loss and damage will come from or how the funds will be disbursed. This will be a hot topic for discussion during the next COP.

For indigenous peoples, the discussions on loss and damage will ultimately be important, as many indigenous peoples live in geographically-isolated areas that are particularly affected by climate change. Once again, their full and effective participation in and benefit from any measures taken under this item will be a test for the implementation of the UNDRIP.

REDD+

The negotiations on REDD+ developed along two tracks during 2012, the financing of REDD being negotiated in the AWG-LCA and the methodologies for reporting emissions reductions, implementation of safeguards and drivers of deforestations being part of the SBSTA negotiations.

In the SBSTA, issues of contention were the relationship and balance between clear commitments for emissions reductions on the part of developed and developing countries, the amount of financing for climate actions and the different views on the measuring, reporting and verification (MRV) of carbon stocks. There were wide disagreements on the issue of verification and finance: the developed countries, with Norway in the lead, demanded high standards for verifying carbon emissions before providing finance for REDD and the developing countries, with Brazil in the lead, refused to adopt high standards until such long-term financial support was in place. The negotiations in the SBSTA effectively collapsed as no final agreement was reached and the discussion has been deferred to the next SBSTA meeting in Bonn (spring) 2013.

The AWG - LCA was not able to reach a final agreement on REDD financing and it was decided to establish a one-year work program on REDD financing

under the COP. This will consist of a series of workshops and the production of a draft decision for COP19.

Indigenous peoples strongly argue that all REDD+ policies, strategies and actions need to respect their collective rights to forests, lands, territories and resources, in line with their customary systems of forest governance and management systems, cosmovisions, and adhering to international standards and instruments such as UNDRIP and ILO Convention 169. MRV systems should go beyond carbon to include all indigenous peoples' forest values such as traditional livelihoods, ecosystem services, conservation enhancement and biodiversity, among others. MRV systems must comply with all safeguards. Indigenous people have the right to conduct their own MRV based on their traditional knowledge.

Agriculture

A working group under the SBSTA tried to negotiate an agreement on agriculture during 2012 without much success. The discussions were dominated by serious disagreements between developing states - stressing that this work should be about adaptation – and developed states – focusing on the mitigation aspect. For indigenous peoples, the negotiations on adaptation go to the very core of their livelihood issues and many are concerned that the expansion of industrial agriculture and enhanced use of pesticides that is being promoted as a means of enhancing food security will threaten their lands and traditional territories. Science and recent studies show that agro-industry is responsible for 80% of deforestation, with industrial logging responsible for the remaining 20%. Experts report that small-scale agriculture feeds 70% of the world, and that approximately one billion people depend on hunting, fishing and gathering for their food security, while 40% of Africans practise pastoralism and depend on it as their sole source of livelihood. These same studies prove that industrial agriculture is harmful, contributing to greenhouse gases, and recommend that the change in land use for its expansion and large-scale practice should be halted. For indigenous peoples' food preservation, food security and food sovereignty must not be replaced by unsustainable industrial agriculture. Small-scale agricultural production such as indigenous agriculture should be supported and strengthened as the strong solution and adaptation to climate change that it is.

Negotiations on agriculture were not finalised in Doha and discussions will continue under the SBSTA in June 2013.

Technology

The negotiations on technology focused on the transfer of technologies to developing countries for the reduction of greenhouse gas emissions and for adaptation to climate change. During COP18, it was decided to establish a climate technology centre and network, to be hosted by UNEP and based in Copenhagen. There will also be a technology network of 12 centres responsible for technology transfer. The centre will be guided by an advisory Board comprising 16 representatives of states, representatives of international organisations and three representatives of major groups, without the right to vote. Indigenous peoples are not among those major groups that gained a seat on the technology centre's Board. ❍

Notes and references

1 The Kyoto Protocol entered into force in 2005 and, during its first commitment period from 2008-2012, 37 industrialized countries and the European Union committed themselves to reducing their greenhouse gas emissions by an average of 5 per cent by 2012, in relation to the 1990 level.

2 The Bali Action Plan can be downloaded from the UNFCCC website: http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3 (accessed on 9 March 2009).

3 Sources: UNFCCC's website (http://unfccc.int/press/items/2794.php), **International Institute for Environment and Development (IIED), 2009:** *COP15 for journalists: a guide to the UN climate change summit* (available at: http://www.iied.org/pubs/display.php?o=17074IIED).

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CONVENTION ON BIOLOGICAL DIVERSITY

The Convention on Biological Diversity (CBD) is an international treaty under the United Nations. The CBD has three objectives: to conserve biodiversity, to promote its sustainable use and to ensure the equitable sharing of the benefits arising from its utilization.

The Convention has developed programs of work on thematic issues (such as marine, agricultural or forest biodiversity) and cross-cutting issues (such as traditional knowledge, access to genetic resources or protected areas). All these programs of work have a direct impact on indigenous peoples' rights and territories. The CBD recognizes the importance of indigenous knowledge and customary sustainable use for the achievement of its objectives (articles 8(j) and 10(c)) and emphasises their vital role in biodiversity. In 2010, COP10 adopted the *Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Utilization*, the Aichi Targets and a new multi-year program of work.[1]

The International Indigenous Forum on Biodiversity (IIFB) was established in 1996, during COP3, as the indigenous caucus in the CBD negotiations. Since then, it has worked as a coordination mechanism to facilitate indigenous participation in, and advocacy on, the work of the Convention through preparatory meetings, capacity-building activities and other initiatives. The IIFB has managed to get many of the CBD programs of work to consider traditional knowledge, customary use or the effective participation of indigenous peoples, and has been active in the negotiations regarding access to genetic resources in order to defend the fundamental rights of indigenous peoples that should be included therein.

The eleventh Conference of the Parties (COP11) of the CBD took place in October 2012, in Hyderabad, India. Thirty-three (33) decisions were adopted at this Conference (several of them of relevance to indigenous rights, including those relating to Article 8(j) and related provisions of the CBD), on the basis of the

results of the seventh meeting of the Working Group on this issue (WG8J)[2] held in Montreal in 2011 (see *The Indigenous World 2012*).

In terms of the Nagoya Protocol, as of December 2012, 92 signatures and 11 ratifications had been recorded.[3] Activity in this regard is focusing on national and regional capacity building in preparation for the entering into force of the Protocol. A number of countries are putting the necessary legislative reviews in place, some with the participatory involvement of the indigenous organisations, as in the case of Colombia, for example. The second meeting of the Intergovernmental Committee for the Nagoya Protocol was held from 2 to 6 July 2012, at which issues were considered in relation to: budget, financial mechanisms and resource mobilisation for the implementation of the Protocol; rules of procedure for future meetings of the Parties to the Protocol; and the global multilateral benefit-sharing mechanism (Article 10), in addition to other issues already considered at its first meeting.[4]

Biological diversity was also considered in the negotiations of the World Summit on Sustainable Development, Rio+20. At the 20th anniversary of the CBD, the Secretariats of the three Rio Conventions organised an information pavilion in which activities and panels were held on the implementation of the Conventions, with the involvement of indigenous representatives.[5] The Río outcome document[6] recognises the importance of the three Conventions and urges the Parties to implement their commitments under the UNFCCC (paragraph 17); reiterates the urgency of adopting measures for the conservation and sustainable use of biodiversity (paragraph 61), including in the context of green agriculture (paragraph 111) and sustainable tourism (paragraph 130); and refers to the importance of marine conservation and the establishment of protected marine and coastal areas, in accordance with decision X/2 of the COP10. It also devotes a brief specific section to biodiversity (paragraphs 197 to 204) in which it urges States to implement the Strategic Plan for Biodiversity 2011-2020, to achieve the Aichi Targets and to ratify the Nagoya Protocol, and emphasises the need to incorporate the costs and benefits of biodiversity conservation into national legislation through priorities and incentives to support this. It also notes the important role of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and of the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES)[7] in this context. The document contains a number of references to the importance of traditional knowledge for achieving sustainable development.[8]

The Eleventh Conference of the Parties (COP11) and Article 10(c)

In the context of the negotiations on the implementation of Article 8(j) and related provisions of the Convention, the Working Group on Article 8(j) (WG8J) adopted a number of recommendations at its seventh meeting in 2011 (see *The Indigenous World 2012*) for consideration at the COP11. Among the main issues were the implementation of outstanding tasks from the programme of work for Article 8(j); the work on *sui generis* systems for the protection of traditional knowledge; the work on indicators of traditional knowledge and sustainable use; and, particularly, the development of a new programme of work for the implementation of Article 10(c) on customary sustainable use. The WG8J called on interested parties to submit their contributions on this latter point for consideration at the COP.[9]

Participation and pending tasks of the program of work on Article 8(j)

The COP11 adopted decision XI/14 on Article 8(j) and related provisions.[10] The decision contains proposed measures on several issues. In relation to progress in the implementation of Article 8(j) and its incorporation into all the programmes of work under the Convention, the Parties were urged to send updated information in this regard and were called on to include Aichi Target 18 [11] in their biodiversity strategies and action plans and to report on the action taken. A further meeting of the WG8J was called.[12] The theme for the in-depth dialogue at this meeting would be "linking traditional knowledge systems and science, such as under the IPBES, including gender dimensions".[13]

With regard to participation, the COP called the Parties to support indigenous participation; to cooperate with existing indigenous initiatives; to support capacity building, especially where conducted community to community; and to translate the webpage on traditional knowledge into other languages,[14] among other initiatives. The decision also referred to the report on the participation of local communities representatives (as distinct from indigenous participation) and called on the Secretariat to ensure that these representatives have equitable access to the Voluntary Fund and other support measures.

As proposed by the WG8J, the COP agreed to commence work on the implementation of Tasks 7, 10 and 12 of the revised programme of work on Article 8(j).

Task 7 relates to the development of guidelines to develop mechanisms, laws and other initiatives to ensure a fair and equitable share of the benefits arising from the utilization and application of traditional knowledge. Task 10 is the development of standards and guidelines for the reporting and prevention of misappropriation of traditional knowledge and related genetic resources. Task 12 consists of developing guidelines to establish appropriate mechanisms for recognising, safeguarding and fully guaranteeing the rights of indigenous and local communities over their traditional knowledge.

This work will begin with the commissioning of three studies, one on each of the tasks, in order to consider how these could be implemented, bearing in mind the relevant work of, among others, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, the UN Permanent Forum on Indigenous Issues and UNESCO. Interested Parties were also invited to contribute their views. The studies will be presented at the eighth meeting of the WG8J. The WG8J was asked to report on the development of these initiatives to the Intergovernmental Committee for the Nagoya Protocol.

With regard to Task 15, also discussed within the WG8J in 2011, and which consists of developing guidelines to facilitate the repatriation of information, including cultural property, in order to facilitate the recovery of traditional knowledge on biological diversity, the COP adopted terms of reference for the implementation of this task. The Executive Secretary was asked to request and collate information from all interested parties, to cooperate with UNESCO in its analysis and to prepare draft guidelines of good practices in the repatriation of indigenous and traditional knowledge relevant to the conservation and sustainable use of biodiversity, for consideration by the WG8J at its next meeting and then, subsequently, by the COP12.

Sui generis systems

The issue of *sui generis* systems for the protection of traditional knowledge has been an item on the agenda of the WG8J for several years. In order to develop possible elements of these *sui generis* systems, the COP asked all interested parties to send their contributions so that the Executive Secretary (ES) could compile them and present them to the next meeting of the WG8J. It further re-

quested the ES to organize an electronic discussion on the issue; to facilitate capacity building activities for indigenous and local communities; to support the exchange of experiences and the monitoring and assement of the pros and cons of documenting traditional knowledge; and to keep the . WIPO Intergovernmental Committee informed on developments. It was also decided that a meeting of a technical experts group would be held to prepare a report, as part of the CBD's Technical Series. This document could be a practical contribution on the different options for *sui generis* systems that are being debated and implemented over the last few years.

Adoption of article 10 work programme

The most substantive issue considered at the COP11 was probably the adoption of a new programme of work[15] on Article 10, particularly paragraph (c), on the customary sustainable use of biodiversity. *The Indigenous World 2012* summarised the disappointing discussions on this programme of work at the seventh WG8J meeting. In its decision, the COP11:

- agree to the development of an action plan on customary sustainable use;
- invited all interested parties to send information on the development of the action plan, focusing on the selected priority tasks;
- called on the Executive Secretary, on the basis of the information received, to produce a draft action plan that includes a timeframe for implementation;
- called on the WG8J to consider this draft and provide guidance for its implementation at its next meeting;
- also called on the Executive Secretary to include customary sustainable use in the programme of work on protected areas;
- invited the Parties to include policies on customary sustainable use in their national strategies and action plans; and
- requested the WG8J to provide advice to the SBSTTA on issues of traditional knowledge and customary sustainable use so that they can be mainstreamed within the Convention's thematic programmes, beginning with the program of work on protected areas.

The decision indicates that the initial tasks for the first phase of the programme will be:

- to include practices or policies on customary sustainable use within national biodiversity strategies and action plans, with the full participation of indigenous peoples;
- to promote and strengthen community initiatives for the implementation of Article 10(c) and to cooperate with indigenous and local communities on the joint implementation activities;
- to identify good practices in relation to: the promotion of the participation of indigenous peoples in protected areas, and their prior informed consent (or approval); the promotion of the application of traditional knowledge and customary sustainable use in protected areas; and the promotion of community protocols for the protection of customary sustainable use in protected areas.

The decision also includes a list of indicative tasks that could be included in the programme of work, and calls on the WG8J to consider them once it has reviewed the implementation of the first phase. This list of indicative tasks includes various proposals from the indigenous organisations, although many are pending future discussion and negotiation.

Recommendations of the UNPFII

Lastly, the COP11 decision takes note of the recommendations from the ninth and tenth sessions of the UN Permanent Forum on Indigenous Issues. It refers specifically to recommendations regarding the adoption of the term "indigenous peoples and local communities" in place of the current "indigenous and local communities" within the CBD.[16] This issue was hotly debated within the COP.[17] The International Indigenous Forum on Biodiversity (IIFB) called for a change of terminology to be adopted, given the recent use of these terms in the outcome document of the Rio Summit and the development of international law in this regard. However, India and Canada's opposition prevented an agreement, and, in the end, the COP decided that the issue will be considered at the next meeting of the WG8J, which wiill consider contributions from all interested parties , and sub-

mit recommendations to the next COP12. Coordinated action on this issue among the indigenous organisations, sympathetic countries and support organisations would help to achive a longstanding demand of the indigenous organisations within the CBD negotiations. This, in turn, could have positive consequences for other environmental instruments and negotiations, thus improving their rights-based approach. ❍

Notes and references

1 http://www.cbd.int/decisions/cop/?m=cop-10 and http://www.cbd.int/abs/
2 Ad-hoc Open-ended Working Group on Article 8j and related provisions.
3 http://www.cbd.int/abs/nagoya-protocol/signatories/ The Protocol will come into force 90 days following the deposit of the 50th ratification instrument.
4 Meeting documents and final report at http://www.cbd.int/icnp2/documents/
5 The Río+20 Summit took place in Río de Janeiro (Brazil) from 13 to 22 June 2012. On the Pavilion activities see www.riopavilion.org.
6 *The Future We Want*. UN Doc: A/CONF.216/L.1, 19 June 2012.
7 On the Intergovernmental Platform on Biodiversity and Ecosystem Services, see http://www.ipbes.net. The Platform aims to be an advisory body on these issues and has considered the issue of knowledge systems, including indigenous. On this theme, closely related to the CBD, see *Conocimientos indígenas, tradicionales y científicos. Conectando los diversos sistemas de conocimientos*, available at http://www.stockholmresilience.org/21/research/research-programmes/swedbio-programme.html in English and Spanish. Information on the process at http://www.cbd.int/tk/.
8 See commentary on the outcomes in relation to this issue in Information Note VIII produced by Almáciga and available at http://www.almaciga.org/index.php?option=com_k2&view=item&id=77:cd-pueblos-indígenas-y-desarrollo-sostenible-río+20&Itemid=54&lang=es
9 In August 2012, the Executive Secretary of the Convention was sent a joint contribution from various indigenous organisations and local communities on the main elements that the programme of work should contain. Available in English, French and Spanish at http://www.forestpeoples.org/topics/convention-biological-diversity-cbd/news/2012/10/cop11-should-develop-strong-work-plan-suppor.
10 All COP11 decisions can be found at http://www.cbd.int/doc/decisions/cop-11/full/cop-11-dec-en.pdf
11 Target 18 states: *By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.* See: http://www.cbd.int/doc/strategic-plan/2011-2020/aichi-targets-en.pdf
12 The meeting will be held from 7 to 11 October 2013 in Montreal.
13 On IPBES, see note 7.
14 http://www.cbd.int/tk/

15 More specifically a 'new major component of work' on Article 10, with special focus on paragraph (c), in the programme of work for Article 8 (j) and related provisions.

16 Permanent Forum on Indigenous Issues. Report on the Tenth Session. Doc. UN E/2011/43 E/C.19/2011/19):

26 *Affirmation of the status of indigenous peoples as "peoples" is important in fully respecting and protecting their human rights. Consistent with its 2010 report (E/2010/43-E/C.19/2010/15), the permanent Forum calls upon the parties to the Convention on Biological Diversity, and especially including the Nagoya Protocol, to adopt the terminology "indigenous peoples and local communities" as an accurate reflection of the distinct identities developed by those entities since the adoption of the Convention almost 20 years ago.*

27 *The Permanent Forum reiterates to the parties to the Convention on Biological Diversity, and especially to the parties to the Nagoya Protocol, the importance of respecting and protecting indigenous peoples' rights to genetic resources consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Consistent with the objective of "fair and equitable" benefit sharing in the Convention and Protocol, all rights based on customary use must be safeguarded and not only "established" rights. The Committee on the Elimination of Racial Discrimination has concluded that such kinds of distinctions would be discriminatory.*

17 See http://www.forestpeoples.org/topics/convention-biological-diversity-cbd/news/2012/12/parties-biodiversity-convention-not-ready-ac

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INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American Commission on Human Rights (IACHR), created in 1959, is a principal and autonomous organ of the Organization of American States (OAS). Its mission is to promote and protect human rights in the American hemisphere. It is composed of seven independent members who serve in their personal capacity and it has its headquarters in Washington, D.C., together with the Inter-American Court of Human Rights, installed in 1979.

Since 1972, the IACHR has stressed that the special protection of indigenous peoples is a fundamental obligation of states.[1] In 1990, the IACHR created the Office of the Special Rapporteur on the Rights of Indigenous Peoples to devote attention to the indigenous peoples of the Americas, who are particularly vulnerable to human rights violations, and to strengthen, promote, and systematize the Commission's own work in this area.[2]

The IACHR protects and promotes indigenous peoples' rights through its different instruments and means of action, including: developing standards for inter-American jurisprudence; granting precautionary measures in urgent and serious cases of threat to the life or integrity of persons; producing specialized in-depth studies and reports on particular themes and topics dealing with indigenous peoples' rights; monitoring and assessing the situation of indigenous peoples in specific countries; acting as a specialized consulting body for states and OAS organs; participating in the elaboration of international legal instruments; organizing training seminars and exchange workshops with indigenous leaders and organizations, representatives of the Member States, international agencies, lawyers, activists and public officials throughout the Americas.

Two or three times a year, the IACHR offers the opportunity of holding public hearings between governments and petitioners or working meetings on specific cases. Governments generally tend to send high-level delegations, but both parties are treated equally and given the same speaking time.

Judgments of the Inter-American Court and Merits Reports of the IACHR

During 2012, the IACHR adopted merits reports in relation to two cases of indigenous peoples' rights to their ancestral territories and natural resources, both of which were referred to the Inter-American Court in 2013. The case of the *Kuna de Madungandí and the Emberá de Bayano indigenous peoples versus Panama* was, in particular, resolved. This refers to the continuing violation of these peoples' right to collective property due to the state's failure to pay financial compensation following the expropriation and flooding of their ancestral territories, from 1969 onwards. The case also relates to an ongoing lack of recognition, demarcation and titling of lands granted to the Emberá del Bayano people. In addition, the IACHR determined that the Panamanian state had failed in its obligation to provide effective protection of the territory and natural resources, by failing to prevent the invasion of settlers and illegal logging. The case was referred to the Inter-American Court on 26 February 2013 because the Commission considered that the state had failed to comply with the recommendations contained in its Merits Report. These recommendations related to speedily concluding the titling and physical demarcation of these two peoples' territories and granting them prompt and fair compensation, the amount of which was to be determined by a participatory procedure, in accordance with the peoples' customary law, values, habits and customs, among other things.[3]

The IACHR also adopted the Merits Report in the case of the Garífuna community of Triunfo de la Cruz versus Honduras, which relates to a failure to protect their ancestral territory from occupation and expropriation by third parties. The actions of these third parties, both private individuals and public authorities, have led to the community being in a situation of permanent conflict. In addition, the IACHR ruled that the community did not have an adequate and culturally-appropriate property title to its ancestral territory and that access to some areas of its territory had been restricted by the creation of protected areas. It considered that these factors had created obstacles to maintaining the people's traditional way of life. The case also refers to a lack of free, prior and informed consultation of the Triunfo de la Cruz community and its members with regard to decisions that affect the territory they have historically occupied, including: the implementation of tourism projects and megaprojects, the creation of a protected area on part of their

ancestral territory and the sale of community lands. The case was referred to the Inter-American Court on 21 February 2013 because the state had not informed the Commission of its compliance with the recommendations contained in the Merits Report. These included, among other things, the adoption of legislative, administrative and any other necessary measures to adequately demarcate and title their ancestral territory, along with the adoption of an effective and simple remedy for ensuring the right of Honduras' indigenous peoples to claim and access their traditional territories and enabling these territories to be protected from state or third-party actions that infringe their property rights.[4]

It is also noteworthy that the Inter-American Court of Human Rights (Inter-American Court) issued two judgments on indigenous peoples' rights in 2012. The first, passed on 27 June, relates to the case of the *Kichwa de Sarayaku People Vs. Ecuador*, and was referred to the Court by the IACHR on 26 April 2010. In its judgment, the Court declared that the Ecuadorian state was responsible for violating the Kichwa de Sarayaku people's rights to consultation, to indigenous communal property and to cultural identity because it had permitted a private company to conduct oil exploration activities within the community's territory since the end of the 1990s, with no prior consultation of the people. The state was also declared responsible for having seriously endangered the lives and personal integrity of members of the Sarayaku people because of activities undertaken since the oil exploration phase, including the placement of high-power explosives at various points around the indigenous territory. Before this judgment was passed, in April 2012, the Inter-American Court paid a visit to the Sarayaku territory, in the Ecuadorian Amazon, the first time the Court has made an onsite visit to the location of a case under its consideration.[5]

The second judgment was issued by the Inter-American Court on 4 September in the case of the *Rio Negro Massacres Vs. Guatemala*. This relates to the destruction of the Maya community of Río Negro, along with the persecution and elimination of its members through a series of massacres carried out by the Guatemalan Army and members of the Civil Self-Defence Patrols (*Patrullas de Autodefensa Civil*) between 1980 and 1982. In its ruling, the Court determined that the massacres had been conducted as part of a "scorched earth" policy directed by the Guatemalan state at the Maya people, described as the "enemy within". It found that this had taken place in a context of discrimination and racism and in violation of fundamental personal human rights. In addition, it found that the state

had failed to investigate these massacres effectively, and had not examined the numerous violations that occurred both during and after these events.[6]

Precautionary measures mechanism

The IACHR uses the precautionary measures mechanism to protect the rights of indigenous peoples when faced with "serious and urgent situations". This is in order to "to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case".[7] The Commission has granted precautionary measures in favour of indigenous peoples or their members under very different circumstances, such as: to guarantee the right to life and personal integrity of indigenous authorities or leaders, or indigenous peoples in general in the face of attacks, assassinations and threats.[8] In addition, injunctions have been issued with regard to protecting an indigenous territory until a final decision has been taken on the petition submitted,[9] and there have been measures whereby the IACHR has ordered that an indigenous territory be protected from mass invasions by third parties who are destroying the forests or crops and threatening the physical integrity of their members.[10] Other cases requiring protection include communities that are forcibly displaced or evicted and who are living in a highly vulnerable situation,[11] and where protection is required to prevent the possible destruction of or ensure access to sacred places.[12]

In 2012, the IACHR granted various precautionary measures relating to indigenous communities and persons, calling on the respective states to adopt measures to protect these peoples' lives and physical integrity. One such measure was granted on 29 May in favour of 76 members of the Triqui community of Valle del Río San Pedro, San Juan Cópala, Putla de Guerrero, Oaxaca, in Mexico. According to the petition, the beneficiaries had been displaced from the area of San Juan Cópala by armed actors and were now being subjected to threats, acts of violence and harassment with the aim of evicting them from their current place of settlement. Subsequently, on 15 October, the IACHR granted precautionary measures in favour of Carlos Antonio Pop Ac and Rodrigo Tot, legal representative and community leader respectively of the Agua Caliente community of "Lote 9", belonging to the Maya Q'eqchi people and located in El Estor municipality, Izabal department, in Guatemala. According to information received, the situation

of risk had arisen in both cases, either directly or indirectly, because of third-party interests on the territory historically occupied by these indigenous communities.

Country monitoring

During 2012, the IACHR and its Rapporteurship on the Rights of Indigenous Peoples continued to monitor the situation of indigenous peoples on the American continent by means of different mechanisms such as country visits, hearings, requests for information from states and press releases.

Country visits

During the year, visits were conducted to two countries to gather information on the human rights situation of indigenous peoples. In March, the Rapporteur on the Rights of Indigenous Peoples, Dinah Shelton, undertook a working visit to Guatemala. On conclusion of her visit, she expressed deep concern at the serious human rights situation affecting Guatemala's indigenous peoples, due primarily to the state's failure to take action aimed at guaranteeing their rights to land and natural resources. According to the information received, the failure to protect indigenous peoples' territorial rights in Guatemala is due to: the lack of recognition of indigenous lands; the lack of any land registry recognising ancestral territories and enabling lands belonging to indigenous peoples to be protected; the acquisition of lands by companies without any direct supervision from the state; and the implementation of investment, development and resource extraction projects in violation of international norms in this regard.[13]

In addition, in December, the IACHR made an onsite visit to Colombia with the participation of a specialist from the Rapporteurship on the Rights of Indigenous Peoples. On conclusion of the visit, the IACHR considered generally that, despite the existence of a favourable legal framework and programmes aimed at addressing and protecting indigenous rights, the information received suggested that this had not resulted in the effective protection of indigenous peoples' rights in Colombia. On the contrary, as noted in the press release issued in this regard, the IACHR had received information on numerous acts that demonstrated that indigenous peoples were being acutely and disproportionately affected by the internal armed conflict and that, during 2012, the conflict seemed to have intensi-

fied on their territories. Some of the acts of violence that the IACHR was made aware of included: indiscriminate attacks related to the heavy militarisation of the indigenous territories and their control by actors in the conflict, substantially affecting the lives and physical and cultural integrity of the communities; the forced recruitment of indigenous boys and girls for use in intelligence activities or for carrying military equipment; sexual violence against indigenous women and girls, along with a significant under-recording of such acts through fear of reprisals; and the physical hemming in of the indigenous communities, preventing them from accessing their traditional hunting, fishing and gathering sites.[14]

Hearings before the IACHR

The IACHR's 144th and 146th period of sessions took place in 2012, at which public hearings were held on the situation of indigenous peoples. These bore witness to the continuing violations of and disregard for territorial rights in various of the region's countries, such as Argentina, Colombia, Panama, Peru and Suriname.[15]

Worthy of particular note was the hearing on the "Situation of indigenous peoples in voluntary isolation in South America", held during the 146th period of sessions, and at which disconcerting information was presented on the increasing threats to the lives and physical and cultural integrity of these peoples, which has even placed some of them at risk of extinction as a people. In the press release issued at the end of this period of sessions, the IACHR put out "a call to the region's states to ensure respect for and guarantee the human rights of indigenous peoples in voluntary isolation, putting appropriate measures in place to ensure the effective enjoyment of their right to ownership of their ancestral territories and the natural resources found therein". In addition, the Commission "urged the states to consider the possibility of implementing regional protection measures, given the specific characteristics of the peoples in voluntary isolation".[16]

In addition, during the 2012 hearings, the IACHR received worrying information about the repression of protests and public demonstrations being conducted by leaders, authorities and members of indigenous peoples in defence of their ancestral territories and natural resources. In particular, it was informed of the use of ambiguous and wide-ranging criminal charges aimed at restricting the right to public protest, along with the excessive use of force by public officials in order to put down legitimate demonstrations and social protest.

Some of the events that took place during 2012 in the region, which even included the deaths of indigenous demonstrators, highlight the severity of the situation and the importance of safeguarding this right in democratic societies. A number of these events resulted in IACHR press releases, such as the protests of the Ngöbe Buglé people in Panama at the approval of legislation on the implementation of investment projects on their territories;[17] the communities and rural self-defence groups opposed to the Conga mining project in Cajamarca, Peru;[18] and the deaths of indigenous K'iche from the 48 Cantones de Totonicapán, in Guatemala, who died during a state operation to repress a demonstration on 4 October 2012.[19] ❍

Notes and references

1 At: http://www.oas.org/en/iachr/mandate/what.asp
2 At: http://www.oas.org/en/iachr/indigenous/mandate/functions.asp
3 For more information on the case, see IACHR. Press release 22/13. IACHR takes case involving Panama to the Inter-American Court. Washington, D.C., 4 April 2013.
4 For more information on the case, see IACHR. Press release 21/13. IACHR takes case involving Honduras to the Inter-American Court. Washington, D.C., 4 April 2013.
5 For more information, see Inter-American Court. *Indígena Kichwa de Sarayaku People Vs. Ecuador*. Merits and Reparations. Judgment of 27 June 2012. Series C No. 245. Available at: http://www.corteidh.or.cr/casos.cfm.
6 For more information, see Inter-American Court. *Río Negro Massacres Vs. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 4 September 2012 Series C No. 250. Available at: http://www.corteidh.or.cr/casos.cfm.
7 Article 25 of the IACHR Rules of Procedure, approved by the Commission at its 137th period of sessions, held from 28 October to 13 November 2009, and amended on 2 September 2011. This mechanism fills a dual role for the IACHR: preventing or preserving a legal situation made known to it via a petition or case in order to prevent the implementation of measures that may make an eventual decision of the IACHR ineffective; and a "supervisory" role, by preserving the exercise of rights with the aim of avoiding irreparable damage to the life and personal integrity of the beneficiary.
8 For example, the precautionary measures granted to the Awá people of the departments of Nariño and Putumayo (MC 61/11) and, in November of the same year, to the Nasa people of the Toribio, San Francisco, Tacueyo and Jambalo Reserves (MC 255/11), both in Colombia.
9 For example, the measures granted to the Garífuna communities of Triunfo de la Cruz (MC 253/05) and San Juan de Tela (MC 304/05), in Honduras.
10 For example, the measures granted to the Kuna de Madungandí and Emberá de Bayano peoples, in Panama (MC 105/11); and to the Maho Indigenous Community, in Suriname (MC 395/09).

11 For example, the precautionary measures granted to 14 Q'echi indigenous communities from Panzos municipality, Guatemala (MC 121/11) and to 21 families of the Nonam community of the Wounaan people, Colombia (MC 355/10).

12 For example, the precautionary measures granted to the Lof Paichil Antriao community of the Mapuche indigenous people, Argentina (MC 269/08) and to the Maya-Sitio community, El Rosario-Naranjo, Guatemala (MC 114/06).

13 The main observations of the Rapporteur on the Rights of Indigenous Peoples can be found in the press release issued at the end of her visit. IACHR. Press Release No. 33/12. "IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women". 27 March 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/033.asp.

14 More information on the IACHR's main observations regarding the situation of indigenous peoples in Colombia can be found at: IACHR. Press Release No. 144/12. "IACHR concludes its onsite visit to Colombia. Bogotá, Colombia, 7 December 2012". Annex. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/144.asp.

15 For more information, see IACHR. Release 136A/12. Annex to Press Release 36/12 issued on the conclusion of the 144th Session. 30 March 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/036A.asp; and CIDH. Release 134A/12. Annex to Press Release 134/12 issued on the 146th Period of Sessions. 16 November 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/134A.asp.

16 IACHR. Release 134A/12. Annex to Press Release 134/12 issued on the conclusion of the146th Period of Sessions. 16 November 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/134A.asp.

17 IACHR. Press Release 13/12. "IACHR Urges Panama to Guarantee Protesters' Physical Integrity and Security". 7 February 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/013.asp.

18 IACHR. Press Release 80/12. "IACHR Expresses its Concern over the Aggressions in the Department of Cajamarca, Peru". 6 July 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/080.asp.

19 IACHR. Press Release 127/12. "IACHR Deeply Regrets Killings of K'iche's Indigenous Persons in Totonicapán, Guatemala". 23 October 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/127.asp.

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (African Commission) was officially inaugurated on 2 November 1987 and is the main human rights body of the African Union (AU). In 2001, the African Commission established its Working Group on Indigenous Populations / Communities in Africa, which was a remarkable step forward in promoting and protecting the human rights of indigenous peoples in Africa. The Working Group has produced a thorough report on the rights of indigenous peoples in Africa, and this document has been adopted by the African Commission as its official conceptualisation of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2001, been on the agenda of the African Commission and henceforth has been a topic of debate between the African Commission, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and in the Working Group's continued activities – sensitisation seminars, country visits, information activities and research – plays a crucial role in ensuring the vital dialogue.

Facilitating dialogue between civil society and states at the session of the African Commission

In 2012, the African Commission held its 51st and 52nd ordinary sessions. Indigenous peoples' representatives participated and contributed by making statements on the human rights situation of indigenous peoples in Africa. The African Commission's Working Group on Indigenous Populations / Communities (Working Group) also presented its progress reports. The participation of indigenous representatives, as well as the intervention of the Working Group's chairperson during the sessions, contributed to raising awareness of indigenous peoples' rights.

During each session, the African Commission also examines the periodic reports of African states, in accordance with Article 62 of the African Charter on Human and Peoples' Rights. For example, the periodic report of Angola was presented at the 51st session. During the state report examination, the African Commission raised questions concerning the situation of indigenous peoples and the extent to which their rights are protected. IWGIA's partner organisation in Angola, OCADEC (Christian Organisation Supporting Community Development), also contributed with shadow reports that provided an alternative source of information and assisted the African Commission in asking substantiated and critical questions on indigenous peoples during the dialogue with the state.

The participation of indigenous peoples' representatives in the African Commission sessions has facilitated the exchanges with their respective governments and the advancement of the rights of indigenous peoples in their country. For example, the participant from Angola had the opportunity to hold meetings with the government delegation to discuss the situation of indigenous peoples in Angola and to define how they could better cooperate in the future to enhance the situation. The participants from Angola stated that the experience and interaction with different NGOs was very good and that they had seen some positive results from their participation in the session. Many actions were planned by the government following the session, such as including San issues on the Ministry of Social Affairs´ agenda in order to establish specific interventions. According to OCADEC, this is because it was raised by the African Commission during the country examination.

Documentary film: a strong promotional tool for indigenous peoples' rights

In 2012, the documentary film: "Indigenous Peoples' Rights in Africa: A Question of Justice", produced by the African Commission's Working Group was launched in the Democratic Republic of Congo, Cameroon, Kenya, Central African Republic, Gabon, Uganda, Burundi and Tanzania. In all these countries, the film was presented during a one-day seminar where key stakeholders were invited to discuss the human rights situation of indigenous peoples in their country and the work of the African Commission in addressing indigenous peoples' rights in Africa.

The launch seminars were attended by many participants, including government representatives, civil society organisations, the media, national human rights institutions, the indigenous community, the judiciary and universities. In Kenya, the Minister of Justice and Constitutional Affairs opened the seminar and assured that the government would work to protect indigenous peoples' rights at the national level. The film was also widely distributed at the international level and also used as an educational tool by, for example, the Centre for Human Rights of the University of Pretoria and the non-governmental organisation, Forest Peoples' Programme. Moreover, the film was distributed to all the African embassies at African Union level in Addis Ababa. This contributed to sensitising the member states of the African Union on indigenous peoples' rights. Subsequently, the Government of Uganda warmly welcomed the film and recommended its wide distribution in Africa.

Indigenous peoples' rights at university

In September 2012, the Centre for Human Rights of the University of Pretoria in South Africa for the second year conducted a one-week intensive course on indigenous peoples' rights. This course was targeted at senior government officials, civil society and academics in Africa. The lecturers were all well-known experts on the topic, including two members of the Working Group. The course programme included various topics, such as, for example:

- Indigenous peoples: definitional and conceptual issues;
- UN human rights treaty bodies and indigenous peoples;
- Self-management, consultation and participation of indigenous peoples;
- Land, environment and natural resources: indigenous people, development and modernity;
- Gender equality and indigenous people;
- The Inter-American human rights system and indigenous peoples' rights;
- The Endorois case: a practical illustration of vindicating the rights of indigenous peoples.

Many participants attended the course and indicated that they were very pleased with the content, the fruitful discussions they had had and what they took away with them from the experience.

Working in synergy with the African Union

The African Commission's Working Group participated in the stakeholders' meeting on the implementation of the Pastoralism Policy of the African Union in Addis Ababa, in August 2012. Many participants from all over the continent had an opportunity to participate in the meeting and discuss how the Pastoralist Policy,[1] a highly progressive policy adopted by the African Union in 2010, could be pushed forward in Africa and implemented at the national level.

The African Commission's Working Group also held a meeting with Dr. Janet Edeme, head of the Rural Economy Division at the Department of Rural Economy and Agriculture of the African Union to discuss how the two bodies could collaborate specifically on the implementation of the Pastoralism Policy and, more generally, on the issue of indigenous peoples' rights.

Follow-up visits: a way of monitoring the implementation of recommendations

Many countries have thus far been visited by the African Commission's Working Group to examine the human rights situation of indigenous peoples and sensitise key stakeholders as to the African Commission's approach to the issue. The African Commission's Working Group has therefore decided that it is now important to evaluate the impact of those visits. This can be done by conducting follow-up visits to monitor the extent to which the recommendations from the first visits are being implemented and to continue the dialogue with the different stakeholders.

In 2012, the African Commission's Working Group conducted follow-up visits to the Democratic Republic of Congo (DRC), the Central African Republic and Gabon. In the DRC, for example, the Working Group met with all the relevant stakeholders, including government officials, civil society organisations, UN agencies, local authorities and the media, and discussed the recommendations from the report and how they could be better implemented in the country. The visit concluded with a press conference that was broadcast on national television. The documentary film "Indigenous Peoples' Rights in Africa: A Question of Justice" was also shown on national television. The visit revealed that very few stakeholders knew about the report and its content and that the situation of indigenous

peoples was still very precarious in the country. The human rights situation of indigenous peoples in the DRC is alarming. They suffer from discrimination and marginalisation, have no access to land and basic services such as health and education, are used as slaves by neighboring communities, are victims of rape due to a belief that they can cure diseases, are killed with complete impunity and are not represented at the decision-making level. None of the recommendations had yet been implemented and the follow-up visit helped the different actors to sit down together and discuss a plan of action for the way forward.

Letter of concern: displacement of indigenous peoples due to the conflict in the DRC

The African Commission's Working Group sent a letter of concern to the United Nations Organisation Stabilization Mission in the DRC (MONUSCO). The letter raised concerns related to the displacement of indigenous peoples in the eastern part of the DRC due to a resurgence of violent conflict and called upon MONUSCO to put in place measures to specifically address the precarious situation of the indigenous communities by:

- putting an end to the conflict in Eastern Congo, paying particular attention to indigenous communities in conflict areas;
- mobilising humanitarian support for displaced indigenous peoples who do not receive any support in camps or in foster families. This support should include food, non-food support and medicine for their healthcare;
- collaborating with the relevant UN agencies and with the Government of the DRC to build temporary shelters for displaced indigenous peoples living in the camps in the two provinces most affected by the war in the east of the DRC;

New publications

In 2012, the African Commission's Working Group published the following reports:

- A report on the research and information visit to Kenya conducted from 1-19 March 2010. This report was published in both French and English.[2]
- A report on the regional sensitisation seminar on the rights of indigenous populations/communities in Central and East Africa held in Brazzaville, the Republic of Congo, 22-25 August 2011. The report was published in both French and English.[3]
- The Manual and its summary on the promotion and protection of the rights of indigenous populations/communities through the African human rights system. The manual and its summary were published in both French and English.[4] ❍

Notes and references

1 http://rea.au.int/en/sites/default/files/Policy%20Framework%20for%20Pastoralism.pdf
2 http://www.iwgia.org/publications/search-pubs?publication_id=569
3 http://www.iwgia.org/publications/search-pubs?publication_id=600
4 http://www.iwgia.org/publications/search-pubs?publication_id=604

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ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 with the signing of the ASEAN Declaration (Bangkok Declaration) by Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei, Cambodia, Lao PDR, Vietnam and Myanmar later joined, bringing the number of member states to ten. The official aims and purposes of ASEAN include the acceleration of economic growth, social progress and cultural development, and the promotion of regional peace and stability through respect for justice and the rule of law in relationships between countries in the region, plus adherence to the principles of the UN Charter. The ASEAN Charter was adopted in November 2007 and provides a legal status and institutional framework for ASEAN. This Charter is a legally-binding agreement among the ASEAN member states.

In 2011, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was mandated to develop an ASEAN Human Rights Declaration with a view to establish a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights. The ASEAN Human Rights Declaration was adopted by the ten member States on November 18, 2012 in Phnom Penh, Cambodia. It does not make any reference to indigenous peoples despite the fact that an estimated population of 100 million people identify as indigenous in Southeast Asia.[1]

ASEAN's investment plan

Indigenous peoples in Southeast Asia comprise a large part of the population of the region, numbering an estimated 100 million. Despite this, ASEAN member countries have been remiss in their duties and obligations to promote and protect the rights of its indigenous peoples. Instead, indigenous peoples are made to bear the burden of national development goals by sacrificing their lands, territo-

ries and resources. ASEAN's current ambitious investment plan[2] shows a severe imbalance between the duties of states to respect and protect human rights and national development goals that do not ensure equity and justice. The differential impacts of the resource-extractive model of ASEAN member states' development violate the collective rights of indigenous peoples to maintain and develop their political, economic and social systems in their own territories. This is clearly resulting in massive displacements, wide-scale destruction of sustainable livelihoods, food security, cultural heritage, social cohesion and the ethnic identities of indigenous peoples. On the other hand, indigenous peoples continue to be highly marginalized and suffer from a lack of basic social services, compounded by the denial of citizenship in certain countries.

The ASEAN Human Rights Declaration

Two years after its establishment in 2009, the AICHR started to elaborate on its mandate to develop an ASEAN Human Rights Declaration. The drafting process has been marred by criticism of its lack of transparency and genuine consultation with civil society organizations, including from United Nations High Commissioner on Human Rights, Navanethem Pillay, who criticized the lack of transparency during the drafting process and called for broader public consultations and review of the content of the Declaration.[3]

As was expected, the ASEAN Human Rights Declaration adopted by the member states in November was rejected by civil society organizations, who described it as falling below international human rights standards. Key concerns include provisions addressing the right to life, and a so-called "balance" between rights and individual duties and conditions restricting peoples' rights.[4] It also gives states a wide margin of discretion in the interpretation of the Declaration.

Indigenous responses to the ASEAN Human Rights Declaration

The Indigenous Peoples Task Force on ASEAN (IPTF), the Asia Indigenous Peoples Pact (AIPP) and other indigenous peoples' organizations have expressed extreme disappointment at the adopted version of the Declaration. Despite the favorable votes of all ASEAN member states in the adoption of the

UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, the ASEAN Human Rights Declaration does not recognize indigenous peoples as distinct peoples.

Indigenous peoples, moreover, expressed disappointment at the drafting process, whereby no genuine consultations with indigenous peoples took place. In the few instances that the AICHR called for consultations with civil society organizations, indigenous peoples' organizations were barred from attending and presenting their inputs and recommendations. This did not, however, prevent indigenous peoples from submitting recommendations to the AICHR for the Declaration aimed at recognizing indigenous peoples and their collective rights, especially their rights to lands, territories and resources, self-determination, and Free, Prior and Informed Consent (FPIC).

Indigenous rights recognized in leaked draft

The disappointment with regard to the content of the adopted Declaration was made worse by the fact that indigenous peoples' rights had actually been included in a leaked draft.

In November 2011, the IPTF had met informally with three of the AICHR's commissioners to lobby for the inclusion of indigenous peoples' rights in the Declaration. It had also helped facilitate the visit of Dr. Melaku Tegegn, a commissioner from the African Commission on Human and Peoples' Rights' Working Group on Indigenous Peoples, during which Dr. Tegegn gave advice on indigenous peoples' rights to the 10 AICHR commissioners. As a result of this lobbying and advocacy work, references to indigenous peoples' rights to land, territories and resources, their right to culture and to FPIC were reflected in a leaked draft of the ASEAN Human Rights Declaration. However, disappointed that the draft had been leaked, the AICHR decided to totally abandon it and work on an entirely new draft. Subsequent information on the skeleton and outline of the draft lacked any reference to indigenous peoples and their rights. Reliable information gathered by the IPTF pointed out that some commissioners did not agree with the inclusion of indigenous peoples and their rights, claiming that their countries had no indigenous peoples, the same line towed by most Asian governments in not recognizing indigenous peoples and their rights.

Call to revise the ASEAN Human Rights Declaration

For indigenous peoples in the region, the failure to include their rights in the ASEAN Human Rights Declaration is a further step backwards for ASEAN member countries and their duties and obligations to abide by international human rights standards and norms, including those that recognize indigenous peoples' rights.

Indigenous peoples in the region are therefore calling upon the ASEAN to revise the current Declaration in order to bring it into line with international human rights standards and norms, including the rights of indigenous peoples. They are likewise calling for the ASEAN to be transparent and inclusive, providing effective mechanisms and a platform for indigenous peoples and civil society to engage effectively on matters that affect them, such as the ASEAN Human Rights Declaration. Further, indigenous peoples are pushing for the AICHR to assign a focal person for indigenous peoples aimed at establishing a working group that would look into the issues, concerns and welfare of indigenous peoples in the region. ❍

Notes and references

1 This figure is not accurate since only a few states in the region recognize indigenous peoples and their rights and, as a result, indigenous peoples are not taken into account when conducting national censuses.

2 ASEAN's current investment plan can be downloaded as a pdf from the following link: http://www.asean.org/images/2012/Economic/AIA/Agreement/ASEAN%20Comprehensive%20Investment%20Agreement%20%28ACIA%29%202012.pdf See also: http://www.asean.org/images/2012/publications/ASEAN%20Investment%20Map%202009.pdf

3 See for example: Yohanna Ririhena and Margareth Aritonang, *The Jakarta Post*, November 14, 2012:
"ASEAN human rights declaration fails to impress UNHRC". Accessed from: http://www.thejakartapost.com/news/2012/11/14/asean-human-rights-declaration-fails-impress-unhrc.html

4 http://www.un.org/apps/news/story.asp?NewsID=43520&Cr=human+rights&Cr1=

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PART III

GENERAL INFORMATION

ABOUT IWGIA

IWGIA is an independent international membership organization that supports indigenous peoples' right to self-determination. Since its foundation in 1968, IWGIA's secretariat has been based in Copenhagen, Denmark.

IWGIA holds consultative status with the United Nations Economic and Social Council (ECOSOC) and has observer status with the Arctic Council, the African Commission on Human and Peoples Rights and United Nations Educational, Scientific and Cultural Organization (UNESCO).

Aims and activities

IWGIA supports indigenous peoples' struggles for human rights, self-determination, the right to territory, control of land and resources, cultural integrity, and the right to development on their own terms. In order to fulfil this mission, IWGIA works in a wide range of areas: documentation and publication, human rights advocacy and lobbying, plus direct support to indigenous organisations' programmes of work.

IWGIA works worldwide at local, regional and international level, in close cooperation with indigenous partner organizations.

More information about IWGIA can be found on our website, www.iwgia.org

Become a member of IWGIA

Membership is an important sign of support to our work, politically as well as economically. Members receive IWGIA's Annual Report and the yearbook. In addition, members get a 33% reduction on the price of other IWGIA publications.

Read more about IWGIA membership and join us at: http://www.iwgia.org/iwgia/membership

IWGIA PUBLICATIONS IN 2012

Publications can be ordered online at:
www.iwgia.org

In English:

The Indigenous World 2012
Ed. Cæcilie Mikkelsen, Copenhagen: IWGIA
ISBN: 978-87-92786-15-9

The Human Rights of the Rapa Nui people on Easter Island: Report of the International Observers' Mission to Rapa Nui
Ed. Observatorio Ciudadano, Copenhagen: IWGIA
ISBN: 978-87-92786-27-2

Pitfalls and Pipelines. Indigenous Peoples and Extractive Industries
Ed.: Andy Whitmore, Copenhagen: Tebtebba, IWGIA and Piplinks
ISBN: 978-879-27861-8-0

Silent Sacrifice Girl-child beading in the Samburu Community of Kenya
Samburu Womens Trust and IWGIA

Training Manual on Free, Prior and Informed Consent (FPIC) in REDD+ for Indigenous Peoples
Ed. Joan Carling, Chang Mai: AIPP and IWGIA
ISBN: 978-87-92786-21-0

Voices of Indigenous Women
Chiang Mai: AIPP and IWGIA

Forest is Life – A Story of Climate Change, Forest and Communities
Chang Mai: AIPP and IWGIA

IWGIA report 13 - Cameroon: What Future for the Baka. Indigenous Peoples' Rights and Livelihood Opportunities in South-East Cameroon
By: Aili Pyhälä, Ed. Marianne Wiben Jensen, Copenhagen: IWGIA and Plan
ISBN: 978-87-92786-16-6

IWGIA report 14 - Bangladesh: Militarization in the Chittagong Hill Tracts. The Slow Demise of the Region's Indigenous Peoples
Copenhagen: IWGIA, Organising Committee CHT Campaign and Simin Gaikou Centre
ISBN: 978-87-92786-20-3

Drivers of Deforestation? Facts to be Considered Regarding the Impact of Shifting Cultivation in Asia
Chang Mai: AIPP and IWGIA

Beads of Bondage
SWEEDO and IWGIA

Customary Law in Forest Resources Use and Managment –
A Case Study among the Dzao and Thai People in North-West Vietnam
By: Culture Identity and Resource Use Managment (CIRUM), Chang Mai: IWGIA, AIPP and CIRUM
ISBN: 978-87-92786-13-5

Briefing note: Respect, Protect and Remedy:
The Rights of Indigenous Peoples Affected by Business
Copenhagen: IWGIA, Batani and Forum for ursprungsspørgsmål i bistanden

Briefing note: Mineral extraction in the Taimyr Peninsula
Copenhagen: IWGIA and RAIPON

Briefing note: Coal Mining in Kemerovo Oblast, Russia
Copenhagen: IWGIA and RAIPON

Briefing note: Indigenous peoples in the Russian Federation
Copenhagen: IWGIA

Briefing note: Indigenous peoples and transnational corporations and other business enterprises
Copenhagen: IWGIA, RAIPON, PiPlinks, Almáciga and codpi.org

In English and French

Regional Sensitization Seminar on the Rights of Indigenous Populations / Communities in Central and East Africa
Copenhagen: ACHPR and IWGIA
ISBN: 978-87-92786-30-2

Manual on the Promotion and Protection of the Rights of Indigenous Populations / Communities through the African Human Rights System
Copenhagen: ACHPR and IWGIA
ISBN: 978-87-92786-29-6

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In Spanish

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Copenhagen: IWGIA
ISBN: 978-87-92786-32-6

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