

THE INDIGENOUS WORLD 2001/2002

IWGIA
Copenhagen 2002

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EDITORIAL

The year 2001 will go down in history as the year in which the technologically and economically developed Western world came face to face with its vulnerability and, overnight, became engulfed in fear, suspicion and hatred, in which armed revenge has so far been the only response envisaged. The terrorist attacks on the Twin Towers in New York and the Pentagon in Washington on September 11, 2001, and the deaths of some 3,000 innocent civilian men and women, radically changed the world overnight and, as the US administration and its allies get ever more deeply involved in their “war against terrorism”, there is indeed cause for deep concern for the indigenous movement worldwide also.

The global and long lasting impact of the September 11 events can but seem out of proportion when compared with events that took place in other parts of the world during 2001. This holds especially true when talking about events that involve indigenous peoples, and this issue of *The Indigenous World* gives several examples of massacres, violent deaths and disappearances of indigenous peoples and indigenous leaders – Colombia is a case in point – events that are condemnable and abominable too but which, nevertheless, barely make the news and most probably will never make history.

The impact of September 11 has also been directly felt by indigenous peoples. In some cases, it has meant that important indigenous issues were taken off the table, as reported from Mexico; in others (e.g. India) the passing of a new anti-terrorism law is seen as a direct threat to indigenous organisations. In yet others, hostile governments and local authorities have taken the opportunity of the “war against terrorism” to accuse and castigate indigenous peoples of being terrorists when they are legitimately protesting against the violation of their fundamental rights, (see chapters on Chile, China, etc.) or are using excitation against Islam to persecute Moslem indigenous peoples (e.g. Burma).

With the prevailing worldwide “terrorist syndrome” it is indeed to be feared that indigenous peoples who merely struggle for self-determination and for their fundamental rights may in the future be unjustly accused of being terrorists and treated as such. This situation may well, in some places, degenerate into more oppression and even serious confrontation, and indigenous leaders will henceforward need all the political acumen they can muster in order not to give the authorities a pretext to clamp down on them and their fellow men.

Globalisation and neo-liberal economic policies are two other factors that are increasingly impacting on the situation of indigenous peoples. The Plan Puebla-Panama, which will affect indigenous communities throughout Mexico and Central America, is one example. In Russia, indigenous communities are facing increasingly tough competition from private enterprises over their land and natural resources. In other cases, rights acquired by the indigenous peoples are being directly threatened. In India, for instance, private mining companies are lobbying forcefully for an amendment to the 5th Schedule of the Constitution, which would make the leasing of land to outsiders in tribal areas possible. In Bolivia, the whole land reform process for which the indigenous population has struggled for years is being jeopardized by the government's sell-out to the cattle farming sector and large landowners.

In other parts of the world, indigenous peoples continue to be forced to relocate in order to make way for hydroelectric dams (e.g. in Laos, the Philippines, Chile), national parks (e.g. Bangladesh, India, Tanzania), or in the name of so-called "development", like the San of Botswana and the Mon-Khmer of Laos. Not surprisingly, the issue of forced relocation was high on the indigenous agenda during the consultations conducted in 2001-2002 by the World Bank in connection with the revision of their guidelines. Unfortunately, it seems as if the proposed revised guidelines will not be nearly as strong as they should be and even weaker than they were originally.

While this issue of *The Indigenous World* brings a number of country reports that show that the situation of indigenous peoples worldwide remains highly precarious, with important advances being consistently threatened, it also highlights a number of positive developments that have occurred over the period under consideration.

At local level, one such development worth mentioning is the several-month-long protest movement of the Adivasi and the Dalits in the state of Kerala (India), which ended with the government conceding to all the demands made by the Adivasi-Dalit platform, Samara Samithy, notably in terms of land distribution. Other examples include Cambodia, where a new land law recognizing indigenous land rights has been passed, and Nicaragua where the Awas Tingni land claims were recognised.

A major event in 2001 - 2002 was the birth of a new independent country - Timor Lorosa'e. After more than 24 years of Indonesian colonization and a liberation struggle which, on several occasions, seemed on the point of collapsing, this is indeed cause for joy and,

from IWGIA, we send our best wishes and hopes for the future to the people of Timor Lorosa'e.

At international level, there have also been some major achievements. In the Americas, the Inter-American Court on Human Rights (IACHR), which has the mandate to place binding obligations on all American states to comply with human rights standards, has been playing an increasingly important role in mediating and defending indigenous peoples' rights (see chapters on Panama, Paraguay and Nicaragua).

In Africa, an interesting process has been initiated within the African Commission on Human and Peoples' Rights (ACHPR), with the establishment of an ad-hoc group that will focus on the situation of indigenous peoples in Africa. Given the reticence of African governments to recognize the concept of "indigenous", this is a promising step forward that may open up the path for a process which, in the longer term, may give the commission a role similar to that of the IACHR.

At UN level, the designation of Rodolfo Stavenhagen as Special Rapporteur on the Situation of Indigenous People has been met with great expectations and will, in the future, be a significant contribution to the protection and recognition of indigenous peoples' fundamental rights.

The greatest advance, however, has been the establishment of the Permanent Forum for Indigenous Peoples under ECOSOC. This new high-level institution within the UN system is a breakthrough for indigenous peoples and will, hopefully, support them in meeting the many challenges of the years to come: the ongoing struggle for land rights and self-determination, for recognition and respect of their indigenous cultures and know-how, for acquisition of equal rights and equal opportunities.

This issue of *The Indigenous World* is no.16. From the very beginning - in 1986 - our goal has been to document as completely as possible the situation of indigenous peoples worldwide. Even though we are still far from this goal, we also feel that some progress has been made over the years. For this we wish to thank our many contributors and, at the same time, enjoin all those who feel there are still too many shortcomings to come forward with their suggestions and contributions so that we can keep improving our coverage of the indigenous world.

Diana Vinding
Coordinating Editor

ABOUT OUR CONTRIBUTORS

IWGIA would like to extend warm thanks to the following people and organisations for having contributed to *The Indigenous World 2001/2002*. We would also like to thank the contributors who have wished to remain anonymous and therefore are not mentioned below. Without any of these people's help, this book would not have been published.

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The Arctic & North America

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PART II

Indigenous Rights

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PART I

REGION AND COUNTRY REPORTS

THE ARCTIC

THE ARCTIC COUNCIL

The Arctic Council Ministerial meeting in Barrow (Alaska) in 2000 clearly emphasized the need for the Arctic Council to continue to cooperate closely with relevant regional and international bodies. Subsequently, the Finnish Chair has been very active in promoting the Arctic Region and the Arctic Council at numerous regional and international thematic conferences.

Presently, the Arctic Council is preparing for two major events in the fall of 2002.

Firstly, the Arctic Council, under the Finnish Chairmanship, is advocating that a strong voice be given to the Arctic Region and its peoples at the World Summit on Sustainable Development (WSSD), due to take place in Johannesburg in September of this year.

More specifically, the Arctic Council aims to highlight the unique cooperation between national governments and indigenous peoples in a high-level inter-governmental forum, which also features partnerships with non-Arctic states, parliamentarians, international and non-governmental organizations, regional bodies and research networks.

The Arctic Message, or Arctic Dimension of Sustainable Development, will build on the ongoing work of the Arctic Council to promote the sustainable development and protection of the Arctic environment, which is sensitive to the needs, aspirations and livelihood of the Arctic peoples.

Secondly, the Arctic Council is preparing its third Ministerial Meeting to be held in Inari (Finland) at the beginning of October. This meeting, which will mark the finale of a very active Finnish Chairmanship and the transfer of the Arctic Council responsibilities to Iceland, is also expected to deal with the recommendations from the WSSD with respect to setting standards and priorities for its sustainable development activities in the Arctic.

The Ministerial Meeting will furthermore be discussing proposals for adjustments to the Council's structure and work, based on ongoing consultations with members and participants. Finally, ministers will be deciding on the program of work for the coming two years in the environment and sustainable development working groups.

Whereas the long established environmental working groups and programs are quite successful in obtaining funding for environmental monitoring, assessment and action planning, it has proven difficult to get the same level of attention from governments and donors for initiatives under the Sustainable Development Program, except where activities are already part of a national program, such as is the case



with many health-related projects. This is why some members and participants argue in favour of some form of core funding and a permanent secretariat.

One comprehensive project under the Sustainable Development Program is the Survey on Living Conditions in the Arctic (SLICA), which has the objective of providing proper and much needed com-

parable statistical information across the Arctic Region. The comprehensive Survey is expected to make an important contribution to sustainable policy planning and development for the region.

The 10th anniversary of the Arctic Environmental Protection Strategy (AEPS) was celebrated with a successful conference in June 2001, in Rovaneimi (Finland) where the Declaration on the establishment of this important environmental co-operation was signed in 1991. It was at the Arctic Council Ministerial meeting in Nuuk (Greenland) under Danish Chairmanship, that the Arctic Indigenous Peoples first became accepted as Permanent Participants and true partners in the Arctic Council process in accordance with the provisions of the 1992 Rio Declaration on Environment and Development dealing with the promotion of indigenous peoples' effective participation in the achievement of sustainable development.

In the margins of the Arctic Council, there have been several conferences during the course of 2001. Notably, the Meeting on Youth Policy in the Arctic held at Rovaneimi in September (12-14) to discuss, review and promote the youth policy viewpoints in activities of the Arctic Council. At the beginning of November (1-2), a conference on Capacity Building was held back to back with the Senior Arctic Officials meeting and co-hosted by Canada and Finland. The objective of the conference, which also included youth representatives from Greenland, was to gather ideas and recommendations for the development of a capacity-building strategy and focus for the Arctic Council, as described in the Barrow Declaration.

In the summer (August 4-6) of 2002, the "Taking Wing - Conference on Gender Equality and Women in the Arctic" will be held in Inari. The conference, which is a joint Arctic Council and Nordic Council of Ministers initiative co-hosted by Finland, aims to raise awareness of the situation of women in the Arctic and to give voice to women to express their experiences, views and interests regarding future action in areas of concern.

GREENLAND

Greenland is a self-governing unit within the Danish realm. The first Danish colonial settlement was established in 1721 close to the current capital, Nuuk. Until 1953, Greenland was legally a Danish

colony and it was not until 1979, when Home Rule was established, that some kind of real autonomy was introduced. Greenland now has its own Home Rule Parliament and Government responsible for most internal matters. In the year 1999, the Home Rule Government established a self-government commission to investigate the possibilities for taking over more responsibilities from the Danish state. Core issues are foreign affairs, security matters, economic development and language policy. The latter is especially important to a population of only 56,000 inhabitants, 87 per cent of them being ethnic Greenlanders (Inuit).

Recent events

During the past year, a power struggle has been going on within the largest government party, Siumut (the Social Democratic Party). As a result, Hans Enoksen was appointed as new party leader thereby creating the situation of having a Home Rule Premier - Jonathan Motzfeldt - who is not leader of his own party. Alongside the change in party leader, Siumut adopted a new strategy for the equal development of all parts of Greenland. However, this may very well clash with the party's wish for more independence from Denmark, given that keeping the outlying districts alive is a costly affair. Another problem Siumut is facing is the creation of and plans for creating new parties such as e.g. the Women's Party (Arnat Partiiat) or a party that will take care of the hunters' and fishermen's interests. The distance between people's daily lives and the administration in Nuuk, added to Siumut's lack of ability to respond to the interests of its voters, seem to be the reason for these new parties, which will no doubt steal voters from Siumut in future elections. The unrest within Siumut partly explains the break-up of the coalition government between Siumut and the left-wing Inuit Ataqatigiit in late 2001. Instead Siumut established a new coalition with the conservative Atassut party.

In November 2001, Denmark held elections for the Danish Parliament and Greenland had to elect their two members. Those elected are Kuupik Kleist from Inuit Ataqatigiit (IA) and the former Greenland Premier, Lars Emil Johansen, from Siumut. The two politicians won the election by focusing on key issues such as independence, transfer of complete ownership of the subsoil and a renegotiation of the defence agreement between Denmark and the US. Neither of the two politicians wants to bind themselves to a Danish party like their predecessors did, as they want to be able to vote for what they feel is the best for Greenland. Instead, the two Greenlandic politicians have,

together with the Faeroese member of the Danish Parliament, created a North Atlantic Group.

With regard to foreign politics, the Premier of Greenland, Jonathan Motzfeldt (from Siumut), has met the new Danish foreign minister, Per Stig Møller. Among other things, they discussed the US airbase in Thule and the National Missile Defence (NMD) and decided to look through the case together if an enquiry should come from the USA. Another subject was the forthcoming Danish chairmanship of the European Union, which will be used to invite politicians from the EU to Greenland.

The language debate

In January 2001, a language conference was held in Kangerlussuaq focusing on subjects such as the language of the Greenlandic authorities; how the development of the Greenlandic language can be strengthened; what role the Danish language should play and whether Greenland should be mono- or bilingual. Most participants wanted the development in Greenland to be based on three languages: Greenlandic, Danish and English, which should all be strengthened in the public schools.

In February 2001, the Self-government Commission held a meeting in Nuuk where the language debate was again in focus. The meeting demonstrated that many Greenlandic-speaking Greenlanders were dissatisfied with the dominant role of the Danish language in the Home Rule administration, as well as in the educational institutions. The problem concerning the Home Rule arises, among other things, due to the fact that one third of the staff in the administration do not speak Greenlandic. Concerning the educational institutions, half of the Greenlandic youth are facing the problem of not mastering the Danish language well enough to get an education. The result is that even though only about ten per cent of the children in the public schools are monolingual in Danish, this group accounts for a massive majority in the high schools. To make the Greenlandic language the dominant educational language thus has long-term prospects. One solution could be to strengthen the development of Greenlandic as the main language but, at the same time, give a higher priority to the Danish language in the schools, as often noted by the Greenlandic press. A group of parents in Nuuk have decided to resolve the matter their own way by establishing a private school where the pupils will be taught both Greenlandic, Danish and English from the first day at school. Most of the children will be of mixed marriages and the par-

ents believe all three languages are necessary to get on in society and in the educational system.

Mineral and Oil Resources

In the southern part of Greenland, in the area of Nanortalik, prospecting for gold has been going on since the 1980s, led by the Greenlandic company Nuna Minerals A/S and the Canadian company Crew Development Corporation. The final decision to establish a mine will depend on the price of gold on the world market and the profitability of the mine, which will be examined during the spring and summer of 2002. For the community of Nanortalik, a goldmine would bring employment and thereby strengthen the economy of the municipality. Nevertheless, some negative impacts might also be felt, affecting both the local community and the environment.

With regard to oil extraction, current prospects are not very good as the search for oil at Fylla Banke, west of Nuuk, turned out to be negative. As a result, the oil companies involved have given up their licences and no further investigation is planned for the moment.

The potential value of the seabed explains the renewed interest in the North Pole and the resources of the Polar Sea. Because of geological circumstances, Greenland/Denmark might be able to enlarge its nautical mile border from 200 nautical miles to 350. Russia, however, has already filed a rights claim to the North Pole and part of the Polar Sea with the UN Sea Rights Commission, while Denmark has not yet signed the UN Sea Rights Convention.

The Greenland Home Rule puts great expectations on the investigations of both oil, gold and other minerals as a means of making the economy, and thereby the country, more self-supporting and independent of Denmark. Furthermore, oil and minerals are seen as a way to remedy the all-embracing dependence on the fishing industry, which makes the country incredibly vulnerable in case of fluctuations in the living resources.

Trade and Industry

The expectations for profitable oil and mineral explorations might be even higher in the future as the large fishing corporation Royal Greenland A/S is facing significant financial problems. The company's

debt has increased from 2.3 billion in 2000 to 3 billion DKK in 2001 partly because of falling prices for the company's main product - shrimps - on the world market. Furthermore, three to five factories are in danger of closure, largely due to a lack of raw materials.

As a result of the crises in Royal Greenland A/S, the Home Rule - which owns the company - has decided to grant the company a 200 million Danish Crowns (DKK) subsidy. This is done in the knowledge that the survival of the company is vital to the employment and economy of Greenland. The 200 million DKK have been financed by the sale of another Home Rule-owned company, Greenland's major department store Pisiffik. The Home Rule has agreed to privatise a large part of Pisiffik and to make the business legislation more liberal in order to make it easier for anyone to establish a company. That the Home Rule has, at the same time, doubled the grants to both the Consumers' Advisory Council and the Board of Competition could be a sign of a more positive attitude towards private business, which has so far had a hard time in Greenland.

These openings towards the private sector come at a time when the Home Rule is facing a scandal regarding the Puisi A/S Company, which was to have produced seal sausages and seal oil pills for the Chinese market. The company was established in 1998 and began production in 1999 but, after only two weeks, the company faced significant financial problems. It turned out that Puisi A/S had paid for activities in a non-existent daughter company in China where neither factory nor market for the seal products existed. The managing director was fired and the company's payments were suspended. At the beginning of 2001, a report from the trustees criticised the managing director, the board, the members and the accountants for a number of actions and omissions concerning the company. The Puisi affair has cost Greenlandic society more than 50 million DKK and has been a hot topic of debate in the Greenlandic newspapers over the past year. People want the matter examined thoroughly and the responsibility apportioned. To some, the scandal is an example of the lack of responsibility in many of the Home Rule's corporations.

Living resources

- : In the autumn of 2001, a book discussing hunting and fishing in
- : Greenland was published by a Danish journalist, Kjeld Hansen. The
- : book has the not very flattering title of "*Farvel til Grønlands Natur*" i.e.

A Farewell to Greenland's Wildlife, and in it Kjeld Hansen criticises the way living resources are used in Greenland. By doing so, he questions a part of the Greenlandic self-conception of having an innate ability to manage the resources in a sustainable way. Although Kjeld Hansen is dealing with very sensitive issues, the book has on the whole been well received in Greenland and it contributes to the ongoing debate on the management of living resources.

One example is the discussion of new and more restrictive regulations on bird hunting that came into force on 1 January 2002 and that will restrict the hunting season. All relevant interest groups have taken part in the preparation: the fishermen's and hunters' organisation (KNAPK) the gamekeepers, the ornithological association "Timmiaq", Greenland Tourism, the police, the municipalities, the Greenland Institute for Natural Resources, the Department for Employment and the Department for Environment. The hunters have nevertheless expressed dissatisfaction and the whole matter has been of great discussion in the Greenlandic newspapers. The discussion has mainly focused on whether the regulations have been forced on the hunters - what they themselves argue - or whether the hunters' occupation has been taken into extensive consideration - what the Greenland Parliament argues. The discussion can be seen as an example of the constant struggle between hunters, biologists and wildlife managers and the ongoing debate on whose knowledge and whose ways of managing are the most correct. Furthermore, it reflects the hunters' fear for their occupation, and the biologists' fear for the animals, and the wildlife managers have to navigate a fine line between the two in order to protect both the hunters and the animals.

SÁPMI - NORWAY

As the most important voice for the Saami people in Norway, the Saami Parliament is dealing with a wide range of issues having to do with most areas of politics. These issues will eventually be brought onto the political common agenda of the national Norwegian Government. Different aspects of land rights have a high priority in

the Saami Parliament, as well as livelihood, questions related to presentation and development of the Saami language, and questions concerning children and education.

Elections

In September 2001, elections to both the national parliament and the Saami parliament took place. In the national parliament, the right wing parties obtained a majority. A coalition of three parties belonging to a politically liberal tradition formed a government with the support of the right wing *Framsrittspartiet* (Progress Party), which has a negative approach toward ethnic minorities in general and toward Saami rights altogether. In 1999, the Samefolkets Parti (Saami Peoples Party) was founded. This party stands for election to the National Parliament in the electoral district of the county of Finnmark. They were not successful.

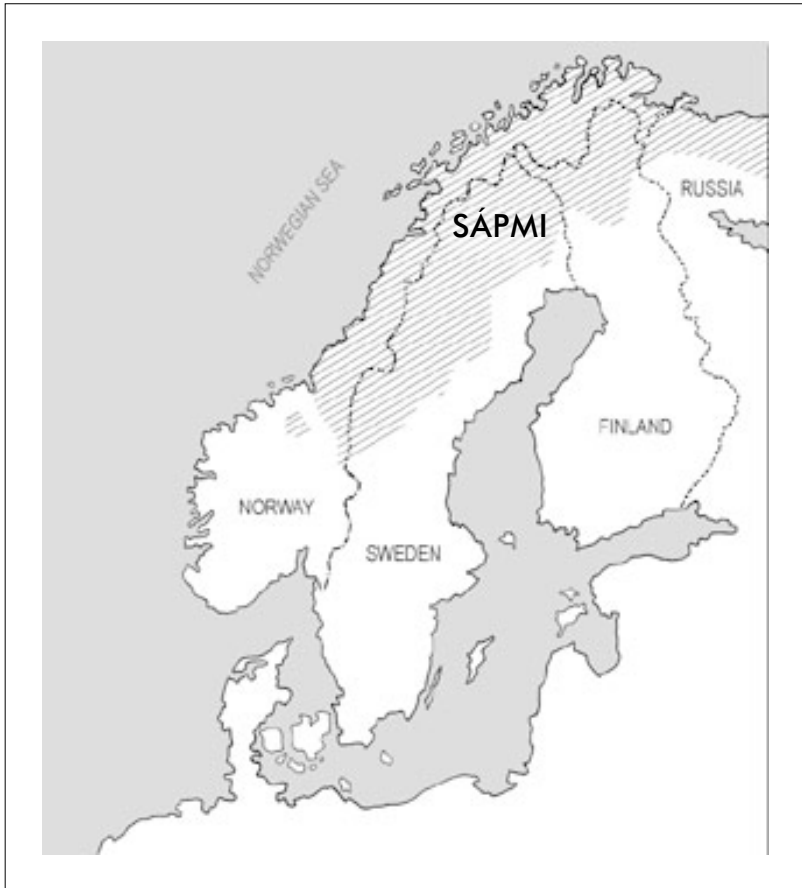
The Saami Parliament is elected on the same day as the national parliament. The Norwegian Saami Association (NSR) succeeded in retaining its majority in alliance with three other minor parties. Female representation in the Parliament has constantly been falling ever since the Parliament was established. In this last election, the number of female representatives fell from 27 % (10 out of 39) to 18 % (7 out of 39). There has as yet been no research into the reasons for this diminishing female representation.

Land rights

In 2001, the Government re-established the Saami Rights Committee. The last Committee was examining the Saami land claims in Finnmark County. This Committee's mandate is to examine Saami rights in the traditional Saami areas south of Finnmark County and to identify these areas according to Article 14-2 of ILO Convention no.169. The Committee consists of 16 members, both Saami and Norwegians, and has to present its report by 1 July 2005.

In 2001, the Norwegian Supreme Court ruled in two cases that can be seen as a turning point, and will have a major impact, on future developments in Saami land rights.

: The first ruling came on June 21. The issue was concerning a
: dispute as to whether two reindeer districts (Essand and Riast/Hyl-
: ling) had grazing rights for their reindeer in privately owned outlying



areas within the municipality of Selbu in the county of Sør-Trøndelag. The Supreme Court has previously, in similar issues, ruled in favour of the farmers that are against reindeer herding on their land. However, this time, the Supreme Court ruled in favour of the reindeer herders, based on their continued use over a long period of historical time (*alders tids bruk*).

On October 5, the Norwegian Supreme Court ruled that the local inhabitants in Manndalen / Olmmaivaggi in the county of Troms had the property rights to the Svartskogen-area. The state had claimed its ownership to this 116 sq.km. area. The locals argued that they had used the area as if they owned it and that they never had given this right away. Again, the Court's decision was based on their continued use over a long period

of historical time (*alders tids bruk*) and that this use had been practised as if they actually had been owners. The Court did not find it necessary to take ILO Convention No. 169 into consideration but it did highlight the fact that the decision was in accordance with the convention.

There is an ongoing conflict around the national armed forces' activity in the reindeer herding areas of Mauken/Blåtind (Troms County) and Halkavarre (Finnmark County). In Halkavarre a non-violent, one-day demonstration against this activity took place last autumn.

In 1998 and 1999, there were two complaints to ESA (EFTA Surveillance Authority) alleging that Norwegian legislation regarding angling in inland watercourses for foreign nationals was in breach of the European Economic Area (EEA) Agreement. On 29 June 2001, the ESA requested answers to specific questions and information on Norwegian legislation. In response, the Norwegian government pointed out that the contested Norwegian legislation did not fall within the scope of the EEA Agreement. Foreigners therefore do not have rights to angling in inland watercourses equal to Norwegian citizens.

Other significant events

The former President in the Saami Parliament, professor Ole Henrik Magga, was appointed representative for the Inuit and Saami areas to the Permanent Forum on Indigenous Issues in the United Nations.

Despite the fact that legislation on education gives Saami pupils the individual right to Saami language education wherever they live in Norway, several cases have proven that this right is hard to achieve in many communities.

The Saami cultural festival Riddu Riddu celebrated its tenth anniversary in 2001. This festival has a distinct Arctic indigenous profile, whereby other indigenous people are invited to contribute with their cultural expressions.

On November 26, one of the most well-known and profiled Saami artists both within Saami society and internationally, Nils Aslak Valkeapää, passed away. The Saami people lost a highly cherished and much loved artist.

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SÁPMI - SWEDEN

This report aims to review developments of importance to Sweden's indigenous Saami people over the last year. The Saami people also inhabit Finland, Norway and the Kola Peninsula in Russia. Even though this report only covers Sweden, several of the developments outlined below are also relevant to members of the Saami population living outside Sweden.

The right to self-determination

Sweden has established a Saami Parliament, with the mandate to decide on certain matters of relevance to the Saami people. The Saami parliament constitutes a commendable effort to realize the Saami people's right to self-determination. However, the Saami parliament does not have the authority to take decisions on issues of most importance to the Saami people, such as issues regarding land rights and rights to natural resources. The government has recently submitted a report to the Swedish parliament, outlining how, in the government's opinion, Sweden is promoting human rights. In its report, the government acknowledges that the Saami people is an indigenous people and that this has implications e.g. with regard to the Saami people's right to self-determination. It remains to be seen whether this insight will have an impact on the government's future policy towards the rights of the Saami people.

Further, on December 14, 2001, a government investigation committee, *Rennäringspolitiska Kommittén*,¹ presented its report with a pro-

posal for a new reindeer management policy. The report contains suggestions on how to balance the interests of the Saami people with other forms of livelihoods that make use of the traditional Saami territory. The report also includes some proposals that increase the Saami people's self-determination in matters of real relevance to the Saami people. For instance, it suggests that the right to make decisions on divisions of winter pasture areas between different Saami villages should be transferred from the Swedish authorities to the Saami Parliament. The Saami parliament is also granted a wider mandate with regard to some other matters relating to reindeer herding.

The ILO Convention no. 169 and the Saami people's land rights

By the end of 2001, the government had still not responded to the recommendations of its own investigation regarding the ratification of the ILO Convention no 169, or to the criticism from the Committee on the Elimination of Racial Discrimination (CERD)² in the year 2000 (see *The Indigenous World 2000-2001*). Instead, it announced that it was awaiting the result of the investigations conducted by the *Ren-näringspolitiska Kommittén*, mentioned above. In its report, the Committee includes a number of proposals that would strengthen the Saami people's land rights, but further measures will be necessary should Sweden adhere to the provisions of ILO 169.

There are thus signs of a possible strengthening of the Saami people's land rights in the future. However, while these proposals were being evaluated, the Saami people's land rights were being further eroded during 2001. In the case of the power plant company *Vattenfall*, which in 2000 filed an application to be registered as owner of three separate land areas within traditional Saami territory (see *The Indigenous World 2000-2001*), in December 2001, the Supreme Court decided not to try the Saami parties' appeal of the ruling of the Court of Appeals in the first of the three cases. The ruling of the Court of Appeal thus stands, and *Vattenfall* will be registered as owner of traditional Saami territory. In a ruling of January 2002, the Court of Appeal reached the same conclusion in the second of the three cases.

Reindeer husbandry is one of the main traditional livelihoods of the Saami people. The practice of reindeer husbandry is paramount to preserving the Saami culture. Even if not recognized as owners of their traditional land, under Swedish legislation the Saami people is allowed to pursue reindeer husbandry in areas they have inhabited "since time immemorial".³ The legislation does not define, however, which these areas,

in the government's opinion, are. This uncertainty has resulted in several conflicts, particularly in the winter pasture areas, which the Saami people nowadays share with the non-Saami population. There are seven cases pending before Swedish courts, in which non-Saami claim compensation from reindeer herders because of their reindeer grazing on territories to which the non-Saami hold title but which, also, according to the reindeer herders, form part of Saami traditional winter grazing areas.

During 2001, an appointed mediator tried to come up with a proposal by which the reindeer herders agree to pay some compensation to the landowners for the reindeer grazing on "their" land. If an agreement is reached, the government has indicated that it might be prepared to compensate the reindeer herders for at least some of these fees. Moreover, in December 2001, the Swedish government appointed a long-awaited committee with the task of investigating which areas constitute traditional Saami territories. The aim is to avoid further court proceedings regarding which land the Saami people has inhabited since time immemorial.

Meanwhile, on February 15, 2002, the Swedish Court of Appeal ruled on the first of the seven cases. Concurring with the Court of First Instance, the Court of Appeal held that the land areas in question did not constitute traditional Saami territory, and that the reindeer herders would thus have to pay compensation to the landowners for the reindeer grazing on that land. Obviously, the ruling will have a detrimental effect on the reindeer herding industry. What upsets the Saami community the most is the heavy burden of proof that the courts have placed on the Saami parties. The reindeer herders tried to explain the prerequisites for reindeer herding, and that it was almost impossible for a culture that aims to live in harmony with the land, and leave no traces thereupon, to prove its presence in a particular land area. The courts were not convinced by this reasoning. A major Swedish newspaper referred to the ruling of the Court of Appeal as "racist".

Together with the lawsuits described above, predatory animals, such as wolfs, wolverines, lynxes and brown bears, continue to constitute the most severe threat towards many reindeer herders. The Saami people has long argued for a cap on how many killed reindeer each reindeer herder should have to sustain and that adequate compensation should be paid for reindeer killed. No progress was made in this regard during 2001.

Hunting and fishing rights

Historically, hunting and fishing rights in the areas the Saami people traditionally inhabit were vested in the Saami people alone, and were

first regulated in the late 19th century. The first Reindeer Grazing Act of 1886 transferred the right to subcontract hunting and fishing rights from the Saami people to the government, the reason being that the Saami people was deemed incapable of administrating its own hunting and fishing rights. Swedish authorities thereafter administered the Saami people's hunting and fishing rights for about 100 years. Then, in 1992, the government suddenly announced that it was no longer subcontracting the Saami people's, but the *state's*, hunting and fishing rights. Legal scholars have referred to the regulation as a confiscation of the Saami people's hunting and fishing rights. In the concluding observations on Sweden in 2000, CERD particularly stressed its concern over the Saami people's hunting and fishing rights.

When *Rennäringspolitiska Kommittén* recently submitted its report, referred to above, it announced that it believed that the hunting and fishing rights would be better investigated separately. It therefore recommended that yet another investigator be appointed. This will not, however, be a political investigation. Instead, the investigator will survey the question of the Saami people's hunting and fishing rights solely from a legal viewpoint.

Cultural rights - the Saami Language Act and Saami television

The Swedish government has recently announced that it is considering expanding the scope of the Saami Language Act⁴ to apply to the whole Saami area following criticism by, among others, CERD.

Further, during 2001, the Swedish state television began broadcasting a daily Saami news program. The news broadcast is in the Saami language, subtitled in Swedish.

Notes and references

- 1 SOU 2001:101 – *En ny rennäringspolitik – öppna samebyar och samverkan med andra markanvändare. Betänkande av Rennäringspolitiska Kommittén.*
- 2 CERD Document CERD/C57/CRP.3/Add.2
- 3 In Swedish: "*urminnes hävd*"
- 4 In Swedish: *Lag (1999:1175) om rätt att använda samiska hos förvaltningsmyndigheter och domstolar.*

SÁPMI - RUSSIA

The Russian Saami have worked actively in 2001 with both political and cultural matters. The Saami together with the Regional Duma of Murmansk County have worked out a county (*oblast*) law about the legal status of the indigenous peoples of the Murmansk county. On July 11th the Duma of the Murmansk region adopted a regulation on the territory that has traditionally been used by the Saami people and should be reserved for them. On the base of that regulation the territory around the holy lake Sejdjaur was declared a protected Saami area.

Much of the Saami political and cultural work was accomplished by the Saami Public Organization of the Murmansk Region (OOSMO). It cooperated with the Danish organization Infonor, which helped OOSMO to get an office and equipment.

On 23 May the Russian language edition of the research report *Saami Potatoes: Living with Reindeer and Perestroika*, by Michael P. Robinson and Karim-Aly S. Kassam was presented in Moscow by the former Soviet leader Mikhail Gorbachev. It was financed by the Gorbachev Fund and was a joint Canadian-Kola Saami project. The report offers a Canadian-Saami vision of how co-management could flourish in post-perestroika Russian society. It is the story of the struggle of the Saami to protect their traditional lands and their reindeer.

In 2001 the Ethnic Center in Lovozero arranged various courses and meeting, for instance a course for unemployed Saami women and a course on bone, horn and wood carving with a Norwegian Saami teacher. The Center participated in a cultural festival in June in Rovaniemi, Finland. It also arranged a meeting for the former inhabitants of Voronje, a village situated between Lovozero and the northern coast, which they were forced to leave in the 1960's when it was flooded due to the construction of a power station.

The sport fishing in the Saami rivers continued in 2001. The rivers are rented to foreign fishing companies for the cost of 4,300 to 7,900 dollars per week. Most of the fishers come from the USA and Scandinavia. The Saami are practically being pushed out of the fishing places on their homelands.

The situation of the reindeer herders was worse than the year before. This is due to the difficulties to sell the reindeer meat. Many reindeer herders lost their work. Some Russian Saami reindeer herders have visited Norwegian colleagues in order to improve the situation at home.

The Russian Saami are actively participating in the work of the Association of Small Peoples of the Russian North. The situation of

the Russian Saami can be characterized as follows: Economically life is getting worse, politically the situation is as before and culturally things are improving.

THE INDIGENOUS PEOPLES OF RUSSIA

Social, economic and environmental processes now underway in the areas inhabited by indigenous peoples have shown evidence that the rights and interests of indigenous peoples' communities are being ignored both by the government and the local authorities.

In October 2001, the Ministry for the Affairs of the Federation, National and Regional Policy was abolished and its functions regarding indigenous peoples were transferred to the Ministry of Economic Development and Trade. Tangible cooperation with this Ministry, as well as with the Ministry of Natural Resources, has failed to take shape. All the initiatives of the Russian Association of Indigenous Peoples of the North (RAIPON – the national umbrella organization of indigenous peoples in Russia), in the sphere of the defence of indigenous peoples' rights at government level have drowned in a flood of bureaucratic correspondence.

The indigenous peoples' rights outlined in Federal legislation have been systematically violated in the areas they inhabit. These violations take place in accordance with a very complicated scheme and, unfortunately, are not subject to court examination in the majority of cases. The point is that the local authorities are being guided in their practical activities primarily by temporary instructions issued by the government rather than by Federal laws. These instructions, alias and enforceable enactments are of a provisional nature. Quite commonly, they contradict the existing Federal legislation. However, to prove this in court and to cancel the inconsistent enforceable enactment is a time-consuming operation requiring substantial legal backup.

For instance, in April 2001 the State Fishing Committee issued a regulation regarding the order giving users licenses to fish anadromous species on a tender basis. Contestants were faced with high demands regarding their organization of fishing and fish processing. Indigenous peoples' rights to priority licensing were not mentioned in that regulation despite the fact that they had been envisaged by the Federal law "*On Fauna*".

Besides, the greater number of quotas remained in the hands of the state, while the regions received a lesser number. However, it is for the regions to distribute the quotas among the indigenous peoples. Referring to this government regulation, the regional authorities put out all the quotas for the tender and invited the indigenous peoples to participate. The majority of communities and indigenous businesses surely failed to compete in terms of equipment with solid industrial fishing companies and, therefore, did not gain any licenses. While RAIPON tried to prove the illegitimacy of the regulation and the government replied that the regulation did not infringe upon the indigenous peoples' interests, the fishing season (to fish anadromous species) of 2001 was over and the indigenous peoples of the Far East were left jobless and without any fish.

Territories of traditional natural resource use

Despite the indigenous peoples' communities appeal to the government regarding the formation of traditional subsistence territories, not a single traditional subsistence territory has been established since the Federal law *"On Territories of Traditional Natural Resource Use (Traditional Subsistence Territories) of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation"*, came into effect on May 11, 2001. Meanwhile, the government explains its inertia by "unavailability of essential legislative acts regulating the order of establishing traditional subsistence territories of Federal significance as well as specification of the system of rules applicable to their functioning".¹ There is no indication in the letter as to why such enforceable enactments have not been formulated and when indeed they will be drawn up.

RAIPON, with the help of lawyers, prepared some drafts of the necessary enforceable enactments and handed them over to the government in October 2001 but until now RAIPON's initiative has been roaming the corridors of bureaucratic letter-writing.

At the same time, in 2000 and 2001, during the period of formulation and adoption of the above-mentioned Federal law, cases of hasty abolition of the formerly established traditional subsistence territories, with the approval of regional authorities, became increasingly frequent.

In the Evenk Autonomous Area, for example, documents of 55 kinship communities concerning their lineage-based kinship land parcelling dating back to 1992-1995 were declared null and void by a single ordinance # 152 dated June 23, 2000 issued by the Area's

Governor. In the opinion of the Evenk Area's organizations of indigenous peoples, this decision was due to the beginning of oil and gas prospecting in the Area. Only one kinship community succeeded in obtaining copies of documents concerning the withdrawal of kinship lands and in lodging, with RAIPON's assistance, a protest against the unlawful ordinance. The unlawful decision with regard to that community was revoked. However, it was impossible to get documents concerning the other kinship communities.

Examples from the regions

The withdrawal of lands previously assigned to indigenous peoples is a flagrant violation of their rights to traditional natural resource use. The Governor of the Koryak Autonomous Okrug issued ordinance # 60 on March 14, 2001 revoking ordinance #317 (1998) issued by his predecessor, on "The Establishment of the 'Tkhsanom' Traditional Subsistence Territory in the Tigilskiy District of the Koryak Autonomous Area". The Tkhsanom Traditional Subsistence Territory was established in compliance with the law "On Traditional Subsistence Territories in the Koryak Autonomous Area" at the request of the Union of Communities of Indigenous Peoples and Non-Natives of the Villages of Kovran, Ust'-Khairyuzovo, Khairyuzovo and in accordance with resolution #136 (1998) by the Tigilskiy District administration. The possibility of a new governor revoking an earlier decree shows the weakness in the implementation of the current laws...

At the same time, the construction of a natural gas pipeline is underway to the south of the Tkhsanom territory. The pipeline construction started in 1999 without any prior environmental impact assessment, public hearing or argument and reconciliation with indigenous peoples' organisations. The pipeline stretches from north to south across the Tkhsanom territory, crossing the upper reaches of more than a hundred spawning rivers and hunting grounds known to have been traditional subsistence areas of indigenous peoples. Pushing ahead with this pipeline construction envisaged to supply Petropavlovsk-Kamchatskiy with gas, the administration of the Kamchatkan region, with the government's tacit consent, has violated all the standards with regard to observing the rules of environmental security, ecological impact assessment and the rights of population to information. The coastal areas of the Tkhsanom territory and the adjacent area of the Sea of Okhotsk are viewed as prospective zones of oil and gas production. The lease of a section of Samarga forests in

the Primorskiy Territory, since 1991 reserved as an ethnic area inhabited by the Udeges, to a timber cutting company in March 2001 is a case similar to the above examples.

Twenty-six percent of the total territory of the Khanty-Mansi Autonomous *Okrug* was given to kinship communities of the Khants and Mansis in 1992-1993 as their kinship lands for gratuitous and termless use with the right to lease them out to other users. As of January 1, 2002, 47 percent of kinship lands happened to be leased out on a long-term basis to oil-drilling companies. The indigenous population, given one-time compensation for leasing out their lands in the form of propeller-driven sledges, wireless and audio equipment, has now found itself without means of existence. The majority of the indigenous population is jobless, living like beggars on the outskirts of towns and industrial settlements in the hope of promised apartments and compensation. Their native lands have been disfigured by geological prospecting, drilling rigs and forest fires and are unsuitable for traditional natural resource use.

Land code

In May 2001, the Land Code of the Russian Federation was adopted by parliament, practically at the same time as the law on traditional natural resource use. The Code envisages the right to acquire land as private property. The priority right to acquisition is given to those already having this or that kind of right to hold parcels of land. The process of leasehold legalization practically without payment for the land in industrial use on traditional subsistence territories of indigenous peoples thus became extremely intensive in 2000 and 2001.

Unfortunately, groups of indigenous peoples dispersed all across the great vast areas, cut off from administrative centres by hundreds of miles of impassable roads, are more often than not left uninformed about the legal status of their native lands. They keep using their lands and natural resources on the basis of traditional law. Their fathers and grandfathers lived there. Under the tsars, their lands were administered by kinship boards, under the Soviet power they were incorporated into collective and state farms. Later, they became lands of kinship communities. Now they can become the private property or long-term leasehold property of extractive companies.

At present, indigenous peoples' communities, frequently without knowing it, are engaged in a tough competition with private capital

for their lands and natural resources. Unfortunately, there has been no tangible state support, at least not in the form of implementation of laws concerning indigenous peoples' rights.

Projects of indigenous organizations that are funded through foreign partners make it possible for indigenous peoples' representatives to acquire the necessary legislative information, at least partly, during workshops and courses, in order to know how to defend their rights, to get information about possible ways of community development and to share information about environmental problems in their regions. However, these projects are far from being able to cover the entire spectrum of activities involved in the defence of indigenous peoples' rights. These rights are not sufficiently reflected in federal legislation. A sizable effort is required for its improvement and expansion taking due account of proposals coming from indigenous peoples themselves.

Much work lies ahead in the Parliament. Indigenous peoples' communities are too dissociated, the distances are too great and the conditions and problems in the regions differ too much. There must be far more workshops, training courses, local information centres and

The *subjekty* (provinces) of the North, Siberia and Far East of the Russian Federation

- | | |
|--|---|
| 1. Murmanskaya Oblast | 18. Republic of Buryatia |
| 2. Nenets Autonomous Okrug | 19. Ust-Ordynsky Buryatsky Autonomous Okrug |
| 3. Republic of Komi | 20. Evenkisky Autonomous Okrug |
| 4. Yamal-Nenets Autonomous Okrug | 21. Altaisky Krai |
| 5. Hanty-Mansi Autonomous Okrug | 22. Krasnoyarsky Krai |
| 6. Taymyr Autonomous Okrug | 23. Republic of Altai |
| 7. Republic of Sakha-Yakutia | 24. Republic of Tyva |
| 8. Chukotsky Autonomous Okrug | 25. Republic of Hakassia |
| 9. Koryaksky Autonomous Okrug | 26. Kemerovskaya Oblast |
| 10. Kamchatkская Oblast | 27. Novosibirskaya Oblast |
| 11. Magadanskaya Oblast | 28. Tomskaya Oblast |
| 12. Habarovskiy Krai | 29. Omskaya Oblast |
| 13. Primorsky Krai | 30. Tyumenskaya Oblast |
| 14. Sahalinskaya Oblast | 31. Sverdlovskaya Oblast |
| 15. Evreyskaya Oblast | 32. Moskva |
| 16. Amurskaya Oblast | 33. Saint-Petersburg |
| 17. Aginsky Buryatsky Autonomous Okrug | 34. Arhangelskaya Oblast |
| | 35. Republic of Karelia |



well-trained leaders in the regions. Russia's indigenous peoples have entered a new phase in their development: they have been granted rights admitted by law and they must learn how to use them in practice and how to defend them in case of need.

The work of RAIPON

The years 2001 and 2002 have been extremely contradictory for the indigenous peoples of the North, Siberia and the Far East.

On the one hand, the indigenous peoples' movement, through RAIPON, has gained a greater degree of recognition among Russia's state authorities. In April 2001, RAIPON convened its 4th Congress at the Presidential Palace in Moscow with more than 400 delegates from all areas inhabited by indigenous peoples attending. Representatives from all the state bodies, the government and parliament delivered speeches bearing more resemblance to reports summing up their efforts for the welfare of indigenous peoples.

The RAIPON leadership has been received at the highest level in the Ministries of Economic Development and Trade, and the Affairs of the Federation, National and Regional Policy. At government level, agreements have been reached between the above Ministries and RAIPON concerning their cooperation. In December 2001, RAIPON President, S.N. Kharyuchi, was awarded the Order of Friendship personally by Russia's President V.V. Putin.

Note and sources

- 1 Quote from letter # 29/22-1 dated January 1, 2002, written by the First Deputy Minister of Economic Development, Mr. I.S. Materov to the president of the Association of Indigenous Peoples of the North, Siberia and the Far East, Mr. S.N. Kharyuchi.

"Mir korennykh narodov – Zhivoaya Arktika" nos. 5, 6-7 and 8, 2001, is the general source of this chapter.

CHUKOTKA

On December 24, 2000, the Chukotka Autonomous Region in the far east of Russia experienced a shift in regional and administrative power. Previously run under the auspices of autocratic governor, Aleksandr Nazarov, the region is now governed by Roman Abramovich. It remains, however, to be seen if the situation of the region's indigenous residents will improve, for the new governor has already assumed a number of different roles.

First, Roman Abramovich is Chukotka's latest manifestation of altruism and care. In summer 2000, he paid for hundreds of indigenous children from impoverished communities to spend the two summer months of their school vacation in well-staffed camps on the Black Sea. Jet-planes were flying back and forth between Anadyr and the Black Sea, financed by his personal wealth. The new governor, too, sends "humanitarian aid" in the form of food, clothes, and shoes, but also candles and fishing rods, to Chukchi villages in Chukotka. Yet there is one article that Roman Abramovich will not give: money. It is, however, this latter, indigenous residents argue, that they so urgently need. Money not only buys products and food, it also buys technical tools and mechanical devices that could help them to revitalize their own income-generating activities such as, for example, reindeer herding.

Why is Roman Abramovich providing all of this "assistance"? A look at his second incarnation might provide the answer. In Russia, and particularly Chukotka, Abramovich is better known as one of Russia's oligarchs: the key beneficiaries of the economic reign of the few who have decided Russia's economic fate since the beginning of the 1990s. Together with other members of this economic elite, he reached his apogee in 1996 when "the oligarchs" received important slices of state property at extraordinarily low prices in return for their collective decision to underwrite and finance Yeltzin's re-election campaign. The move guaranteed Abramovich's apotheosis to an "oil baron." He currently holds more than fifty percent of the shares of Sibneft (Siberian Oil), one of Russia's most powerful companies. Although many indigenous residents feel grateful for the help Abramovich provides, there is also increasing concern that he will want to exploit Chukotka's rich oil reserves without consulting the communities who live on these lands.

In this volatile political environment, it has been quite dangerous for Chukotka's indigenous population to argue for social justice and self-determination. Even while the newly democratized Russian gov-

ernment has opened up debates on issues of land rights and legal reforms, Chukotka's government has continued to use intimidating tactics to threaten indigenous critics. And although the current regional government disavows such practices, it thwarts aspirations to greater social justice and rights by fostering unequal relations of dependency. Since democratization, one of the key issues for indigenous organizing in the Chukotka region has been the search for political possibilities in an environment that seeks to silence or undermine indigenous debates. In the Chukotka peninsula, some of the most compelling issues for indigenous people include poverty, land rights and community participation. From the vantage point of the present, the challenges are formidable. Most likely, there will be a variety of futures and paths before the heralding of indigenous social justice in Chukotka.

ALASKA

Of the 630,000 inhabitants of the state of Alaska, approximately 16% are indigenous, belonging to different Athabaskan groups, Inuit (Yupik and Inupiak), Aleut and Tlingit. The Inuit and Aleut communities are located on the coast or along the major rivers, the Athabaskan communities in the interior and the Tlingit along the south-eastern coast.

The Alaska Native Claim Settlement Act (ANCSA) was established in 1979 giving certain rights to indigenous peoples in exchange for the extinguishment of aboriginal rights to land and territories. Under ANCSA, the indigenous peoples own ("fee simple title") 11% of the state of Alaska's land mass. The beneficiaries are shareholders of village and regional corporations who own the surface land and (regional corporations) the subsurface land. The corporations have been involved in oil development, logging, tourism, real estate investment and many have also supported educational and cultural activities of their stakeholders. Indigenous communities have their own tribal governments. Their jurisdiction is limited to certain legal, cultural and social areas and does not include rights concerning the territories as such. A few indigenous communities that had status as

indigenous reserves decided in 1979 not to be a part of ANCSA but to keep their special status.

Alaska tribal leaders sign Millennium Agreement with State of Alaska

Representatives from more than 80 federally recognized Alaska indigenous tribes signed an agreement with the State of Alaska on April 11, 2001 under which a framework was provided for tribes and the state to work together on a “government-to-government” basis. The document, called the Millennium Agreement, makes it possible for the tribes and the state to work together to improve the delivery of essential services to Native villages.

For many years, the State of Alaska refused to acknowledge the existence of tribes in Alaska despite their recognition by the federal government, which maintains a government-to-government relationship with recognized tribes in Alaska. Under this relationship, many millions of dollars of federal money is contracted to tribes for the provision of a wide range of health and social service programs.

In 1993, Ada Deer, the Assistant Secretary of the Interior for Indian Affairs in the Clinton administration, officially recognized 227 Alaska tribes. This action was followed by an act of the U.S. Congress in 1994 that affirmed the tribes’ existence. In 2000, the Alaska Supreme Court reversed a long-standing position and acknowledged the existence of federally recognized tribes.

“This agreement begins a whole new era of Tribal-State relations built upon the principles of mutual respect and acknowledgement,” Alaska Governor Tony Knowles said during the signing ceremony. “It carefully lays out the framework for an effective and orderly partnership as we work together to better meet the needs of Alaskans, especially those who live in rural Alaska. With this agreement, we acknowledge something that tribal leaders have known all along that their governments are the modern day expressions of the oldest, continuous political entities in North America.”

“This is a historic time for tribes,” said Mike Williams, Chairman of the Alaska Inter-Tribal Council. “This is the first time there is a working relationship established to improve the quality of life in our tribal communities. It opens up opportunities for the state and the tribes to do something about problems in our communities.”

On December 10, 2001, the leaders of the Alaska State Legislature appealed to Gale Norton, the Secretary of the Interior in the

Bush administration, to review the federal policy towards Alaska Natives.

They contend that Congress has established an “Alaska Native policy that is quite different from the Native American policy Congress established for the forty-eight contiguous states”. The foundation for their claims is the Alaska Native Claims Settlement Act of 1971 under which state-chartered corporations were required to be formed by Alaska Natives in order to receive the settlement. In their request to Secretary Norton, the state legislature leaders state that they do not believe that Congress intended that Alaska Native villages be recognized tribes as “distinct political entities whose governing bodies possess governmental authority and sovereign immunity”.

Alaska Governor declines to appeal in Katie John case

In a reversal of a previous position, Alaska Governor Tony Knowles announced in August 2001 that the State of Alaska would not appeal to the U.S. Supreme Court to have the Ninth Circuit Court of Appeals ruling overturned in the long-standing Katie John case.

On May 8, 2001 the Ninth Circuit Court had ruled in the case, *Katie John v. State of Alaska*, that Katie John, an 86-year-old Ahtna Athabaskan grandmother, had the right to continue to subsistence fish at her camp near the headwaters of the Copper River as she had done most of her life. The Ninth Circuit ruling left only one option for the State of Alaska and that was to appeal to the U.S. Supreme Court. An extended deadline for such an appeal was granted, making it October 4.

In July, Governor Knowles visited Katie John at her fish camp. The widely publicized visit seemed to be a turning point in the case. The articulate and outspoken grandmother, who, in living a traditional life had never learned to read or write, presented her case directly to the governor. “This subsistence business, I tell you. You know, we used to have Indian law. In those days, we don’t see white man, or white people, around. Alaska is just Native. All different Natives in Alaska. They got their own law for their game, for their village, all got their own different law. People always help each other,” she told the governor.

On August 21, 2001, over 4,000 people marched through the streets of Anchorage, Alaska’s largest city, in support of Katie John and urging Governor Knowles not to appeal against the decision to the Supreme Court. Surveys continued to show that a majority of Alaskan citizens, Native and non-Native alike, supported the right of people

who depend on subsistence foods to have priority to those foods in times of shortage.

“This case has been in the courts for 10 years during which the state has lost its argument five times,” Knowles said. “This includes three appeals my administration has pursued, one of which was to the U.S. Supreme Court.”

“I cannot oppose in court what I know in my heart to be right,” Knowles said. “I know – we all know – what Katie John does is not wrong.”

Leaders of the Alaska State legislature failed in their attempt to take an appeal to the U.S. Supreme Court despite the governor’s decision not to. It was ruled that only the governor had the standing to take the case to appeal.

Paint ball attacks on homeless Alaska Natives shocks Alaskans

An attack on homeless Alaska Natives in Anchorage in January 2001 shocked Alaska and the entire U.S. Three young white men drove the streets of Anchorage looking for Alaska Natives to shoot with paintball guns, shooting frozen paintballs. The three videotaped the shootings along with their own commentary. A voice on the video tape, made public after the tape was confiscated by police, said they were hunting down “...Eskimos...otherwise known as muktuks”.

One of the victims, a homeless Native man who was walking along a sidewalk, was shot several times by the frozen paint balls. When he complained to the police he was arrested and charged with disorderly conduct. He served 10 days in jail as a result. He later filed a lawsuit against the young men and their parents.

The incident brought national attention to racism in Alaska with CNN and other national networks coming to Alaska to cover the case. The incident led to the governor of Alaska appointing a special commission on tolerance and to the U.S. Commission on Civil Rights holding public hearings on racism and hate crime in Alaska.

The Arctic National Wildlife Refuge (ANWR)

The Alaska National Interest Lands Conservation Act (ANILCA) was finalized in December 1980 and designated the 1.5 million acre Coastal Plain within the Arctic National Wildlife Refuge (ANWR) a study area, to be evaluated for its oil and gas development potential. The resource

evaluation, conducted by the Department of Interior, was released in 1987 and recommended that Congress open the Coastal Plain for oil and gas exploration and development. In 1995, the U.S. House and Senate approved Coastal Plain Development as part of a balanced budget act but the entire measure was vetoed by President Clinton.

During 2001, extensive discussions about a new energy legislation in the United States took place. The bill calls for more oil and gas drilling, new conservation measures and energy infrastructure upgrades. One of its most controversial proposals is drilling in the Arctic National Wildlife Refuge (ANWR). The discussions included different opinions about the substantial risk to caribou and other wildlife. The Porcupine caribou herd that has its breeding ground in ANWR was the center of the dispute and of concern to many indigenous peoples in the interior of Alaska and in Canada. However, the dispute also included the arguments of some indigenous communities that they should be able to develop their privately owned lands if the energy bill were passed.

In August 2001, the national energy plan passed the Republican-controlled House. However, the bill was strongly opposed by some of the Democrat senators and extensive lobbying of both pro and anti oil and gas drilling parties took place in Washington throughout 2001 and the beginning of 2002. On 18 April 2002, the Senate voted to keep the Arctic National Wildlife Refuge free from oil drilling.

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NUNAVUT

The territory of Nunavut covers the Eastern Arctic region of Canada and was created under the land claim agreement between the

Inuit of the territory and Canada. It came into existence in April 1999 (see also *The Indigenous World 1999-2000* and *2000-2001*). The Government of Nunavut is a public government, representing all people living in Nunavut. The rights and responsibility accorded to Inuit under the 1993 Nunavut Land Claims Agreement are managed by an Inuit representative organisation called Nunavut Tunngavik Incorporated (NTI). NTI's leadership is elected by Inuit, whereas all residents of Nunavut (Inuit and non-Inuit) vote for members of Nunavut's Legislative Assembly.

The government of Nunavut

2001 was a year of consolidation for the new Government of Nunavut. Its ten departments continued to hire staff, establish decentralized offices in ten communities outside Iqaluit (the capital), deliver a wide range of programs and services and review its legislation and policies in order to determine where change was most immediately required (the development of a "made in Nunavut" Wildlife Act being one example). Few of these efforts generated news headlines – at least not outside Nunavut. For example, the Nunavut Power Corporation came into being and assumed responsibility for the generation of electricity in Nunavut communities. This is not the sort of story that fires the imagination of newspaper editors but it is precisely the kind of institutional development that self-government entails.

Issues that dominated public discussion included the quality of the territory's education and health programs, efforts to incorporate Inuit Qaujimagatuqangit (Inuit traditional knowledge) in the operation of government (see also *The Indigenous World 2000-2001*), limited progress in raising the percentage of Inuit employees working for the government, the change from three time zones to a single Nunavut-wide time zone (which was eventually abandoned) and the start-up of a law school for 15 Inuit students. Language Commissioner Eva Arreak called for a new language law that would require all business and road signs, utility bills and medicine prescriptions to be written in Inuktitut in addition to any other languages.

Premier Paul Okalik and his Cabinet emerged from a mid-term leadership review in October 2001 largely unscathed, and it would appear that the current leadership will remain in place until Nunavut's second election – expected to take place in November 2003.

The Inuit organizations

2001 was rather more unsettled for several of the representative Inuit organizations.

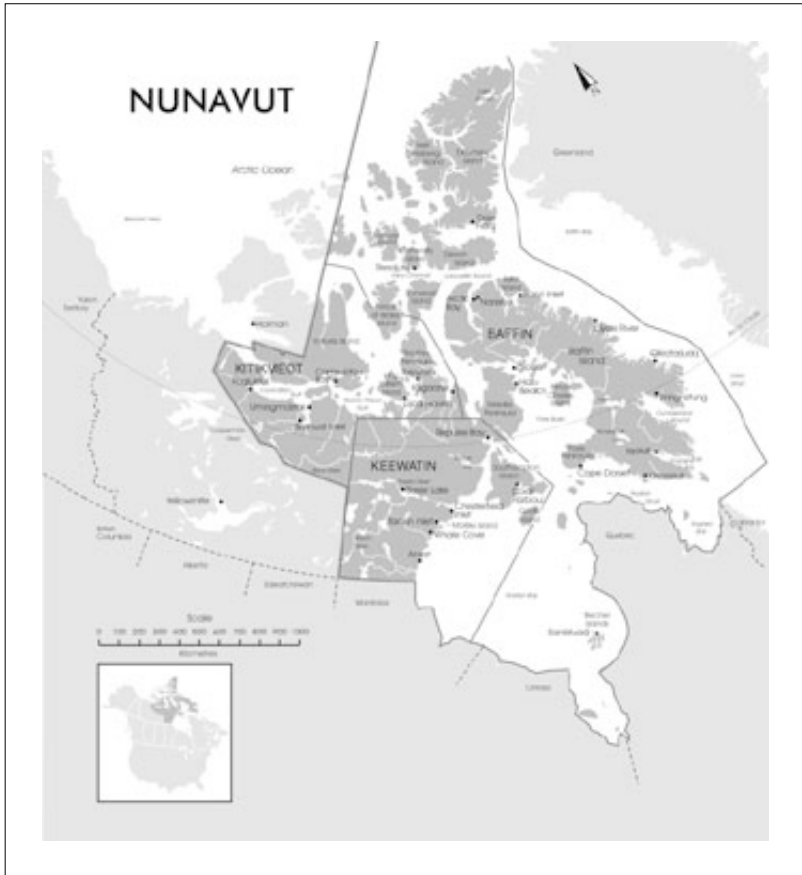
Paul Quassa resigned as President of NTI after he was discovered to have abused corporate credit cards and bank cards. Cathy Towntongie of Rankin Inlet was elected by the Inuit of Nunavut to replace Quassa, thereby becoming the first woman to head NTI. In an election in which just 45 per cent of eligible voters bothered to cast their ballot, she narrowly defeated long-time Inuit politician John Amagoalik, who is often referred to as “the father of Nunavut”.

While NTI was welcoming its first female President, the Board of Directors of the Qikitani Inuit Association (QIA), which represents the interests of the Inuit of the Baffin region, fired the first woman to become President of QIA. Meeka Kilabuk’s erratic behavior had raised questions about her ability to lead the struggling organization but she had not done anything illegal or immoral. The fact that the all-male Board of Directors removed her from office when the sins of so many male politicians had been forgiven over the years led observers to speculate that her real crime was that she was not part of the regional “boys’ club”.

Economic development

The economic news in Nunavut was often depressing: The Supreme Court of Canada rejected NTI’s appeal against a lower court decision that upheld the federal government’s allocation of quotas for turbot in Baffin Bay and Davis Strait. Nunavut interests receive just 27 per cent of the total allowable catch in the waters adjacent to Nunavut. It is a principle of fisheries management in Canada that a significant proportion of the quotas for any given species are allocated to companies based in the province or territory closest to where the species resides. NTI felt that the federal government’s decision to give the bulk of the quotas to interests in Atlantic Canada violated the land claim’s requirement that NTI be consulted on allocations of this kind but the courts ruled that the consultation had been adequate.

First Air terminated its weekly jet service between Iqaluit and Kangerlussuaq (Greenland), leaving Nunavut without a scheduled airline service to its neighbour in the east. Not only will this limit the opportunity for business development between Nunavut and Greenland but even the most basic exchanges between the two govern-



ments will be made that much more difficult (and expensive) as a result.

Breakwater Resources announced that its Nanisivik lead/zinc mine, which has operated near Arctic Bay on northern Baffin Island since 1974, would close in September 2002 - several years earlier than forecast. Unemployment remains a huge problem in Nunavut, and with a large number of teenagers about to enter the labour force the situation can only become more serious. Other parts of Canada often required significant public investment in infrastructure to encourage the development of a viable private sector. The Government of Nunavut and the representative organisations are lobbying the federal government to invest in the future of Nunavut as it invested in the rest of the country in earlier times.

That being said, there continues to be a high level of exploration for gold and diamonds as well as for base metals taking place in the Kitikmeot and Keewatin regions. Several promising properties may well be brought into production in the next few years.

Inuit film makes international news

Perhaps the brightest moment in Nunavut in 2001 came when “Atanarjuat” (“The Fast Runner”), the first feature film made by Inuit, was released – and quickly took the cinematic world by storm. A photograph of director Zach Kunuk of Igloolik accepting the coveted *Camera d’Or* prize at the Cannes film festival appeared on the front page of nearly every major newspaper in Canada. The film was rapturously received in Nunavut communities, and is now being distributed both nationally and internationally. “Atanarjuat” has immersed and engaged Canada and the world in Inuit culture in ways that only a truly great film can. “Atanarjuat” is a source of great pride for Nunavummiut, who are already looking forward to Zach Kunuk’s next film – which will focus on the relationship between Inuit and the first non-Inuit residents of Nunavut, the priests, the traders and the police.



NORTH AMERICA

CANADA

The First Nations Governance Initiative

The second article on Canada, in *The Indigenous World 2000-2001*, was devoted to the *First Nations Governance Act* and the *First Nations Financial Institutions Act*. In that article, Russell Diabo summarized these proposed amendments to the federal Canadian law regarding the legal status of "Indian" Communities, which were proposed by Robert Nault, the Minister of Indian Affairs and Northern Development. Nault has since announced that even more companion bills might be introduced in 2002. The package of amendments and new bills has been labeled the *First Nations Governance Initiative (FNGI)*.

Two essential factors remain the same in 2002 as described in last year's book:

- 1) Adoption of this package would re-write the status of First Nations and additionally change the relationship of Chiefs-and-Councils to their communities. At the same time, it would limit the liability of the federal government (the Crown in right of Canada) for repeated and continuing breaches of its fiduciary duties as they have been set out in historic legislation and in court decisions from the 1985 *Guérin* decision (in which the Supreme Court of Canada found that the Crown has a legally binding fiduciary or trust-like duty to act in the best interests of First Nations) to the 2001 *Cree School Board* case (in which the Québec Court of Appeal criticized the federal and Quebec governments for once again ignoring the terms of the *James Bay and Northern Quebec Agreement* which, among other things, guarantees that the Cree School Board should be a party to any decisions affecting Cree education).
- 2) First Nations political organizations across Canada have expressed their steadfast opposition to *FNGI*, identifying it as a programme that renews colonialism and ignores the key recommendations of all the public inquiries into First Nations relations in Canada, particularly the 1983 *Penner Report* and the 1996 *Report of the Royal Commission on Aboriginal Peoples* and a 2000 Senate Report entitled *Forging New Relationships*. Each of these earlier reports had set out basically complementary plans for realizing a provincial-type of self-government for First Nations within the Canadian Confederation. The new



programme, however, will require First Nations to govern themselves via a complex system of direct democracy that no territorial or provincial government in Canada would find workable. “Communities First”, as this government statement is called, argues that the minister wants to focus on the well-being of the communities and not to focus so much effort on the legal rights that First Nations leaders emphasize. This is a doubly offensive argument. Without jurisdiction or legal authority having been granted by Parliament, the minister could do nothing. He would not have an office. In contrast, since the rise of colonial authoritarianism, but particularly since the 1969 *White Paper* in which the Trudeau Government and the then Minister of Indian Affairs, Jean Chrétien, proposed terminating all Indian rights and imposing a policy of assimilation, First Nations leaders have been arguing that the living standards of their communities will only improve when they achieve substantial freedom from Canadian colonial rule. They point to numerous parliamentary and public inquiries, such as those just mentioned, that have reached similar conclusions. Proposals to hand “Indian affairs” over to the provinces have been criticized by parliamentary committees ever since the *Watson Report* on Indian Education, in 1971, found that the best progress was to be found in

transferring Indian schools to Indian control. Yet, in 2002, public and Catholic school boards receive 50% more money per Indian student than do First Nations-run schools.

Nault's strategy and plan is not new. Indian Affairs officials have been providing variations on this package for the presentation of one minister after another since 1978 when they talked of *Optional Indian Band Government Legislation* which, like *FNGI* was a proposal of Indian Affairs officials to revise federal Indian law without consulting with First Nations leaders. A close examination of each of the proposals that has reached the light of day — something that Indian Affairs officials avoid as though they were still a part of the defence establishment¹ — shows that the ministerial verbiage and propaganda proclaims promises of increased autonomy and greater community control while a closer look at the actual proposals indicate a legal text moving in quite the opposite direction.

Two things have changed under Robert Nault's rough-hewn ministrations. First, Nault has made it clear that he is quite prepared to circumvent the elected First Nations leadership — including community leaders, tribal and grand councils, provincial and territorial political organizations and the national organization of status Indians, the Assembly of First Nations. Secondly, the set of political strategies and rhetorical sleights-of-hand developed by the Indian Affairs bureaucracy, in collaboration with the Privy Council Office (PCO),² re-work the plain sense of many key words in English political discourse in the interests of fostering an illusion of change in the face of a renewed colonialism.³ Even the word "governance" has been introduced as part of an effort to evade earlier proposals for genuine *First Nations self-government*. The Canadian public and their parliamentary representatives may have been fooled by this Alice-in-Ottawa rhetoric in which words take on meanings that are upside down from their usual meanings. First Nations leaders across the country have clearly identified Nault's programme as an attack on the autonomy of their communities that undermines their efforts at rebuilding their nations in the face of historic Canadian colonialism.

The issue of consultations

- : Robert Nault has distinguished himself from his recent predecessors
- : by a willingness to be far more confrontational in his relations with
- : First Nations leaders. This confrontational attitude has come to be

seen as a large part of what *FNGI* is really all about. The earliest efforts to re-write the *Indian Act* were developed without any efforts at consultation with the First Nations leadership. It was an effort undertaken entirely within the Indian Affairs bureaucracy undisturbed by the presence of any representative Indians.

Since John Munro became Minister in 1980, Canadian Ministers of Indian Affairs have needed to create the appearance of consultation with First Nations leaders – indeed, if rights are involved, the courts require it. The list of ministers from Munro to Nault could well be sorted into those who gave evidence of actually listening to First Nations leaders and those whose consultations were an empty shell. By and large, those ministers whose record gives evidence of listening to First Nations leaders also evidence a significant effort to direct rather than be directed by their senior officials. Almost all the ministers with a demonstrated ability to listen to First Nations were replaced soon after their sympathies became apparent.

Nault's confrontational manner has determined on which of these lists his name will appear. The earliest indication that he was expecting and willing to foster resistance from First Nations leaders was his decision to make his initial announcement of *FNGI* before an audience of high school students instead of announcing his intentions to First Nations leaders and to parliament, which was a calculated insult. Then and ever since, Nault has maintained a mantra about the evils of the present *Indian Act*. This might be called "Nault's *straw Indian*", i.e., his reply to an argument that was not made. Since the hearings of a task force headed by the then junior Minister of Indian Affairs, Robert Andras, before the 1969 *White Paper*, First Nations leaders have consistently argued that the federal *Indian Act* should be re-written to recognize and respect the Aboriginal and treaty rights of First Nations.⁴

Nault's attack on the *Indian Act* plays on the illusion that this act is the principal embodiment of federal authority in First Nations relations. Yet, the largest part of his departmental activities – housing, education, land claims, even policing — take their authority from annual appropriations acts. Indian health services, though administered by another department, are likewise authorized by an annual appropriation act. The most basic reform that any Canadian government could make would be assured, long-term funding for First Nations community-based programs.

In July 2001, on a national Canadian Broadcasting Corporation (C.B.C.) radio program, *The House*, Nault was emphatic that if he could not find First Nations leaders with whom to consult he would find other Indians who were prepared to consult with him. Listening to

this interview again recently, I heard the sound of a colonial governor determined to install a pliable local administration. The rhetoric resonated with images of a 19th century outpost of the British Empire.

Nault also claimed, based on some co-operation from one provincial First Nations political organization, to have gained participation in his consultation programme. Non-governmental observers, however, see some First Nations, such as the Prince Albert Grand Council in northern Saskatchewan, who have accepted consultation funding in order to develop their opposition to *FNGI* while others have simply refused to participate.

Consultations have not, however, been primarily between the minister and First Nations leaders. The minister has sent a flying squad of officials around the country to conduct workshops according to an agenda fixed in Ottawa. These workshops were devoted to discussing those issues of Indian law reform that the departmental officials chose to put on the agenda. There has been a consistent refusal to include items on the agenda that were sought by First Nations representatives. Although the department has adopted the slogan "Communities First" there is no apparent reason to expect that the communities and their elected leaders have a voice in setting the agenda. At several of these workshops bureaucrats outnumbered First Nations folks.

The Case of the Dakota Tipi First Nation

Nault's confrontational attitude has carried over into related areas. On March 27, 2002, for example, Nault overthrew the traditional government of the Dakota Tipi First Nation and placed it under "third party management until such time as an election for a Chief and Council has occurred". The Dakota Tipi First Nation has followed a traditional form of governance, as allowed under the *Indian Act* since its inception, since time immemorial. Dakota Tipi has now applied to the Federal Court to overturn the Nault overthrow on the basis that he acted in bad faith, failed to observe principles of natural justice and erred in law. When the minister suspends the authority of a traditional council and declares that a third party manager, i.e. a person appointed by the minister who is neither a career civil servant nor an elected council, has sole authority then (a) no resources go to the community, including any social programs or money for consultants, advisors or suppliers and (b) any effort to gain access to the offices by the traditional council can be met by the armed force of the police at the request of the third party manager. What this means is that the Minister and his senior officials had determined to be rid of a tradi-

tional form of governance whether or not they had to stoop to violence to effect it.⁵

First Nations find that the introduction of third party managers – usually done on the grounds of financial mismanagement – is a disaster from which recovery often takes several years. In the Dakota Tipi instance, the evidence points to the use of this ministerial authority primarily for political objectives, since financial management has not been at issue. Another example is Pikangikum, in North-western Ontario near the Manitoba border, where a tragic wave of suicides prompted the Minister to impose third-party management although most observers felt the return of the Indian Agent, i.e. a person who acts on the Minister's behalf and "administers the Indians", would add to the factors of colonialism, poverty and hopelessness that fostered the suicides in the first place.

Conclusion

The rhetoric of "Communities First" and "First Nations Governance" – derived from an Orwellian newspeak that runs throughout the history of Indian Affairs – has risen to new levels of obfuscation: "Governance", upon close examination, proves to be a code word for renewed federal authority. A hypothetical concerned citizen might well mistake it for "self-government" as recommended by successive committees of both Houses of Parliament and the Royal Commission on Aboriginal Peoples.

Likewise "accountability" turns out to be about more detailed *reporting to federal authorities* by band administrations, in contrast to the impression that it is related to *responsibility of First Nations leadership to their own communities*.

Ministerial rhetoric about improving community living conditions *rather than developing self-government* runs against Nault's own argument that all problems will be solved if the federal Government could only create the perfect institutions of Aboriginal governance. Worse, it ignores the history of appalling rates of child mortality that have resulted from non-fulfillment of federal treaty obligations even under modern land claims agreements such as the *James Bay Agreement*.

What I have called "rhetoric" is not merely a matter of word games. If it is a game, it is one that is deadly serious. Nault's rhetoric represents a sea change, a sudden and dramatic shift in which the Liberal government is playing primarily to the Official Opposition in the Canadian Parliament, a party long dedicated to assimilation, a code

word for the dissolution (if necessary, the destruction) of the First Nations. Throughout this Parliament and the previous one, the right-wing party, the Canadian Alliance, and its predecessor, the Reform Party, have told Prime Minister Jean Chrétien that his great mistake in Indian policy was his abandonment of the 1969 *White Paper* policy of forced assimilation and termination of Aboriginal and treaty rights. Indians, the Alliance argues, need to be dragged into the mainstream.

Alliance MPs who urge the Liberal government toward assimilation are aware of the growing line of cases in which the Supreme Court of Canada and the Courts of Appeal have declared that the guarantee of Aboriginal and treaty rights in Part II of the *Constitution Act, 1982* is a solemn promise and that the obligations of the Canadian Crown to First Nations are legally enforceable fiduciary duties on which depends the "honour of the Crown". They may even be aware of the Court's injunction against what the Supreme Court described as "sharp dealings" in First Nations relations. Their reply to this line of reasoning is that it smacks of judicial activism. These are matters for Parliament to resolve, for instance, through the *First Nations Governance Initiative*.

Notes

- 1 Indian Affairs was run by the defence department for many years, indeed, from Confederation until after WWI. After WWII it was dominated by retired military officers who continued to recognize one another by their ranks.
- 2 PCO is the federal department directly under the Prime Minister that has responsibility for constitutional development including "Aboriginal Constitutional Affairs", a term formerly used to describe a branch of PCO. As its name suggests, this most central of central agencies operates under a cloak of secrecy. The present Deputy Minister of Indian Affairs is only the most senior of several officials to come to Indian Affairs from PCO. PCO is the most likely path of promotion for Indian Affairs officials concerned with issues of governance.
- 3 The government consistently used terms in the discussion of First Nations relations which consist of words used in other political discourse but they then define them in ways that are quite unfamiliar. As a result, the ordinary citizen with a casual interest in Indian policy is led, for instance, to believe that the government is looking to enable self-government, or to do other good things when, in fact, they are doing quite the opposite.
- 4 It is quite central to my thesis here and elsewhere that First Nations leaders have been unfailingly consistent in the positions that they have

taken before various kinds of public hearings at least since 1967. I use this benchmark because the Andras hearings were supposed to gather the evidence on which the White Paper was supposed to be based. Quite clearly, the White Paper was, in fact, written in the Privy Council Office without regard to the evidence gathered by Minister Andras.

- 5 Application for writ of *certiorari* of Dakota Tipi First Nation in the Federal Court of Appeal, April 5, 2002.

NORTHWEST TERRITORIES

As was the case last year (see *The Indigenous World 2000-2001*), non-renewable resource development dominated the political agenda of the Northwest Territories' Aboriginal peoples in 2001. Over the past twelve months, economic activities in the NWT grew substantially, both in terms of gross domestic product and employment, largely as a result of mineral, oil and gas prospecting and development. Additional impetus to this growth came from widespread preparations by governments and industry in anticipation of the construction of a major natural gas pipeline down the Mackenzie Valley. This pipeline as currently planned will run through the NWT from north to south passing most regions that are under indigenous land-claim or self-government negotiation. In the face of all this activity, the prime focus of Aboriginal governments, communities and corporations alike was on ensuring appropriate recognition and protection of their interests. Unfortunately, with all the emphasis on resource development, little progress occurred in the NWT in terms of implementing the inherent right of Aboriginal self-government.

The development of pipeline proposals

A key challenge for NWT Aboriginal governments has been to determine which of three competing pipeline proposals best serves their long-term economic and social interests. Two of them are backed by consortia of large multinational corporations: one, the Alaska Gas Producers, proposes to construct a pipeline from Prudhoe Bay in northern Alaska down through the Yukon territories in northern

Canada to southern Canada, while the other, the Mackenzie Delta Producers Group plans a pipeline route from onshore natural gas fields in the northern NWT down the Mackenzie Valley. A third proposal has come from the Arctic Resources Corporation (Arctic Gas), which is prepared to consider 100 % Aboriginal ownership and debt financing for a pipeline, also down from the Beaufort Sea. Each of these projects extensively lobbied Aboriginal and non-Aboriginal governments for their support and, by the year's end, the Mackenzie Delta Producers Group appeared to have become a clear front runner. In late spring 2001, the Delta Producers Group and the Aboriginal Pipeline Group, a government/industry-funded body representing the NWT's regional Aboriginal organizations, reached a tentative agreement on a *Memorandum of Understanding (MOU)* on Aboriginal equity participation in a gas pipeline project. The Pipeline Group first tabled the *MOU* before the Aboriginal leadership at a June meeting in Hay River. In return for up to one-third ownership of a potential pipeline, it commits Inuit, Dene and Metis governments to supporting the construction of a Mackenzie Valley pipeline, and to recognizing federal jurisdiction over pipeline monitoring and regulation. This *MOU* became the subject of intense debate among the leadership, a debate that continued throughout the summer and fall in all the regions up and down the Mackenzie Valley. In taking a stand either for or against the *MOU*, each Aboriginal community was forced to clarify its views about the future of economic development in its region and about how a pipeline would fit within this.

Some of the strongest opposition to this *MOU* came from Dene First Nations in the Deh Cho region, which are collectively negotiating an agreement with Canada that more fully implements the original terms of Treaty 11 between the Deh Cho and the Crown. A Special Deh Cho Assembly in August unanimously agreed that the region's support for a pipeline project was conditional upon: 1) an agreement being reached with Canada on resource revenue sharing and land access fees; 2) an environmental review of the project involving the Deh Cho as a full and equal participant; and 3) the negotiation of impact/benefit agreements for Deh Cho communities. So far, none of these conditions have been met, and the Deh Cho has still not formally endorsed the project proposal. Several land claim organizations in the Sahtu region also rejected the *MOU* as it stands, and have thrown their support behind the alternative pipeline proposed by the Arctic Resources Corporation (Arctic Gas). Nevertheless, the project's proponents pressed ahead and, in January 2002, the Delta Producers Group and the Mackenzie Valley Aboriginal Pipeline Corporation

jointly announced their intention to work together in developing an application for regulatory approval.

Although Aboriginal governments may achieve some equity ownership in an eventual Mackenzie Valley pipeline, they will apparently play only a limited part in its impact review, formal approval and regulation. Judging from the content of the draft *Cooperation Plan* (December 2001) on project approval, these responsibilities will remain largely with the federal government and with co-management bodies. This *Plan* was worked out over the course of the year by a number of impact assessment and regulatory authorities, with the NWT Aboriginal governments being restricted to a consultative role. This exclusion clearly revealed how far the Aboriginal governments still have to go to achieve practical recognition of their inherent right of self-government over their traditional lands and resources.

Self-government discussions

Self-government negotiations between Aboriginal regional organizations and the federal Crown made only modest progress over the past year. In October 2001, an *Agreement in Principle* on Gwich'in and Inuvialuit self-government was initiated by Aboriginal and government negotiators, and work has now begun toward a Final Agreement, which is still several years away. The final stages of the Dogribs' self-government/land claim talks with Canada continue to drag on, as disagreements over key issues such as "certainty", overlap with other First Nations' territories and taxation powers stand in the way of an Agreement. During the summer, Deh Cho and federal/territorial negotiators finalized an *Interim Agreement* as well as a *Framework Agreement* as a basis for further negotiations. Some of this *Interim Agreement's* provisions have no precedent in Canadian treaty talks, as they recognize the Deh Cho region's veto powers over several federal and territorial government authorizations. However, subsequent negotiations have come to a near standstill over Canada's unwillingness to share resource royalties with Deh Cho Aboriginal governments.

THE UNITED STATES

Following the September 11 attack on New York and the Pentagon, many Native peoples in the United States participated in efforts to aid the victims. For example, Native communities organized spiritual events to ease the passage of the dead as well as to help strengthen the survivors. In addition, keepers of spiritually important pipes traveled to “ground zero” in order to support the efforts of Mohawk ironworkers working at the site. While at this place of sorrow, these Native peoples not only burned sage to cleanse themselves but also purified any non-Native individuals who asked.

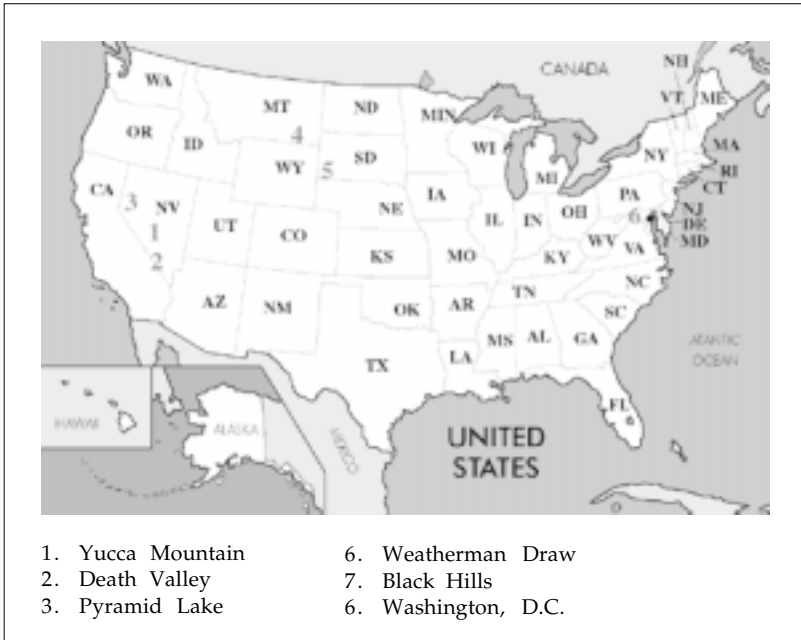
Although the tragedy of September 11 has overshadowed domestic issues, many areas concerning Native communities in the United States still deserve the attention of federal and state authorities. Issues concerning sovereignty, health and finances dominate political discourse among Native Americans. As a consequence, controversies surrounding the Individual Indian Money Trust Fund, sacred sites, gaming, health, education, and jurisdiction over tribal lands, budgets and taxation have begun to gain national attention. Predictably, each of these areas continues to plague Native efforts to sustain viable communities.

Currently, the Bush administration has yet to make any of these issues a priority. This lack of activism on the part of the federal government appears to be related to budgetary constraints, a philosophy that promotes state rights, and a commitment to the development of extractable resources.

A number of Native advocacy organizations have been critical in the fight to protect the rights of indigenous groups affected by the government’s failure to address Native concerns in policy decisions. Particularly helpful in this regard are the Native American Rights Fund (NARF) and the National Congress of American Indians. In order to illustrate the uphill battle facing Native populations in the United States, three specific areas will be addressed. These include the Individual Indian Money Trust Fund, sacred sites, and issues concerning health and education.

Individual Indian Money Trust Fund

Five years ago, three hundred thousand Native people filed a class action lawsuit against the Interior Department’s misuse of trust fund



accounts. Referred to as *Cobell v. Babbitt*, who was Clinton’s Secretary of the Interior, the case alleges that the Bureau of Indian Affairs, a sub agency of the Department of the Interior, underpaid or in some cases failed to pay fees owed to Native tribes and individuals for the use of their land. This problem most commonly occurred over the royalties owed for the extraction of resources such as timber, mining, grazing, oil and coal. At this point in time, these federal agencies cannot account for billions of dollars kept in thousands of trust fund accounts set up for Native peoples. This problem has had the most effect on Natives who reside in the Great Plains states. At least forty percent of the individual accounts managed by the Bureau of Indian Affairs belong to individuals living in North Dakota, South Dakota and Nebraska.

This endemic weakness in accounting procedures began in 1887, when federal law divided some reservation land into smaller plots for individual Natives. Currently, the Bureau of Indian affairs, oversees 45 million acres. Because the land is held in trust, it cannot be taxed or sold and the government must approve any leases.

After President Bush’s election, the *Cobell v. the Department of the Interior* case focused on the actions of the newly appointed Interior Secretary, Gale Norton, and Neal McCaleb, the recently appointed director

of the Bureau of Indian Affairs. In late December, the District Judge overseeing the trial filed contempt charges against both of the government officials over the potentially fraudulent loss of these trust monies. According to the District Judge, Norton and McCaleb failed to aid the trust holders' efforts to gain information concerning funds missing from their accounts.

When the court resumed after its recess during January 2002, the Interior Secretary discussed her efforts to determine how much Natives are owed because of prior mismanagement of the fund, which began more than 100 years ago. Norton's main defense centers on the faulty accounting practices of the past, a loss of critical documents due to improper storage and the destruction of other critical information by past administrators.

Both McCaleb and Norton are spearheading efforts to remove the Bureau of Indian Affairs' historical control over trust accounts. In its stead, they envision the development of a Bureau of Indian Trust Assets Management. Consequently, Norton requested that \$300 million earmarked for the Bureau of Indian Affairs be transferred to the Department of the Interior. Apparently, she visualizes using this money for trust fund management. However, only \$83 million of this funding will be used to oversee trust reform. Almost every Native leader opposes this proposal. As one leader noted, this change fails to address the decades-old problem of the government's mismanagement of billions of dollars belonging to Native landowners.

As an alternative, tribal leaders suggest centralizing trust funds - both tribal and individual - while allowing the Bureau of Indian Affairs to continue managing the funds. Currently, the management of trust funds is spread between a number of Interior and Bureau of Indian Affairs departments. According to the Santee Sioux Tribal Chairman, Roger Trudell, "the bottom line would be to get the bureau out of the Interior Department. Right now, fish get more money than an Indian person gets".

If the class action suit perseveres and a total loss of income owed the Native peoples is determined, the federal government will be responsible for returning monies belonging to the individuals involved in the class action suit. As yet, the contempt charges facing Norton and McCaleb have not been resolved.

Sacred Sites

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Protecting land considered sacred to Native peoples has been a contentious issue in the United States. A particularly problematic situa-

tion occurs when the private or public sector rather than Native peoples control culturally important land. Yucca Mountain provides an example of this difficulty.

In January 2002, the Department of Energy chose Yucca Mountain as a repository for the bulk of the nation's nuclear waste. Currently, about 40,000 tons of commercial waste is generated yearly. Estimates suggest that this amount will increase by at least 2,000 tons annually. In order to address this problem, the Energy Department wants to deposit a minimum of 77,000 tons of highly radioactive material at Yucca Mountain.

Located in Nevada, Yucca Mountain is considered a place with immense spiritual power by the Shoshone and Paiute peoples. According to their beliefs, even the water emerging from the mountain contains spiritual energy. Although the mountain has been used by the military for nuclear testing, the land is actually protected by an 1863 treaty signed by the United States Government and the Shoshone. Unfortunately, the Shoshone have not been able to control their rights to the land. Because of the misuse of this area, the Western Shoshone Nation suffer from widespread cancer, leukemia and other disease as a result of the fallout from more than 900 atomic explosions on their territory.

During President Clinton's tenure in office, he vetoed the use of Yucca Mountain as a nuclear repository. With a new administration, this policy has changed. President Bush approved the site's use as a storage area for radioactive waste in February 2002. If the Senate and the House approve the plan, Yucca Mountain will become the nation's number one nuclear repository. Currently, the Native peoples affected, Nevada officials and environmentalists are fighting Yucca Mountain's designation. Politically, however, it appears that this coalition will lose their battle.

Adding insult to injury, Senate Bill 958 - the Western Shoshone Claims Distribution Act offers \$117 million to individual Western Shoshone citizens for 26 million acres of land that is not, and has never been, for sale. With the passage of this bill, any future claims made by the Western Shoshone will not be considered. Presently, the bill is still in committee. It is impossible to predict whether or not the Senate will pass the bill once it moves to the floor for a vote. Sponsors of the bill hope that its passage will diminish the loss of Yucca Mountain by providing monies for the land and long-term health costs incurred by the Western Shoshone from the past misuses of their territory.

Weatherman Draw, which encompasses 47,000 acres and is located approximately 70 miles southwest of Billings, Montana is another sacred area in peril. At least ten Native nations perceive this region to be sacred. Numerous rock drawings dating back several

thousand years, dot the entire landscape. Unfortunately, Philip Anschutz, the 16th wealthiest person in the world, has a lease to drill for oil in the area. He bought the lease in 1994, which predates the Bureau of Land Management's regulations concerning the protection of places important to our nation's heritage. During Clinton's presidential term, the issue was buried in red tape. After Bush took office, he granted Anschutz's firm the right to begin drilling in the region this June.

As a strategy to protect the region, the Blackfeet have offered Anschutz the right to drill for oil on their reservation instead of on the sacred site. Based on geological surveys, the region offered by this Nation is known to contain at least two billion barrels of oil. To date, Anschutz has refused to consider the Blackfeet's offer.

On a more optimistic note, the Lenape of New Jersey have managed to save a 10,000-year-old site from plans by the town council of Vernon, New Jersey to build a baseball field on the sacred area. In this case, the National Congress of American Indians passed a resolution protecting the site from development.

Another positive development involves the Pyramid Lake Paiute Tribe's agreement with the Department of the Interior and local cities in Nevada. \$36 million will be used to clean up the Truckee River, a major source of water for Pyramid Lake. As a consequence, the endangered cui-ui fish, which is only found at Pyramid Lake and considered critical to the local Paiute, will have a chance to recover (see also *The Indigenous World 2000-2001*).

Health Issues

During the year, the Indian Health Service, under the auspices of the Department of Health and Human Services, received \$2.6 billion to provide healthcare to 2.4 million American Indians and Alaska Natives. Populations residing on reservations or in rural communities received most of these monies.

Currently, 60% of Native peoples in the United States rely on the Indian Health Service for their medical needs. And yet the health of Native peoples is still poorer than that of any other ethnic population in the United States. Obvious health disparities exist in terms of life expectancy, infant deaths, diabetes, tuberculosis and alcoholism. Life expectancy is five years less than for any other populations in the United States. Infant mortality is 8.9 per 1,000 live births, as compared to 7.2 for the population at large. In other areas, these disparities become much worse. In relation to the population at large, death rates

due to alcoholism (740%), tuberculosis (500%), diabetes (390%) and suicide (190%), are clearly much higher for Native peoples.

According to the Indian Health Service, they only receive 59% of the monies needed to address the health care needs of Native peoples. Hopefully, next year's budget will take these health disparities into account.

Development

Reservations are desperately trying to develop employment opportunities for their citizens. In some states, gambling has provided a boom to local economies. Many states do not allow this type of activity, however. In those states that do allow gambling, the market is becoming saturated with competing gaming operations. In the past, proceeds from gaming could not be taxed by the state in which they operated. A number of states have successfully fought to tax these proceeds during the past year. This has reduced profits made from gambling further.

In Nebraska, the Santee community has continued to battle against the state for the right to legally operate a gaming operation. For the first time since this issue arose, the state's committee addressing the activity had enough votes to send a bill to the floor. Once there, it is hoped that the bill will receive enough support from fellow state legislatures to undertake a statewide ballot on the rights of Native gaming. If passed, casino gambling would be allowed on reservation lands or trust lands owned by the Omahas, Winnebagos, Poncas and Santees. According to some elected officials, however, not enough votes are available in the state legislature to place the issue on November's ballot.

During the past year, the Lakota attempted to develop the commercial production of hemp. The importation of hemp is allowed through NAFTA and currently Canada is one of the main exporters of this crop into the United States. Unfortunately, the United States failed to grant the Lakota the right to produce hemp for sale.

Unfortunately, state and federal laws continue to hinder the commercial development of tribal lands. Few options beyond gambling, the selling of extractive resources and the leasing of land for grazing or farming are presently available to Native peoples. Few Native nations have managed to make enough money in any of these areas to diversify their economies. Hopefully, 2002 will be a more prosperous one for the indigenous peoples of the United States.

Education

Native American students face obstacles in their educational success. Only 9% of Native Americans have bachelor's degrees, as compared to 22% for whites and 20% for all other ethnic groups. The Bureau of Indian Affairs' school programs, which serve 50,000 students, will receive \$504 million in 2002. Although the General Services Administration estimates \$292 million dollars are needed to repair, improve and construct schools under the management of the Bureau of Indian Affairs, only \$13.1 million dollars were earmarked for these needs.

Native schools that administer their own education programs have also received less money than requested. During the 2002 fiscal year, these schools will only receive 80% of the funding needed to fulfill their administrative responsibilities.

Native educational leaders are lobbying Bush to "leave no child behind" and to fund schools adequately in his 2003 budget. They have yet to see the 1 billion dollars promised by Bush for improving Native American education. Hopefully, funding levels will increase during the next fiscal year.

Land Claims

In 2001, few - if any - Native communities won in their efforts for either the return of land taken illegally or for monetary compensation for lost land. The Timbisha Shoshone Tribe has yet to receive any acreage in Death Valley, although they were promised that this would occur in a 1983 ruling. The Lakota, who view the sale of the Black Hills of South Dakota as illegal, received monies for this land. Like the Hopi, however, the Lakota refuse to touch money given for land.

Currently, the Wichitas and affiliated Tribes, located in Oklahoma, are fighting Texas for the right to control the use of their ancestral lands in that region. It is legal for private landowners in Texas to sell individuals permits to dig on their property for artifacts once belonging to the Wichitas and their affiliates. So far, the state of Texas has not stopped this practice.



MEXICO AND CENTRAL AMERICA

MEXICO

During the first half of 2001, the most important events for the indigenous world, and for the country as a whole, were the "march for dignity" to Mexico City by the EZLN *comandantes*¹ – with Insurgent Sub-Commander Marcos at its head – and the debate on constitutional reforms relating to indigenous rights and culture.

The March of those who are the Colour of the Earth

The march began on 24 February, lasted 17 days and covered more than two thousand kilometres passing through 13 states, until arriving in the capital of the Republic to implement a prolific agenda.

Two important objectives of the march are worth mentioning. The first was the interaction the EZLN was able to establish with the most representative sections of the national indigenous movement through a national indigenous meeting held in the community of Nurío de Michoacán, in which the EZLN and the indigenous movement ratified their desire to promote legal reforms relating to indigenous autonomy and self-determination. According to the newspaper *La Jornada* (5 March 2001), around 3,383 delegates from 41 indigenous peoples attended this event, coming from 27 states of the Republic. Some 5,000 observers were also present.

The second aim of the march was to demonstrate, by their presence, their full support of the initiative for constitutional reform on indigenous rights and culture, formulated by the Commission for Concord and Peacemaking (COCOPA) as a result of the first Peace Dialogue discussions in San Andrés Larráinzar, Chiapas in 1996. President Vicente Fox had sent this to the Congress of the Union as one of his government's first actions and in fulfilment of his campaign promise to the indigenous movement. For this reason, a central point on the agenda was the proposal that the EZLN command should take the platform at the Congress of the Union to explain to the 500 deputies and 128 senators, and the nation as a whole, the reasons why the Amerindian peoples were in favour of this initiative.

Throughout February and March, the most significant national issue was the presence of the Zapatista command in the country's capital. There was not one social sector in the country that did not express an opinion in the face of such a significant event. The Congress of the Union, and even the parties comprising it, were polarised



between those in favour and those against the Zapatista demands. Finally, on 28 March, from 11 in the morning until 3 in the afternoon, the Chamber of Deputies (without the senators) and, via national television coverage, the whole country heard the moving words of the Zapatista command.

Constitutional Reform in the Congress of the Union

What came next was an intense national debate on the constitutional reform and its promulgation. This has passed through various stages, the latest of which – as of February 2002 at least – has yet to be concluded. First, the reform was approved by the Congress of the Union. Then, it was sent to the local assemblies for their ratification because the law establishes that, for constitutional reforms to enter into force, the approval of 16 state legislatures is required. The reform had to be debated in the state congresses, where it would be endorsed or rejected. If a majority approved it, it would be accepted and promulgated by the nation’s executive power. If rejected, it would have to return to the Congress of the Union for amendment.

This long discussion process on reform kept the indigenous movement active throughout the country, and the country's attention remained focused on it for several months, right up until September 11, 2001. With the collapse of the twin towers in New York, the world's attention, and that of Mexico's along with it, turned to other problems and the Chiapas conflict and the rights of indigenous peoples once more lost centre stage in the national arena.

With the Zapatista march, they had managed to win the battle to legitimize their struggle in the eyes of public opinion. However, power groups within the Senate, in an alliance between the National Action Party (PAN) and the Institutional Revolutionary Party (PRI), stood firm in their position to refuse to accept COCOPA's proposal. Unexpectedly, on 26 April 2001, the Congress of the Union approved a law on Indigenous Rights and Culture that sidelined COCOPA's proposal and minimised the scope of indigenous rights. This reform was immediately rejected by the main indigenous organisations in the country.

The Zapatista Response

Three days later, the EZLN issued two press releases in which it stated its rejection of the reform, noting that it "in no way responded to the demands of Mexico's Amerindian peoples, of the National Indigenous Congress, of the EZLN, or of national and international civil society" and that it

[B]etrayed the San Andrés Accords in general and, in particular, the so-called "COCOPA initiative for a law" in its fundamental points: autonomy and self-determination, Amerindian peoples as subjects of public law, lands and territories, the use and enjoyment of natural resources, the election of authorities and the law of regional association, amongst other things.

In addition, the said reform "prevents the exercise of indigenous rights and represents a serious offence against Amerindian peoples, national and international society, as it disregards the mobilisation and consensus the indigenous struggle has achieved".

Similarly, it reproached and criticised President Vicente Fox for being a "sham", by trying to make the indigenous movement and public opinion believe that the COCOPA law had been his own whilst, in fact, he had done nothing to push it through and, faced with the more hard-line sectors of his party, which have consistently

refused to recognise indigenous rights, he had simply given way.

With the reform, notes the EZLN's press release, the deputies and government of Vicente Fox have closed the doors on dialogue and peace, as

[T]hey avoid resolving one of the original causes of the Zapatista uprising; they give the different armed groups in Mexico a raison d'être...and try to break up the national indigenous movement by giving the state congresses an obligation of the Federal Legislative Power.

For which reason, "the EZLN formally refuses to recognise this constitutional reform on indigenous rights and culture" as it sabotages the incipient process of rapprochement between the federal government and the EZLN, "betraying hopes for a negotiated solution to the war in Chiapas, and revealing the total divorce of the political class from popular demands".

With the reform, the EZLN declared the nascent exchange it had initiated with President Fox's government suspended, and stated that "there will be no more contact between the Fox government and the EZLN". Dialogue would be re-established, it declared, when COCOPA's legal initiative was approved, for which reason "the Zapatistas will continue our resistance and rebellion".

Ratification of the reform in the states of the Republic

The constitutional mechanism that obliges one half plus one (16) of the local congresses of the 31 states of the Republic to approve or reject a constitutional reform offered new hope for a re-opening of the discussion on the reform that had been approved by the deputies. In the states of the Republic, indigenous organisations were active in putting pressure on the legislatures of their states to vote against the reform.

It was significant that two governors, of the states of Oaxaca - José Murat - and Chiapas - Pablo Salazar - called publicly at national level for the state legislatures to reject the reform. Many sectors of the population called on the country not to approve the reform. For example, on 13 June 2001, more than one hundred Mexican artists and intellectuals signed a document in which they expressed their rejection of the Law on Indigenous Rights and Culture approved by the Federal Congress the previous April.

The outcome could not be predicted: the disputes, alliances and political balances kept public opinion on tenterhooks. In the end, and

by a small margin, the reform was approved by 19 of the state legislatures. It is important to note that the reform was overwhelmingly rejected in all states with a majority indigenous population. Such was the case in Oaxaca, Guerrero, Chiapas² and San Luis Potosí, among others. The reform was approved by the vote of legislatures in states where the indigenous population is not in the majority, which clearly minimises the legitimacy of the reform.

Promulgation of the reform

Once the ratification process in the state congresses had come to an end, the government of the Republic promulgated a decree regarding the reform, publishing reforms to constitutional articles 1, 2, 4, 18 and 115 in the Official Journal of the Federation (DOF). The Indigenous Law thus entered into force on 15 August.

The government went ahead with promulgation of this law despite the fact that many sectors of the population and the indigenous movement demanded that it refrain from doing so until the Supreme Court of Justice had passed judgement on the issues raised in objection to the reform. Because the fact is that, in an immediate reaction following the deputies' approval of the reform in April, various people such as the governor, deputies, and 400 municipal presidents from Oaxaca, deputies from the PRD, PRI and PVEM³ in the Tlaxcala state congress, the municipalities of Molcaxac (Puebla), of Texcaltepec (Veracruz), Copalillo (Guerrero) and Comalcalco (Tabasco), the indigenous Mazahua communities of San Miguel Xoltepec and San Antonio de la Laguna (Mexico state), and communities and municipalities in Chiapas, amongst others, all presented constitutional lawsuits against the reform as, they argued, it detracted from the rights that some peoples had already won under state laws. In addition, quite clearly, the precepts contained within the reform were in contravention of ILO Convention 169, which forms part of the constitutional law of Mexico.

On hearing the government's decision, the indigenous organisations added their weight to the EZLN's pronouncement that described the reform as "a betrayal of the Mexican state". The same day that President Fox promulgated the "anti" COCOPA law, hundreds of people from indigenous and civil organisations protested outside the Congress. Inside, a group of deputies were demanding that the government undertake "a reform of the reform". And, as a majority of those involved said, the law was "stillborn".

This is the scenario in 2002: the EZLN continues to wait for the Supreme Court of Justice to pass judgement on the issues raised in

objection to the reform. At the same time, a group of deputies is promoting “a reform of the reform”. Others are hoping that Vicente Fox will fulfil his many promises in this respect. And, in fact, under pressure from pro-Zapatista activists abroad, the president declared that he would promote a discussion of the reform but it has to be assumed that, on returning to the country, he forgot about the new commitment he had made, as he has not mentioned the subject since. Meanwhile, various indigenous players continue to reject the reform whilst, in other states, some indigenous organisations are making the most of the commitment undertaken by their deputies in approving the law to try to win rights that were previously denied them.

October 12 was the context for marches in a number of the country’s towns, organised by indigenous organisations to commemorate the 509 years of indigenous resistance and to protest at the entry into force of the constitutional reform on indigenous rights and culture approved by the Congress. A number of indigenous organisations came to Mexico City to protest the same issues.

And so, hoping that in the spring of 2002 the courts would decide on the legal validity of the reform or demand its revision, the EZLN and indigenous organisations continue to wait. It is unknown how the armed rebels will react following the court’s judgement: whether they will remain silent during the last five years of Vicente Fox’s government (as they did with ex-president Ernesto Zedillo in his last four years in government) or whether they will organise another new initiative to put them once more in the national limelight, from which they have momentarily been displaced due to the serious problems being debated in the country, an economic crisis and the hike in prices of basic services (such as electricity). International events since September 2001 and President Bush’s escalating war against “terrorism” also focus people’s concerns elsewhere.

The Plan Puebla-Panama

Various analysts have established a direct link between the economic mega-projects – particularly those known as the “Plan Puebla-Panama”, the “Meso-American Corridor”, the mega-projects of the Tehuantepec Isthmus, the Pacific and Golf Corridors, to name but a few – being favoured by the current administration and the refusal of the Fox government and his PAN party to approve the initiative for legislative reforms on indigenous rights, including recognition of the territorial rights of the indigenous peoples in the terms of the precepts contained in ILO Convention 169.⁴ In fact, the concepts that were most

discussed during the national debate on indigenous reform were precisely the terms territory, autonomy and self-determination. The links between both issues are obvious: the rights of indigenous peoples to their territories, autonomy and self-determination would form a thorn in the side of these business initiatives.

In March 2001, the federal government made known the “Basic Document” of the Plan Puebla-Panama (PPP). In the section entitled “Scope of Action”, the PPP is described as a “visionary long-term integrated development plan whose geographic scope within Mexico covers the nine states of the south-south-east (Campeche, Chiapas, Guerrero, Oaxaca, Puebla, Quintana Roo, Tabasco, Veracruz and Yucatán) and within Central America the seven countries of that region (Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama)”. The PPP region as a whole comprises more than 62 million inhabitants (CIEPAC 2001).

According to its appraisal, the south-south-east region of Mexico is where the country’s indigenous population, along with the country’s greatest poverty, is concentrated, covering 25.7% of the national territorial area and “considered by the Mexican federal government to be a strategic region for national development”. The Fox government has focused its economic policy on the country’s greater integration into the global economy in order to face up to the economic crisis Mexico is suffering. During the first five months of the Fox government, from November 2000 to April 2001, 255,000 jobs were lost in the country, according to official sources and, at the same time, the government has had to accept zero growth during its first year in office.

The Fox government’s policies and legislative actions have been contradictory in terms of facing up to the country’s main problems. On the one hand, while justifying the indigenous reform of “restricted rights” for indigenous peoples, they offered greater financial investment in exchange (in fact, the reform contains a paragraph promising strong public investment) noting that, “the problem of indigenous peoples is not one of rights but one of poverty”, hence the greater economic resources on offer.

The reality was somewhat different. Social development institutions, including the National Indigenist Institute (INI), suffered serious budget cuts for 2002 (and INI’s continued survival has even been threatened, and a transfer of its functions to the local states has begun) and, at the same time, rural sector resources were cut and subsidies withdrawn from electricity. Given this situation, combined with the impact of the crisis in Argentina, and strongly affected by the recession in neighbouring USA, the Mexican government is insisting on initiating mega-projects in the south of the country.

The search for alternative strategies

However, these proposals gained no sympathy from the different popular sectors, in particular the indigenous organisations, who feel threatened by foreign capital, particularly in a context of the lack of legal protection for their territories that results from the approved reform. So they stated their complete rejection of all mega-projects. In order to face up to these threats, various indigenous organisations, together with sectors of civil society have begun a process of reviewing the mega-projects and are endeavouring to design alternative strategies with which to challenge them.

In May 2001, the border town of Tapachula, Chiapas played host to the First Forum for Information and Analysis, in which 250 representatives from 109 civil society and production organisations from around Central America took part. Six months later, the second forum was held in Xelajú, Guatemala, from 22 to 24 November, with more than 800 delegates representing 300 social organisations from Mexico and Central America, accompanied by observers from Canada, the USA and various European countries. The "imposed globalisation" of free trade agreements, in particular the PPP, was widely discussed in this forum. In the Declaration it was stated that,

For the men and women attending the Xelajú Forum, the PPP is a prefabricated geo-political project that seeks to build a services and infrastructure zone in Meso-America, designed from the logic of transnational business, national oligarchies and international financial institutions. The aim of this project is to create a service infrastructure for the exportation of goods, the exploitation of our natural resources, biodiversity and labour of our peoples and in no way responds to the social logic of Meso-American peoples and communities. (CIEPAC, 2001).

And so the struggle for recognition of the territorial rights, autonomy and self-determination of indigenous peoples takes a new turn, now forced to face up to threats from the transnational capital that will presumably arrive with the mega-projects, without there being any guarantee that such a strategy will be able to stop the deepening of already severe poverty caused by the economic crisis in the country.

The struggle of the indigenous peoples of Guerrero

The most significant events in Guerrero were the participation of four indigenous peoples, the Mixteco, Nahuá, Tlapaneco and Amuzgo, in

the mass rally held in the town of Iguala for the purposes of the Motorcade March of the Zapatista command, and the occupation of the local congress by indigenous authorities and organisations demanding that local deputies reject the Indigenous Law approved by the Congress of the Union. This determined action to block Congress and demand a public dialogue with the 45 local deputies led the state government to respond by reopening previous investigations against eighteen indigenous leaders accused of insurrection, rebellion and sabotage. The three state powers joined forces to discredit and criminalize the state's indigenous movement.

Throughout this period, very tense and difficult moments were experienced due to the political conflict that continues unresolved in the indigenous municipalities of Xochistlahuaca, Acatepec and San Luis Acatlán. The crux of the conflict revolves around the cacique-like and corrupt attitude of the municipal authorities who assert their authority over the indigenous authorities at a whim and without taking into account the decisions of the communities.

Community Police

In the municipalities of San Luis Acatlán, Azoyú, Malinaltepec, Metlatónoc and Atlamajalcingo del Monte, they have managed to consolidate a project of the Tlapaneco and Mixteco peoples known as the "Public Security System for the Indigenous Peoples of Montaña and Costa Chica", known locally as the "Community Police". Calling on their rights as peoples, they formed the Regional Coordinating Body of Indigenous Authorities which, via mandate of the Regional Assembly, has taken responsibility for administering justice in the area. The response to this form of autonomy, which has demonstrated to the state authorities and all citizens its effectiveness at reducing crime and public insecurity, has been one of a fabrication of crimes and persecution of their leaders on the part of the state authorities. On 11 February 2002, five members of the Regional Coordinating Body of Indigenous Authorities were violently arrested by the State Police Investigators just as they were in the process of electing their new leadership. They were accused of having illegally detained non-indigenous people and deprived them of their freedom. This persecutory action outraged the majority of indigenous communities in the region, who immediately marched on the municipal centre of San Luis Acatlán to demand the immediate liberation of the indigenous authorities. Given the racist and arrogant attitude of the Investigating



*Cirilio Plácido Valerio, member of the Indigenous Community Police, San Luís Acatlan
Photo: Diana Vinding:*



*Mural on town hall in Santa Fe de la Laguna, a P'urhépecha community in Michoacán
Photo: Diana Vinding*

Officer and of the police in general, the situation was at the point of turning into a serious confrontation. On 12 February, the five detained leaders were freed on bail and eight court files containing eighteen arrest warrants against members of the Community Police were reviewed. A record was signed of each case revision, demanding the withdrawal of the warrants, seeking respectful coordination between the authorities and fighting for constitutional recognition of their collective rights, autonomy and legal diversity from the legislative power.

The situation in Chihuahua

The Rarámuri and Ódame⁵ unexpectedly burst onto a scene new to them, that of their rights as peoples. The signs of danger can be found in history. The celebration of 500 years of dominance, the agrarian counter-reforms, the Free Trade Agreement and the 1994 Zapatista uprising in Chiapas were all warning signs. The Zapatista awakening also reached northern Mexico, organising, illuminating, transforming.

These peoples have had to take many changes on board. They have incorporated into the national indigenous movement, they now relate to other Amerindian peoples, they appoint young authorities, dialogue with policy makers... One major change is that of meetings of traditional authorities which, before, were only tolerated as impositions, and always challenged. Now they have adopted them as an exercise of interculturality in order to understand, come to terms with history, create a consensus among all and thus defend their existence.

Disdain as a state policy

Ironically, the greatest promoter of change has been the government itself. Its policy of disdain of the Amerindian, of calculated indifference and racist scorn, has been constant and has provoked a reaction from the peoples. As a result of the meetings of traditional authorities, on 23 May 2001 a letter was written to the Chihuahua deputies demanding a consultation prior to the approval of the indigenous law. It ended thus: "We have always lived here with no respect for our Indigenous Rights and Culture". This letter represented 67 Rarámuri and Ódame authorities. The response was one of disdain. The deputies told them they had no time for a consultation, and if they wanted one they should do it themselves. They responded with realism on 7 June, "We will hold a consultation...We are aware that this will not

take place before the approval or rejection of the issue currently under debate. However, we know that it is important as indigenous peoples to strengthen ourselves through this consultation process”.

For six months, and with no resources, hitching lifts or on foot, they covered their territories, they provided information in Sunday meetings, they gathered community records. Finally, they presented the results to the state congress on 12 December. They brought 64 community reports, and 4,567 signatures against the law. They say in their report,

Indigenous people... categorically reject the law that has been approved. All the communities state that we want to continue living as we have always lived, with our customs, traditions, communal work, to have our own way of social organisation, our own way of meting out justice, of electing our traditional authorities, of having a culturally-focused education, of using the land and natural resources collectively and occupying the territory as our ancestors charged us to. This has been our life for many years and, with this law, we are being denied the rights that the ancients gave us. The approved law - far from respecting the experience of the Rarámuri and Odame peoples - takes from us what we have been and what we have been doing for many, many years.

Once more they were met with disdain. They were reproached for getting involved in issues they knew nothing about, they were told that they were not policy makers or lawyers, that they did not have the signatures of all indigenous people in Chihuahua, that their work meant nothing without official backing.

Notes and references

- 1 EZLN - Ejército Zapatista de Liberación Nacional/Zapatista National Liberation Army.
- 2 In Chiapas, 27 deputies voted against and 5 in favour of the law.
- 3 PRD: Democratic Revolutionary Party; PRI: Institutional Revolutionary Party; PVEM: Green Ecology Party of Mexico.
- 4 See, in this regard, documents produced by the Centre for Economic and Political Research into Community Action, CIEPAC, AC.
- 5 The Rarámuri (92,000) and the Odame (7,000) along with the Warijón (1,000) and the Pima (5-600) mostly live in the Sierra Tarahumara of Chihuahua state. (Editor's note)

GUATEMALA

Throughout 2001, the situation of indigenous organisations in Guatemala was marked by an abandonment of the peace process following the FRG's¹ accession to power in January 2000 and by an ongoing confrontation between government and civil society. The year began with a rescheduling to 2004 of the still unfulfilled Peace Agreement commitments, and ended with a controversial report from MINUGUA (the UN Verification Mission in Guatemala), which suggested that,

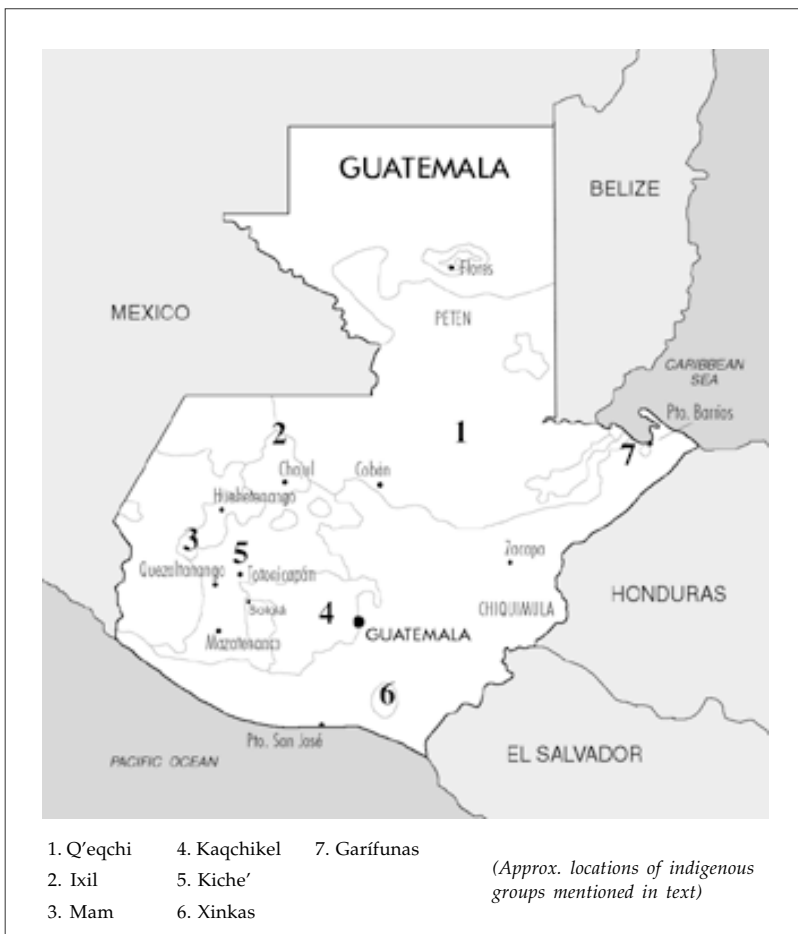
...commitments relating to indigenous peoples are amongst those that have shown the highest level of failure...This is not in line with the proposed changes in the Agreements but encourages the persistence of an exclusive monocultural model.²

In its report, the Head of Mission described Guatemala as a “de facto apartheid”. In fact, the indigenous issue is no longer high on the public agenda, and indigenous organisations are relegated to attempting to reorganise and find a space in which they can continue their struggle.

The slow weaving of the “*huipil*”³ of peace

The Agreement on Identity and Rights of Indigenous Peoples provided for the establishment of a series of Parity and Specific Commissions which, in 1998-1999, offered a number of proposals with regard to the officialisation of indigenous languages, educational reforms and the creation of a Land Fund. The most important proposals were, however, abandoned following the negative results of the referendum of May 1999. On reaching the end of their mandate, some commissions were terminated, such as the Commission on Language Officialisation. Others were modified, for example the Educational Reform Commission, which became a part of the Consultative Commission, and others continued functioning, including the commissions on Land and “Reform and Participation at all Levels”.

The rescheduling at the beginning of 2001 meant that some of these Commissions' periods of work were extended. The Reform and Participation Commission thus presented proposals for a reform of the Municipal Code and a new law on Development Councils; the Indigenous Women's Rights Commission presented proposals for the Law



against Sexual Harassment; and the Land Commission sought the creation of an “Agrarian Ombudsman” to resolve land conflicts, in the face of what it considered the ineffectiveness of the government office created for this purpose. Finally, in October, the Commission on Spirituality and Sacred Places was re-established, after more than a two-year break in its functioning. In his inaugural speech, the Secretary for Peace said that this was yet another step “in the slow and delicate weaving of the huipil of peace”.

But the weaving of this *huipil* is taking far too long and, for the moment, has more holes in it than delicate handiwork. For many sectors, rather than bearing any content, such progress is merely

symbolic and the government's desire to fulfil the Peace Agreements has yet to be confirmed. Serious examples are the Peace Secretary's scant budget, the government's insistence on symbolic issues and the stagnation of proposals when they go before the Congress of the Republic. In addition, the government retains COPMAGUA as a partner even though this body has lost all legitimacy within the Mayan movement.⁴

Faced with this outlook, various proposals are being made to force progress by alternative paths, such as working directly with the Congress of the Republic instead of with the Peace Secretary, overcoming what was the institutionalisation of peace.

The challenges of working within the State

Whilst the government's commitment to peace seems lukewarm, to say the least, one of the components of this peace process has received rather a boost: educational reform. This is due to close coordination between the civil society organisations supporting this reform and also the role of Dr. Demetrio Cojtí as Vice-Minister for Education. His first step at the beginning of this year was to establish the Great National Dialogue to define the content of the reform. In addition, he has promoted Bilingual and Intercultural Education, one of the objectives of which has been to train a minimum of 11,000 teachers in reading and writing their own languages.

However, working within the government is not without its costs, as Cojtí found when he had to ask the directors of the National Programme for Educational Self-Management (PRONADE) to leave his office after complaining that they had gone several months without pay, or when he had to defend a Literacy Campaign's questionable methods and meagre results. Mrs. Otilia Lux, Minister for Culture, has also experienced similar situations. One difficult moment for these officials was in July when they had to defend the government's position regarding the VAT - Value Added Tax - to a group of Mayan leaders meeting for that purpose.

The continual accusations of politicisation, inefficiency and corruption aimed at the Guatemalan Indigenous Fund (FODIGUA), created in 1995, were the subject of much press coverage for several weeks in May and June. Following a debate between organisations, institutions and even the government, as to whether the institution should be reformed or whether the government should intervene, the

issue lost its interest value and FODIGUA continued, but with even less legitimacy than before.

Another ongoing problem is the minimal budget allocated to the Mayan bodies within the State. This has been the case since 1990 for the Academy of Mayan Languages, and is now being repeated with the General Directorate for Bilingual Intercultural Education, the Indigenous Women's Ombudsman and the Indigenous Ombudsman within the Attorney-General's Office for Human Rights.

Reorganisation within the Mayan movement

The years 1999 and 2000 were dark moments for the organisations that form the Mayan movement: their attempts to express their unity through COPMAGUA had failed and the constitutional reforms were at a halt.⁵ However, they soon began to attempt to reorganise. Although very different in terms of their objectives, composition or ways of working, all the associations were agreed that they should avoid excessive institutionalisation and promote a dialogue and reflection on what had happened.

Last year, the "Mayan Forum" appeared around the problems of FODIGUA, the "Platform" sponsored by MINUGUA, and the "Space for Mayan Political Coordination", which is to work on proposals for reforms to the Electoral Law. In addition, regular meetings have been organised with senior Mayan officials in the government.

A recurrent theme within these circles has been the advisability of creating a political party. There is growing awareness that political change will not come about without parliamentary representation. The temptation to set up an exclusively "Mayan" party is giving way to the conviction that there is a need for inter-ethnic alliances and "intercultural" programmes. The example of the Xel-Ju' Civic Committee which, from a mixed indigenous and non-indigenous platform, has managed to govern Quetzaltenango – the country's second largest city – for two consecutive terms, has carried great weight. However, the Committee did not make a public appearance when, on 12 December, Mr. Alfredo Tay Coyoy – from Quetzaltenango and ex-Minister of Education – presented the Political Party for Pluralist Organisation in Guatemala (Pop-Gua) to the Civic Register.⁶ It seems that Xel-Ju' and other groups behind it were abandoning the initiative.

In addition, the National Guatemalan Revolutionary Unity party (URNG), ex-guerrillas turned politicians, held its General Assembly in August. There were at least 7 Maya in its new National Executive

Committee and among its leadership could be found the three Mayan deputies that sit in the Congress of the Republic: Pablo Ceto, Gregorio Chay and Alberto Mazariegos.

The URNG still needs to rethink its relationship with its historic allies in the popular movement. Recent experience seems to suggest a continuing lack of sensitivity towards the ethnic issue, such as the time it tried to “democratise” the indigenous Town Hall of Sololá – a customary institution with its own legitimacy – only managing to cause conflict between the indigenous people of this town. In spite of its part in COPMAGUA’s failure, it has still not clarified its current links with this body. In June, COPMAGUA reorganised, and is now formed only of bodies related to the URNG, plus Xinka and Garífuna representation,⁷ and yet some URNG leaders state that they do not recognise COPMAGUA.

At the same time, new associations are being consolidated, such as Kaqla’ – which reflects on gender, ethnicity and power on the basis of personal experience – or Moloj – aimed at training Mayan women for political posts. There are also the organisations of spiritual leaders, such as Oxlajuj Ajpop or the Gran Confederación Kaqchikel, which participate in the Parity Commission on Sacred Places.

The visibility of the Maya

The images Guatemalans retained this year of their indigenous compatriots were linked to rather unpleasant events, such as the Ch’orti’ girl from the eastern department of Chiquimula, who died of malnutrition at the end of August. One of the causes of increased hunger has been the collapse of coffee prices on the world market. This has affected farmers all over the country, both indigenous and non-indigenous. For this reason, current data indicates that malnutrition and famine levels are currently running at much higher levels than previously.

In addition, clashes over land, such as that in Los Cimientos, Chajul, demonstrate the intra-community conflicts that have been dragging on since the 1980s, with population relocations and the reorganisation and militarisation of community structures.

The public complaints made at the Cobán Folklore Festival in July were another significant event. The outgoing Rabin Ahau – Daughter of the Community – denounced the organisers’ discrimination and maltreatment of her and, out of solidarity, her successor refused to accept the post. This position, which was supported by a number of Mayan women’s groups, shook one of the symbolic bases of tourism

in Guatemala, along with the monopoly of those who benefit from it. One illustration of the increasing lack of visibility of the Maya and their specific demands is the peasant farmers' marches of 12 October, which have always demonstrated the links between the peasant struggle and indigenous resistance. This year, virtually no ethnic demands were raised and hence the proposal for an "Indigenous Peoples' Law", presented by the National Peasant and Indigenous Coordinating Body (CONIC) at the end of the demonstration, went largely unnoticed.

But perhaps the most spectacular and disturbing event for the whole country was the "riots" of Totonicapán and Cobán on 1 August. In these two towns, the population's demands in the face of the imminent approval of an increase in VAT flared up with such force that the government declared a state of siege and sent in tanks to patrol the streets. This popular uprising against corruption and abuse of power in these two municipal centres with a strong indigenous presence provoked the return of "a fear of the Indian". Nonetheless, it was a short-lived conflict and, a few days later, the situation had returned to normal. President Portillo took advantage of the occasion to make a populist gesture of recognition of Mayan institutionality by signing an agreement with the Auxiliary Mayors of Totonicapán.

Notes and references

- 1 *Frente Republicano Guatemalteco*: the Guatemalan Republican Front, a party established and led by ex-General Efraín Ríos Montt who, during 1982 and 1983, was responsible for the worst massacres committed by the Guatemalan army. The Constitution prohibits him from standing for presidential election as he has led a previous coup d'état and so Alfonso Portillo stood during the 1995 and 2000 elections.
- 2 **UN Verification Mission in Guatemala (MINUGUA). September 2001.** "Los pueblos indígenas de Guatemala: la superación de la discriminación en el marco de los Acuerdos de Paz" ("Indigenous Peoples of Guatemala: overcoming discrimination within the context of the Peace Agreements") Verification Report. Page 7.
- 3 Huipil: a blouse that forms part of the Mayan women's traditional dress. It is normally woven by the women themselves.
- 4 The Coordinating Body of Organisations of the Mayan People of Guatemala (COPMAGUA) emerged in 1994 as the joint Mayan body for the peace process and, after 1996, centralised the work of the parity commissions. Due to internal problems, two of its five coordinators left in 2000, leaving only those linked to the URNG.
- 5 In this respect, see the relevant *The Indigenous World* reports for those years.

- 6 In several Mayan languages “*pop*” means kitbag and “*gua*” tortilla, two factors of clear indigenous identification.
 - 7 The Xinkas from the south of Guatemala and the Garífunas from the Atlantic Coast are two non-Mayan linguistic groups.
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NICARAGUA

Political and legislative developments

National elections took place on 4 November 2001. These comprised presidential (and vice-presidential) elections, legislative elections for national and departmental deputies, plus elections for members of the Central American parliament (PARLACEN).

Competing in the departmental elections alongside the two most powerful parties, the Constitutionalist Liberal Party (PLC) and the Sandinista National Liberation Front (FSLN), were two regional parties: Yapti Tasba Masraka Nanih Asla Taranka (YATAMA) and the Party Movement for Coastal Unity (PAMUC). YATAMA performed most notably, gaining 11.3% of the regional vote in the North Atlantic Autonomous Region (RAAN), but this was still insufficient for them to gain one of the three departmental seats for this autonomous region. It is worth mentioning, however, that the Miskito deputy, Leonel Pantin Wilson, was re-elected as a PLC member, the only indigenous deputy in the National Assembly.

At national and regional level, the Constitutionalist Liberal Party, Nicaraguan Christian Path (Camino Cristiano Nicaragüense) and the Nicaraguan Resistance Party (PRN) all participated under the banner of the Constitutionalist Liberal Party Alliance (PLC), winning the national elections with 56% of the votes, followed by the FSLN with 42%.

Of the four municipalities with a majority indigenous population, the PLC Alliance gained a majority of the votes in Waspam and Prinzapolka in the RAAN, and in Desembocadura de Río Grande, in the South Atlantic Autonomous Region (RAAS). For its part, the FSLN gained a majority in Puerto Cabezas.



Regional elections 2002

In line with the provisions of the Law of Autonomy, promulgated in 1987, the first regional elections were held on the Caribbean Coast of Nicaragua in 1990. Given that their term of office lasts four years, further elections for the two Autonomous Regional Councils, each made up of 45 elected members plus the regional deputies, are due to take place on 3 March 2002. This body is the highest authority within the two autonomous regions, and a guarantee of the laws relating to representation of indigenous peoples and ethnic communities.

In the RAAN, the PLC, FSLN, PAMUC, YATAMA and the PRN will contest these elections. With the exception of PAMUC, the above parties will all also contest the RAAS elections.

In the RAAN, there are 108,791 people eligible to vote and in the RAAS 74,806, according to the official figures of the Supreme Electoral Court (CSE). However, poor organisation on the part of the CSE and a marked apathy, particularly in the geographic areas inhabited by a

mestizo majority, added to extensive disagreement with the way in which the process of autonomy is going and a lacklustre electoral campaign, all presage an abstention rate of more than 50% in these constituencies.

Approval of laws

During 2001, various laws were approved that directly affect the lives of many indigenous communities. One such law is Law 387, the Special Law on Exploration and Exploitation of Mines, promulgated by the National Assembly on 26 June 2001.¹ The regulations governing Law 387² were subsequently issued by the Presidency of the Republic. The main criticism of this mining legislation is that it encourages big capital investment, favouring those companies that obtain concessions for exploration with exploitation rights. The interests of traditional gold mining, known as *guirisería* in Nicaragua, remain on a secondary level in relation to industrial mining.

The Law Declaring and Defining the BOSAWAS Biosphere Reserve has caused greater controversy among the population of the Caribbean Coast of Nicaragua. This was approved by the National Assembly on 14 November 2001,³ with no consultation and infringing the participation rights of the community blocks located within this immense reserve of more than 7,000 square kilometres. Two of the community blocks belong to the indigenous Mayangna-Sumo peoples, Mayangna Sauni As and Mayangna Sauni Bu, in addition to the Sikilta community. Three more blocks are communities of indigenous Miskito people: Miskitu Indian Tasbaika Kum, Kipla Sait Tasbaika and Li Lamni Tasbaika Kum.

Ratification of ILO Convention 169 on the part of the Nicaraguan government is still pending. This legal instrument is being vigorously demanded by the indigenous communities of the centre and north of Nicaragua.

Regional autonomy

The decentralisation process remains at a standstill and the administrative, economic, political and social powers defined in the Autonomy Statute (Law 28) have not been taken on board by the regional authorities. The general perception is that the regional councillors act according to the agenda of their member parties and not that of the people who elected them, thus putting party interests above those of the region. This situation is reinforced by an absence of political will to strengthen the process of autonomy on the part of successive national governments.

The dramatic frustration with authorities which, according to the majority of the population, do not work is illustrated in the results of a survey carried out by the Institute for the Promotion of Democracy (IPADE) and entitled “Political Culture, attitudes towards the elections and the regional and municipal systems of autonomy”.⁴ Information from this survey, undertaken in September 2001, highlights the fact that 43.9% of those surveyed consider that the Regional Government, as it currently stands, is of absolutely no use to them, whilst 42% think that it is of little use to them.

Socio-economic aspects

The map of extreme poverty

Backwardness, misery, discrimination and marginalisation have been the constant features of indigenous life. In Nicaragua, as in other countries, a number of contributory factors mean that the indigenous population is amongst the poorest of the poor. Most recent evidence comes from the national survey of households, which measures living standards, undertaken in 1998 by the Government of Nicaragua and the results of which were published in 2000 and 2001. The available data shows that top place in the survey in terms of extreme poverty went to five communities, four of which are located in the RAAN⁵: Prinzapolka, Waspam, Bonanza and Puerto Cabezas. Coming in third was the municipality of Desembocadura de Río Grande in the RAAS. With the exception of Bonanza, all the municipalities mentioned have a majority Miskito population.

Natural disasters

2001 was not free from natural disasters and, once more, the onslaught of nature affected the RAAN. The climatic phenomenon of greatest impact was a nine-day rain storm caused by tropical depression no. 15, which began at the end of October 2001 and caused serious flooding in the municipalities of Rosita, Puerto Cabezas, Waspam and Prinzapolka.

The rivers Coco (Wangky), Wawa, Lycus, Kukalaya and Bambana burst their banks and affected many indigenous communities with populations settled along the banks of these rivers.

According to information from Rev. Norman Bent, the attorney (*procurador*) of the Indigenous Peoples and Communities,⁶ 6,192 families were affected and more than 3,400 homes damaged, of which 180

were destroyed. Crop losses were in excess of 20,907 *manzanas*⁷ of maize, rice, beans, bananas and tubers such as cassava and quequisque (malanga or *Xanthosoma violaceum*). For its part, the Ministry of Transport and Infrastructure calculated the damage to 696 kilometres of roads in the RAAN at 90 million córdobas (approximately 6.3 million USD).

It should be mentioned that, as in the past, once again the capacity to support the victims was inadequate given the magnitude of the disaster.

The process of legalisation of indigenous communal lands

The legal and institutional framework

During the period in question, there was little progress made within the National Assembly in terms of reaching a consensus on the two draft bills on the system of communal property, the first presented by the Presidency of the Republic in October 1998 and the second submitted by the Regional Councils in September 2000.

In some analysts' opinion, the main obstacle to progress is section 1 of the Autonomy Statute (Law 28) which establishes that, "Communal lands are inalienable, they may not be given, sold, seized or mortgaged, and they are imprescriptible." A significant number of deputies from the governing party do not accept this regulatory framework for communal property, which prevents communal territories or lands from forming part of the land market.

The ruling of the IACHR in favour of the Sumo-Mayangna community of Awás Tingni

The most significant event of 2001 was the decision of the Inter-American Court of Human Rights (IACHR),⁸ on 31 Aug. 2001, in favour of the Sumo-Mayangna community of Awás Tingni. This judgement initiates a new stage in the extended dispute between the community and the Government of Nicaragua regarding ownership of their ancestral territory and the forest resources existing within it.

The IACHR recognized the legitimacy of the Awás Tingni community's claim and concluded that the Government of Nicaragua had violated the community's property rights. The Court thus imposed an obligation upon the Nicaraguan state to delimit, demarcate and title the Awás Tingni territory. The Court prescribed that Nicaragua should pay the sum of US\$30,000 in legal costs and invest a further US\$-

50,000 in social projects, as compensation for the emotional distress suffered by the community.

In an IACHR press release,⁹ Dr. Santiago Cantón, Executive Secretary of the Court, indicated that this decision had transcended the borders of Nicaragua and the Americas and represented one of the most significant achievements in the protection of indigenous peoples internationally. The Indian Law Resource Center in the US,¹⁰ which represented the community, considered the Court's decision to be a precedent of great international significance, in addition to being an instrument of vital importance in the defence of indigenous people's human rights in Nicaragua. According to information from this Centre, this was the first time that an indigenous community had appealed to international jurisdiction in defence of its rights, and the first time that an international court had recognised the rights of indigenous peoples to their land and natural resources.

In fulfilment of the Court's judgement, on 22 February 2002, Ambassador Lombardo Martínez handed over a cheque for US\$30,000 to the Inter-American Commission so that it could pass this sum on to the Awás Tingni community in payment of the costs and expenses incurred by the members of this community and their representatives. On this date, both parties also agreed to present a plan of action with which to continue to fulfil the Court's decision at the next meeting, to be held in Managua during the third week of March 2002.

Commercialisation of communal property

As in the previous year, in 2001 the scandalous transactions of the Greek American businessman, Peter Tsokos, continued to form the most publicised aggression against the system of communal property. Following the controversial sale of 4 of the so-called Cayos Perlas in the RAAS, Mr. Tsokos once more hit the news, offering 6,000 manzanas of land, considered to be communal lands, in the municipality of Laguna de Perlas, for sale on the Internet for the sum of US\$360,000. He had previously proceeded to break up 7 plots in the area of Monkey Point, more specifically in Punta de Águila, a territory ancestrally inhabited by indigenous Rama. As a consequence of a series of legal appeals introduced in Bluefields by representatives of the Rama people, judge Anabel Omeir issued a ban on the sale until it could be clarified as to whether the indigenous people were the owners or not.

By way of conclusion

From the perspective of indigenism, the most outstanding event of the year was the IACHR decision regarding Awas Tingni. This legal interpretation lights a new flame along the path of the historic claims of the indigenous peoples of Nicaragua.

In 2002, there was renewed hope that the new Regional Councils would take on a more aggressive and functional role, overcoming a virtually parasitic public Treasury situation and their subordination to hegemonic national party directions. By giving a majority vote to the PLC, trusting in the promises of President Enrique Bolaños, a significant percentage of the indigenous population is also renewing its faith in the fact that the new liberal government will include the Caribbean Coast in national policies and will begin to establish regulations governing the Law on Autonomy, will begin to demarcate and title community lands and will begin to have more effective control over the exploitation of natural resources. The coming months will show whether there has been significant progress in the desired direction or whether these hopes and expectations on the part of indigenous peoples and other ethnic minorities in Nicaragua will once more end in frustration.

Notes and references

- 1 *La Gaceta*, Official Newspaper, No. 151, 13 August 2001.
- 2 *La Gaceta*, Official Newspaper, No. 4, 7 January 2002.
- 3 *La Gaceta*, Official Newspaper, No. 244, 24 December 2001.
- 4 *La Prensa*, 3 March 2002.
- 5 Government of Nicaragua. 2001. *Map of Extreme Poverty in Nicaragua*.
- 6 *La Prensa*, 20 November 2001. Subsequently, tropical depression no. 15 turned into Hurricane Michelle, which caused devastating damage the whole length of its path, particularly on the island of Cuba.
- 7 1 *manzana* is the equivalent of 0.7 has. (Editor's note)
- 8 Inter-American Court of Human Rights, Case of the Mayangna (Sumo) Awas Tingni Community vs. Nicaragua. Decision of 31 August 2001.
- 9 Inter-American Commission on Human Rights. Press Release No. 8/02.
- 10 Legal Resource Centre for Indigenous Peoples. Press Release No. L/AT/PRESS/1, 23/2/2002.

PANAMA

In the concert of nations, Panama occupies the 52nd place in the Human Development Index. This is on a par with other countries of the continent, such as Trinidad and Tobago (49) and Mexico (51). It is below countries that are considered high on the human development scale, such as Spain (21), Argentina (34) or Costa Rica (41) (UNDP Report-Panama, *La Prensa*, 2002). But when we look at these figures, the warning indicators all flash with regard its indigenous peoples. As we can see in the same report, it states that, “the Ngobe-buglé are one of Panama’s most affected ethnic groups in terms of poverty. In some comarcas, more than 90% of the inhabitants are destitute. Infant mortality due to malnutrition-related illnesses is a spectre that haunts the indigenous population”. But this occurs not only amongst the Ngobe, other indigenous peoples are also in a similar situation. The development of indigenous peoples exists only on paper and in government plans, but is never conscientiously implemented.

Village not on the map

Proof of this marginalisation can be found in an article in one daily paper entitled, “Panamanian village not on the map”. The newspaper article stated that:

Jirote is a village lost in time and space. The village does not appear on maps of the Republic of Panama, nor do its almost 200 inhabitants appear in the National Census. Located in the thick forests of the province of Bocas del Toro, more than ten hours by foot, the indigenous Ngobe-Buglé do not know their country, and nor does their country know they exist. (Panamá América, 2002)

This shows how little the indigenous communities mean to the Panamanian authorities, and that it is not only poverty that plagues these communities but also the direct effects of social and political problems. The most important of these for 2001 are detailed below.

Tense situation on the Colombian border

The Colombia Plan and the internal war in that country are now spilling over the border. Hundreds of displaced Colombians are arriv-

ing in Panama fleeing the war and, for the Emberá, Wouanan and Kuna who live along the borders with Colombia (Darién Province and the Kuna Yala Comarca), 2001 was another year of uncertainty and fear.

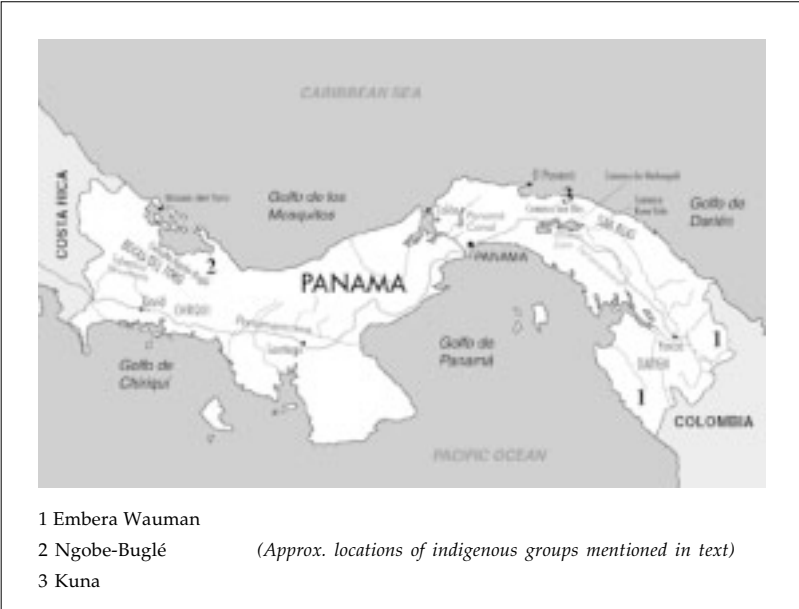
Teaching provision on the part of the Ministry of Education in this area was virtually nil last year due to the fears of the teaching staff, who do not wish to continue to put their lives at risk. This has also discouraged many indigenous children from continuing their studies. Many of these villages have experienced a mass exodus of their inhabitants towards the country's capital.

The creation of new laws in favour of indigenous peoples

Two laws benefiting indigenous peoples were ratified by the government in 2001/2002. Both highlight the struggles of indigenous peoples throughout history since the arrival of the Europeans on the continent of Abya Yala.

Law No.5 of January 2002 "declares 12 October a National Day of Reflection on the Situation of Indigenous Peoples and pronounces other provisions". It should be noted that, with this law, Panama becomes one of the few countries in the whole of Abya Yala to recognise 12 October as a day of "reflection", highlighting the struggle of indigenous peoples to preserve their culture and traditions. This law was approved following two years of discussion and is a very significant legal norm. Although it creates no rights, it will enable changes to be made to national history texts in the very near future which, at the moment, are not absolutely correct in their interpretation of the existence of indigenous peoples before and since Christopher Columbus.

Another law is No. 41 which, "declares 5 August each year to be Civic Day in Commemoration of SIMRAL COLMAN (Ologuindinbipilele)". Ologuindinbipilele (a Kuna name), known as Simral Coman by the non-indigenous, was one of the intellectual authors of the Kuna Revolution of 1925 and who, through his wisdom, was able to encourage the young Kuna of the time to stand up to the colonial policy that wished to "integrate" the Kuna forcibly into the Western culture or ineptly named "civilisation". The new law represents the country's recognition of one of the indigenous peoples' spiritual guides.



Kuna and Emberá bring case before the IACHR

With funding from the World Bank, work began on the Bayano hydroelectric power station (in the south-east of Panama) in 1976, in an area directly inhabited by the Kuna of Bayano, known in law as the Kuna de Madungandi Comarca. In its early stages, the dam affected eight Kuna and three Emberá communities. Along with the communities, cemeteries and sown fields disappeared under the floodwaters and hundreds of forest animals had to be moved to safety. The future of the Panamanian economy was achieved at the expense and sacrifice of one of the poorest and most marginalised sectors of the country. Once all recourse to dialogue had been exhausted and, following years of demanding solutions to their problems, the communities – tired of so many promises – decided to sue the Panamanian state for failure to fulfil its obligations. For this, they granted powers to the Popular Legal Assistance Centre (CEALP) and the Napguana Association so that, together with the International Human Rights Department of the College of Law of the American University, they could submit a petition for violation of their human rights to the Inter-American Commission on Human Rights (IACHR) on their behalf. In

this petition, they also requested fulfilment of the agreements signed between the government and indigenous leaders. The indigenous peoples affected have declared that the state violated their fundamental human rights in the following ways:

1. Right to ownership of land: The dam affected the lands on which indigenous communities were established. In addition, the Panamanian state has not prevented the illegal invasion of their lands by non-indigenous settlers. In the case of the Emberá, the state has not legalised the lands they have been occupying since their relocation in 1975.
2. Right to housing: The artificial dam destroyed entire indigenous communities, leaving many indigenous families exposed to the elements for several days.
3. Right to health: The dam caused water to stagnate, which has led to the appearance of new diseases, and an increase in fatal illnesses such as malaria in the region.
4. Cultural rights: The creation of the lake affected cultural rights in terms of sacred sites, cemeteries and biological reservoirs, as well as places where the indigenous people practised their religion.

In spite of the fact that the indigenous communities of Alto Bayano have lost their best lands, the Panamanian state is still not providing electricity to these communities and the few lands that are left to them are invaded each year by settlers. To this must be added the Pan-American Highway, which passes right through the middle of these communities and on towards the Darién forests. Despite the fact that the indigenous peoples affected have done everything possible to negotiate and reach an agreement with the various governments of the last twenty years, regardless of party or ideology, none have found a solution for them, hence the idea to take the government to the international courts.

The IACHR visits Panama

The Inter-American Commission on Human Rights undertook a visit to Panama from 6-9 June 2001. One of the activities of particular importance during this visit was a tour made of the Kuna de Madungandi comarca, specifically to the community of Akua Yala. The aim was to research and collect information on the ecological, social, economic, cultural, spiritual and religious damage in relation to the complaint made by the Emberá and Kuna de Madungandi popu-

lations affected by the construction of the Bayano hydroelectric power station.

Of the issues and suggestions dealt with by the Commission, it was noted that it was of great importance to examine the exhaustion of internal legal recourse. For its part, the Kuna de Madungandi General Congress and Emberá representatives ratified their petition before the commissioners, which consisted of compensation for the losses caused by the work, the legalisation of Emberá lands and a true development plan for all of Panama's indigenous communities.

In search of a friendly solution

The IACHR received the lawsuit by means of Petition No. 12354 of 21 September 2001, "*Kuna de Madungandi and Emberá of Bayano Panamanian Indigenous Peoples v. the State of Panama.*"

In accordance with article 41 of the IACHR regulations, the petitioners then requested that a friendly solution be considered with regard to the violation contained in the original petition. This latter was received by the IACHR in a hearing held in November 2001. A first round of meetings took place in January 2002 and conversations are currently being held to seek a friendly solution between the indigenous peoples and the government of Panama.

New dams on indigenous territories in Panama

The recently created Ngobe-Buglé Comarca (1997) is being threatened by the forthcoming construction of two hydroelectric power stations, Tabasara I and II, following approval of the Environmental Impact Study by the National Environment Authority (ANAM). This study was condemned by indigenous Ngobe and peasant farmers due to its untruths and technical deficiencies and because of the lack of consent obtained from the comarca's indigenous authorities. In this regard, the Kuna lawyer, Hector Huertas, lodged an appeal to nullify the decision before the Third Court of the Supreme Court of Justice which agreed, by means of a decision dated 21 December 2001, to the request to suspend construction of the first hydro-electric power station until it was decided as to whether the EIA was violating the laws of the comarca and environmental laws or not.

In relation to the same issue, the Ombudsman, Juan Antonio Tejada, met with a group of indigenous people and peasant farmers opposed to construction of the hydro-electric projects and stated that

all consultation procedures with the affected communities had to be exhausted, and that he would ensure that this took place.

Similarly, it is worth mentioning that the construction of new hydroelectric power stations (dams) is a threat to other indigenous territories, such as the future Naso Teribe Comarca in the province of Bocas del Toro, where studies for the construction of the Teribe 1 and Teribe 2 hydroelectric power stations have been undertaken. This construction would also affect the international *Parque Amistad* or Friendship Park existing between the countries of Panama and Costa Rica.



SOUTH AMERICA

COLOMBIA

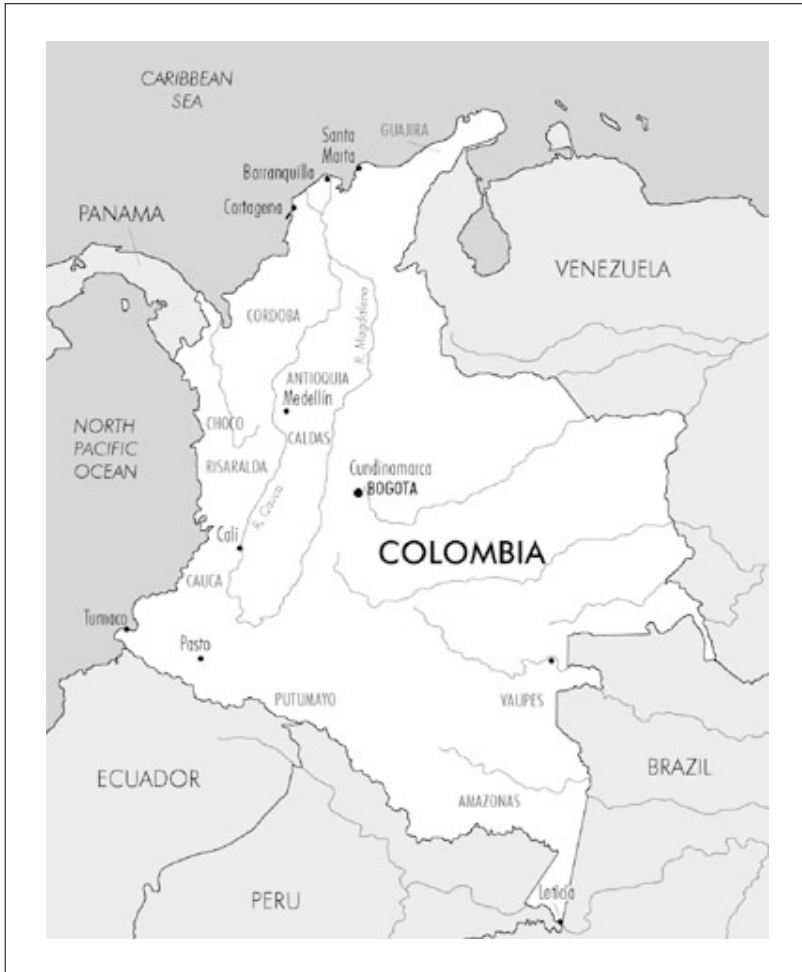
Colombia continued to be marked by violence during 2001. Statistics for that year speak for themselves:

- Over the last two years, every day has seen an average of 20 socio-politically motivated deaths among Colombians. Of the 2,529 civilian deaths recorded in the period October 2000 – March 2001, 2,080 were caused by extra-judicial execution or political murder, 264 by forced disappearance and 185 by the murder of socially marginalised groups. Eighty-three per cent of these deaths were attributed to the paramilitary forces, 13% to guerrilla groups and 4% to the armed forces. Of these victims, 67 were children, 93 were young people and 163 were women, highlighting the fact that the state is unable to guarantee even the protection of the most vulnerable sectors of society.
- Forced displacement has become the most serious humanitarian crisis in the history of Colombia. According to statistics from the Department for Displacement and Human Rights, CODHES, it is estimated that 31,375 people suffered forced displacement in 2000. The figures are similar for 2001. According to Amnesty International, 20% of all the world's internally displaced population is to be found in Colombia. Women form 56% of the displaced population, whilst 55% are under the age of 18. Thirty-one per cent of women have become heads of household due to the death or desertion of their husband or partner.

A disinstitutionalized war

The war has intensified in comparison with the previous year as a result of its increasingly disinstitutionalized nature. The following are four of the main ways in which this is demonstrated:

1. The civilian population is caught in the crossfire, the deliberate victim of the confrontation. Whole territories and populations remain subjected to a kind of "armed clientilism" on the part of all players in the war, trying to incorporate indigenous, peasant and Afro-Colombian populations into their ranks, populations who are not involved in the conflict and who are making tremendous efforts to remain on the margins of this confrontation.



2. There is a growing importance within the war mechanism of an illegal economy based on the production and marketing of illegal drugs. This can be seen in the overlap between areas of coca and poppy cultivation and the areas of greatest dispute between the guerrillas and the paramilitaries.
3. The state's loss of authority and the absence of alternative :
organic projects on the part of the guerrilla insurgents has led :
to stagnation in the peace process and the continual expansion :

of paramilitary groups, which are now to be found throughout the national territory and even in the large cities.

4. As intimidation and domination by force of arms grows stronger, the actions of the guerrilla insurgency become increasingly illegitimate, thus encouraging ever-stronger paramilitary groups. Their advances have enabled them to snatch strategic territories from the Colombian Armed Revolutionary Forces-Popular Army (FARC-EP). The paramilitaries are gaining increasing recognition from many sectors and those advocating an end to the peace negotiations with the FARC-EP are becoming stronger. The presidential candidate, Álvaro Uribe, who has based his campaign on “hard-line” policies against the insurgency and proposals for the intervention of foreign troops in the Colombian conflict, currently enjoys 39.5% in the opinion polls, above that of the experienced liberal politician Horacio Serpa (30.7%) and the “independent” Noemí Sanín (16.9%). Luis E. Garzón, the candidate of the Left, scarcely manages to gain 1%. Four months back, Horacio Serpa headed the polls, 15 points ahead of Álvaro Uribe.

Under such circumstances, Colombians fear that a generalised civil war may become established, of enormous cost in terms of damage to the country’s economic infrastructure and human rights violations. This would be followed by a return to the negotiating table but with an economy in tatters, an even weaker civil society and a mistrustful population.

Almost all the victims of the Colombian massacres and forced displacements have been either peasant, indigenous or Afro-Colombian populations. This situation is causing these groups to change the territorial defence, control and appropriation strategies they have been implementing in order to resist the land privatisations promoted by the neo-liberal model, the establishment of Malaysian-type agro-industrial models for the African palm, the development of mining mega-projects and the continually expanding agricultural frontier in the Orinoquia, Amazonía and Pacific regions, which benefits landowners who have hogged all the good agro-ecological lands for livestock farming. The peasant reserves, indigenous reservations (*resguardos*) and collective territories for black communities are now the focus of attention of transnationals seeking lucrative concessions for the extraction of natural resources, including their mega-biodiversity.¹

Peoples in resistance

All the successful struggles of the indigenous movement are now in danger, as the war that is currently being fought in Colombia is being played out principally on their lands.

The state's apathy, the clearly anti-indigenist nature of its economic and social policies, the impossible hope of state behaviour that was closer to the spirit of the 1991 Constituent Assembly and the fact that the National Committee for Coordination and the Commission for Human Rights of the indigenous peoples were being ignored led the National Indigenous Organisation of Colombia (ONIC) and the Indigenous Authorities of Colombia (AICO) to break off relations with the government in July 2001. But the massacres of Paece individuals in Cauca, the murder of indigenous leaders in Alto Sinú, Cauca, Chocó, Risaralda, Caldas and Putumayo, along with the forced displacement of some indigenous communities has led them to declare themselves to be *Peoples in Resistance*.

Resistance strategies

In order to guarantee their ethnic survival, the preservation of their territories and the strength of their own governments in the face of any change that may occur in the territorial dynamic of the conflict, indigenous peoples have begun to test out different strategies:

- The establishment of zones of refuge.
- The establishment of special zones for the development of basic food security projects.
- Direct action on the part of indigenous authorities in the absence of a response from governmental and non-governmental humanitarian agencies. Examples of this are the cases of the search for Kimy Pernía in the paramilitary zone of Tierralta (Córdoba), and the protest demonstration of 30,000 indigenous Paece, Guambiano and Coconuco peoples that descended on Cali, the main city in the south-east of Colombia.
- The humanitarian dialogues of the indigenous authorities and governments in the zones under guerrilla influence.
- Actions of community protection, through the strengthening of *alguaciles* or indigenous civic policemen, an age-old institution of all indigenous peoples and one that was the basis of the strategy for land recovery in the 1970s and 80s, of territorial

and natural resource control during the 1990s and of social internal control throughout history.

- The creation of spaces for dialogue with other popular sectors in order to seek unity in the face of the conflict, such as the “Space for Co-existence, Dialogue and Negotiation” held in the indigenous “resguardo” La María in Cauca, the aim of which was to bring together different expressions of civil society to present proposed solutions to the country’s armed conflict.²
- Permanent communication between the different indigenous leaders and organisations in order to coordinate their actions in the face of the worsening humanitarian situation caused by the armed conflict.

Popular mobilisations in defence of their settlements

Over the past few months, demonstrations to prevent those involved in the conflict from carrying out barbaric acts against indigenous towns and non-combatant civilian populations have been gathering force. One such example is the case of the indigenous municipality of Caldono in Cauca. Here, the population took to the streets with music and organised barricades to block the path of an armed contingent of the FARC that was trying to take the town centre. In the face of this popular reaction, the FARC was forced to withdraw. Months earlier, the FARC had destroyed the town’s police station, and along with this its school and a number of houses. This strategy was copied by peasant and indigenous populations in the municipality of Bolívar, and also in Cauca. In January 2002, road blocks were recorded in the department of Guajira, in the north of the country. Here, for several days, peasant and indigenous villagers demanded that the Colombian Self-Defence Units (AUC), well-known paramilitaries, leave the region. These and other actions on the part of the population in the department of Santander, which have prevented armed groups from venting their anger on the civilian population, demonstrate not only the desperation of the people in the face of the state’s “reluctance” to afford them effective protection but also the fact that the people are ready to resist the violence with protests, albeit at great risk.

Congresses of indigenous peoples

Although these strategies for indigenous resistance are taking place in a number of the country’s regions, the organisations have realised

that they are insufficient to prevent the armed conflict and its mounting humanitarian tragedy. There has thus been a renewed desire to join forces with the popular movement in order to discuss a proposal for a “new country”, following the direction and experience of the indigenous peoples of Cauca who, in an alliance with the department’s popular sectors have been drawing up a proposal for a society in which the excluded and oppressed will become social players, with the capacity to intervene and generate proposals for peace.

With this aim, the indigenous organisations convened a National Congress of Indigenous Peoples, held in December 2001 in the Cota (Cundinamarca) indigenous reservation. This meeting was organised not as

[A] meeting for ourselves, in order to resolve our problems, for we have said that if there is not peace for all Colombians then nor will there be peace for the indigenous peoples...We do not want peace and justice for ourselves alone, while the rest of the population starve to death on the streets...and so it is logical that we do not want a peace in which we ourselves have to disappear. (Taken from the official announcement)

Prior to the National Congress, the indigenous peoples of Cauca had held an extraordinary Congress because of the difficult situation they were experiencing, with an increase in armed action on the part of both guerrilla and paramilitary forces on their territories, which claimed the lives of around 50 indigenous people in 2001. The last straw was the murder of the historic leader, Cristóbal Sécue, at the hands of the FARC. Approximately 20,000 indigenous people headed for Cauca to demand respect for their lives and autonomy for their authorities.

For its part, the National Indigenous Congress reaffirmed the indigenous peoples’ territorial autonomy in the face of the war. It also stated its political will, after several years of isolation, to revive the process of building a Popular Social Block which, as an alternative focus of power, might gain a space for self-expression that could influence the Peace Process and thus avoid it being built behind the backs of the indigenous, peasant and Afro-Colombian communities. In the working groups, the participants emphasised the need to prevent the communities and organisations from becoming involved in the armed conflict and the need for the armed players to respect the authorities and the autonomy of the indigenous peoples on their own lands. It also endorsed the resistance strategies being implemented and strongly criticised the FARC for discrediting the indig-

enous civic police. All in all, the meeting was just what people had been yearning for. They needed to talk through their fears, express their disapproval, feed on the experience of others, unite their will-power and give new strength to their struggles and protests. The congress also unanimously decided to symbolically run the disappeared leader, Kimy Pernía Domicó, as candidate for Colombian president. This congress, which lasted six days, was attended by indigenous people from a number of Central and South American countries, and various friends from Europe, Canada and the United States.

Nonetheless, popular participation was limited to the presence of a number of union, peasant and Afro-Colombian leaders who participated in the closing ceremony of the Congress. This once more highlighted just how fragmented Colombia's popular movement is, another consequence of the war. But it also showed that, in this tragic phase of their history, the indigenous people continue to stand alone, increasingly dependent upon international solidarity for the continued defence of their territorial autonomy and for their continued existence as peoples.

In spite of these important indigenous resistance strategies, which demonstrate a unity and a will to continue to undertake joint efforts in order to survive the war, the political scene in terms of elections is much more fragmented. Around 15 candidates are standing for election to two special constituencies for indigenous people. In these March elections, genuine representatives of the indigenous struggle will compete against those who are merely playing at politics. Although the indigenous people are very clear as to who their true representatives are, there is a danger that people foreign to their struggles may be elected by the solidarity vote of the large cities.

Epilogue

With the ink not yet dry on this article, the President announced the end of the peace process, after three and a half years of discussions. He spoke at 9.20 p.m. on Wednesday 20 February, ordering the armed forces to begin to take the demilitarised zone as of 12.00 p.m.. That same night and before the early hours of the morning had arrived, around 100 air missions had been undertaken by a fleet of 30 aircraft, destroying almost all the logistics centres of the FARC (bases and airfields, training camps etc.) with laser-guided

bombs. In the following three days, more than 250 bombs were dropped, including the 500 pound MK82, largely to destroy tunnels and underground bunkers.

The peasant population began to abandon the countryside and move towards the urban centres, fearing the arrival of paramilitaries accusing them of collaborating with the guerrillas. The scene is one of all-out war and the media are broadcasting images of bombardments in the style of the aerial attacks on Afghanistan. The commander of the air force, General Héctor Fabio Velasco, has stated that the nighttime air raids will be intensified with the help of new helicopters soon to arrive in the country, equipped with night sights that enable high resolution fields of vision. In spite of this euphoria for war that has invaded both the armed forces and a high percentage of Colombians, uncertainty still reigns, as civilian victims of these bombardments are already beginning to be reported.

No one knows what will now happen in the country, but everyone predicts the worst. President Pastrana ended his speech on Wednesday with the words “...may the archangel Saint Michael protect us”, thus commending the country’s fate to a celestial spirit. The archangel Saint Michael is supposed to be the angel of repentance, justice and mercy. We do not know if it was to these attributes that the President was appealing. Because, in the Bible, the Book of Revelations mentions that this archangel was responsible for leading the guardian angels in the fight against the devil and for freeing those that had fallen under Satan’s power. And the name given by the generals to this operation, “Operation Thanatos”, is also a bad omen. But perhaps they are right, as death is now going to pervade the country, through the miserliness of its ruling classes, the arrogance of the guerrillas and the adventurism of the military forces.

Notes

- 1 The 85 indigenous peoples in the country alone have, in the form of reservations (*resguardos*), around 20 million hectares, or a fifth of the national territory.
- 2 It was at one of these meetings in La María that it was decided to hold a Congress of Indigenous Peoples of Colombia.

VENEZUELA

Since approval of the new constitutional text in 1999, the legal situation of Venezuela's indigenous peoples has improved significantly. Recognition of their existence as peoples, and of their ancestral rights, has forced the different bodies and institutions of the public authorities to respect and consider their presence, through the voice of their representatives and organisations. Proof of this is in the appointment of Noeli Pocaterrea, an indigenous Wayyú deputy, as vice-president of the National Assembly, in a fierce negotiation in which the weight of the three indigenous votes made itself felt in the decision-making process within the Venezuelan parliament.

In spite of a favourable legislative outlook, a number of events took place during the period covered by this report that highlight the need to ensure that the space gained within the state's political structures is not lost. In this respect, in the formal session held in the National Assembly on 5th July 2001 to celebrate the signing of the Act of Independence, the Wayyü representative read the said Act and, wearing a Guajiran *batola*¹ and headscarf, announced: "In other words, the struggle continues."²

Draft Organic Law on Indigenous Peoples and Communities

In December 2001, the draft *Organic Law on Indigenous Peoples and Communities* was presented to the National Assembly for its plenary discussion with the aim of developing the constitutional norms and ILO Convention 169, relating to indigenous peoples, within the context of the Legislative Agenda of the Permanent Commission for Indigenous Peoples. This bill was formulated on the basis of an initial draft and its final result was the product of a number of workshops and consultation processes undertaken with the indigenous peoples and communities during the second half of the year in the states of Amazonas, Anzoátegui, Apure, Bolívar, Delta Amacuro, Monagas, Sucre and Zulia. These workshops and consultations were organised by the National Assembly, with the participation of various indigenist experts and collaborating bodies such as state governments and legislative councils, the Ombudsman, the National Agrarian attorney's office etc.

- : The aim was to find out and include observations on the text and to
- : ensure that it reflected the spirit of the rights of indigenous peoples as
- : enshrined in the Constitution of the Bolivarian Republic of Venezuela.



In the text, aspects such as the land and habitat of indigenous peoples and communities, their culture, language, economy, collective intellectual property, political and civic participation, bilingual intercultural education system, health and traditional medicine and jurisdiction are developed, and the creation of the National Institute for Indigenous Peoples is provided for, to be an autonomous body within the state enabling indigenous people to control and decide their own priorities for economic, social and cultural development.

The Amazonas State Constitution

During 2001, a draft Constitution for the State of Amazonas was submitted for discussion to the State Legislative Council, in which the opinions of neither the indigenous organisations nor representatives of the sector, which form part of the various regional public bodies, were taken into account, ignoring the pluricultural and multi-ethnic nature of the region in its basic regulatory text.

For this reason, in June 2001 in Puerto Ayacucho, representatives of the Regional Organisation of Indigenous Peoples of Amazonas, ORPIA, the Ombudsman, the indigenous deputies Guillermo Arana and Wilson Lara and the indigenous mayors of the municipalities of Manapiare and Autana met to formulate a proposal for inclusion into the said legal text. The proposal dealt primarily with aspects impacting on the existence of indigenous peoples and communities, such as the declaration of Amazonas state as a multi-ethnic and pluricultural political entity whose task it is to guarantee the ethnic and cultural diversity of the indigenous and non-indigenous communities living within its territory, and the use of indigenous languages as official languages within the region alongside Spanish, amongst other things. In spite of this, the previous draft bill was approved by the regional legislative body at its first reading, without including the said proposal. This now puts the attainment of the ancestral rights of the original inhabitants of the Venezuelan Amazon in danger. It is still hoped that the proposal may be included at the second and final reading.

The demarcation process

During 2001, significant progress was made towards achieving the national process of demarcation of the habitat and lands of the indigenous peoples. This was due to approval of the *Law of Demarcation and Guarantee of the Habitat and Lands of Indigenous Peoples* (see Venezuela in *The Indigenous World 2000-2001*). For the first time in Venezuela, this specifies the right of indigenous communities to the collective ownership of their lands.

In this context, on 7 August 2001, the President of the Republic decreed the creation of the National Demarcation Commission, chaired by the Minister for the Environment and Natural Resources, Ana Elisa Osorio Granado, and made up of a total of 16 members appointed in accordance with traditional consultation mechanisms and also including the Ministries of the Environment and Natural

Resources, Education, Culture and Sports, Defence, External Relations, Energy and Mines, Production and Trade, and Interior and Justice.

The aim of this Commission is to promote, supervise, advise, implement and coordinate all aspects of the process of demarcating the habitat and lands of the indigenous peoples and communities. On 17 January 2002, as mandated, it thus approved its Internal Regulations governing the way in which it will operate. These regulations are binding both on the members of the commission and on the members of the Regional and Local Commissions, which will be auxiliary management bodies at these levels.

Despite the fact that the demarcation of indigenous lands has not been achieved within the time period established in the Constitution (which was two years from December 1999), there are strategic alliances, sympathies and spaces within the national public authorities, both state and municipal, that create conditions conducive to encouraging and guaranteeing its continued progress. In the states of Amazonas and Bolívar, the Piaroa and Yekuana ethnic groups are progressing with self-demarcation processes which will be reviewed and considered in line with the law.

Situation of the bilingual intercultural education system

In June 2001, the draft *Law on the Education of Indigenous Peoples and Communities and Use of their Languages* moved forward, via a process of consultation with the indigenous populations of the states, to its ninth version in which it seeks to develop, for the first time, the right to their own education. This is because the Bilingual Intercultural Education System as it has been implemented to date in Venezuela meets the socio-cultural specifics, values and traditions of these peoples, but from a western educational model, which prioritises learning within the spatial boundaries of the school.

In this bill of law, a group's own or traditional education is defined as "the systems of upbringing and socialisation unique to each indigenous people and community, through which the elements that constitute their culture are transmitted and recreated". In this context, during 2001 and early 2002, the Pemón and Yekuana Teaching Guides were published, designed by the teachers as a first step in the reform of the curricular design, coordinated by the Department for Indigenous Affairs (DAI) of the Ministry of Education, Culture and Sports and sponsored by UNICEF.

During this period, an assessment of the educational situation was also undertaken by the Permanent Commission for Indigenous Peoples and Communities, following 22 years of application of the intercultural system, which was showing serious failings, represented by the low level of literacy among the Warao communities, for example, and the crisis within the DAI, the system's implementing body. In this regard, and following analysis, it was agreed: to demand the declaration of an emergency among indigenous peoples, to demand a decree from the national executive to reorganise the DAI, which should take into account all of civil society that is involved in indigenous issues and declare the DAI in a transitional period until the Organic Law of Indigenous Peoples and Communities creates a governing body for this area.

Actions for the respect of collective intellectual property

The organised indigenous communities of Amazonas, represented by ORPIA, raised a voice of protest against the various scientific projects that have been implemented over the last three years, in which these peoples' collective intellectual property rights have not been respected. A number of national and foreign universities have been carrying out their experiments and research without taking the original inhabitants of the territories into consideration and, what is even more serious, have used them as the objects of their study, without their consent.

Because of this, in September 2001, ORPIA presented a proposal to the Autonomous Department for Industrial Property attached to the Ministry for Production and Trade regarding the promotion, respect and protection of ancestral indigenous knowledge in relation to genetic resources, biodiversity, technological innovation and practice. In this proposal, they ask the National Assembly to speed up the process of issuing regulations governing the Law on Biological Diversity and they establish a wide consultation mechanism by which scientific institutions interested in undertaking research in the area can obtain the necessary permission. This consultation mechanism would involve, at the national level, the Ministries of Science and Technology, Education, Culture and Sport, the Ombudsman and the Indian National Council; at state level, various regional indigenous organisations with a recognised legitimate base, environmental reserve authorities and the Regional Councils for Science and Technology and, at local level, the Community General Assemblies which, according to the proposal, represent the most valid authority to issue

this kind of authorisation, permit or other type of request for access to collectively-owned ancestral knowledge and genetic resources.

The importance of this proposal lies in the fact that, even though the law in this matter has not yet had its governing regulations established, it has generated a feeling of respect in different scientific and academic circles with regard to the opinion of the organised communities in terms of the intellectual property of their genetic resources and ancestral knowledge. Over this period of time, a number of consultations for the realisation of various projects were carried out between governmental and non-governmental bodies at national and regional level and the indigenous communities, under the careful watch of ORPIA, as the legitimately recognised grass-roots organisation in the area.

In addition, the Permanent Commission for Indigenous Peoples of the National Assembly invited the North American journalist, Patrick Tierney to speak before Parliament. In his book *Darkness in El Dorado*³ he denounces the research sponsored by the American Atomic Energy Commission that was undertaken with the Yanomami people during the 1960s. He was accompanied by José Seripino and Alfredo Aherowe, representatives of the Yanomami people, who were in the area and declared that they knew the anthropologist Napoleón Chagnon, who was in charge of this research. It was agreed to request the National Assembly to implement concrete actions by which to repair the damage caused. It was also agreed, together with the DAI, to temporarily suspend research permits in the region of Alto Orinoco. Even so, to date the authorities responsible for these accusations have taken no steps in this respect.

Power lines to Brazil

Indigenous opposition to this project did not let up during 2001. In March, renewed clashes occurred between the army and the Pemón communities of Vista Alegre and Kamoiran, due to the establishment of new military posts in the Canaima National Park and the threatening presence of Army officials on territories occupied by the Pemón which, on 20 March, forced these communities to close the road leading to Santa Elena de Uairén. Subsequently, and on attempting to establish a dialogue with the Army on 22 March, they were attacked with tear gas and gunfire, seriously wounding one of the community's inhabitants and illegally detaining its leader, Silviano Castro. This led to urgent action on the part of the Association of Friends in Defence of the Gran Sabana, AMIGRANSA, the Venezuelan Programme of Education-Action in

Human Rights and other human rights, environmental and indigenous organisations with the aim of raising the awareness of all sectors of civil society in order to prevent the outrages against the original inhabitants of the Gran Sabana and to stop the deterioration of this Natural World Heritage Site.

In spite of the fierce opposition of the indigenous communities of Bolívar state to the transmission system to the south-east and despite the fact that, in February, a report of the Sub-commission of Parks of the National Assembly highlighted this project as being unconstitutional and illegal, representing economic losses for the nation and, in addition, an outrage against the indigenous communities, it was finally inaugurated. Even though the current President of the Republic, Hugo Chávez, supported the “No to the electric power line” in his electoral campaign, paradoxically, at this historic moment when the indigenous movement has gained representation in a number of public authority bodies and has had its ancestral rights recognised in the constitutional sphere, the protests of environmental groups and indigenous organisations were ignored and, finally, on 13 August 2001, the transformers began to supply energy to the north of Brazil.

Given the public resistance this has caused, the Minister for the Environment, Ana Elisa Osorio, ordered a socio-cultural impact study to be undertaken by the Central University of Venezuela. At the time of writing, this had not yet been published. It should be noted that it was undertaken without suspending the line’s inauguration, and without taking the affected communities into account.

In this regard, the indigenous deputy for the ethnic groups of Bolívar, Delta Amacuro and Monagas states and President of the Indigenous Federation of Bolívar, José Luis González, who first led the opposition to the power line and then accepted an agreement with the government to paralyse action against the project in exchange for certain government commitments to those affected, clarified:

President Hugo Chávez gave us participation in the National Constituent Assembly and approved the indigenous chapter of the Carta Magna. But it must not be interpreted that, in exchange, we let the power line go through. This is not the case. Regardless of what has been approved or of the fact that his discourse prioritises indigenous peoples, we have to see if the demands turn into reality. We are very patient. Once more we are giving way, but we will also use this argument when the time arrives.⁴

This agreement (see *The Indigenous World 2000-2001*) was seen as a rupture in the indigenous movement although, for González, it was no more than an opportunity to evaluate the organisation's situation and agree a temporary halt, without implying that the struggle was abandoned. What is clear is that the inauguration of the electric power line demonstrates a divide between political discourse, which prioritises the existence of indigenous peoples and communities, and the powerful national and international economic interests that finally pushed this mega-project through.

Land invasions in Amazonas state

Finally, after three years, the relocation of 200 people of the Diñaku Association has at last been achieved. In 1997, they invaded a sector of the protected zone of the Cataniapo river, territory of the indigenous Manuare and Carinagua communities, causing serious environmental damage and directly and indirectly affecting the mentioned communities and the whole population of the town of Puerto Ayacucho, the Cataniapo river being the main source of drinking water in the area. A calculation of the compensation to be paid by those responsible for this crime is currently being made, on the basis of the ecological damage incurred.

Another case is that of the Yabarana ethnic group, comprising scarcely 300 members and which, through the Yabarana of the Alto Parucito Organisation (OIYAPAM), demanded the eviction of a Spanish landowner who had been living on their territory for more than 20 years. After a long drawn-out process, the agrarian authorities passed judgement stating that this person had to leave the territory. Given that this "invader", who was given two years to leave the Manapiare municipality, has not yet done so, OIYAPAM and representatives of other ethnic groups approached the president of the National Agrarian Institute to complain about the institute's decision, taken with no consultation and at the request of the landowner, to grant him two dry seasons for the profitable sale of his cattle, a period that could cover more than 24 months, representing a betrayal of the right of the original inhabitants of these territories. At the time of writing, no decision had been taken regarding a reversal of this decision.

Yanomami Conference

For the first time, in November 2001, a general conference of the Yanomami sector was organised. This was known as the Shakita Conference as it was held in that sector of the Alto Orinoco. It arose out of a need for concrete action around the controversy caused by the publication of the book *Darkness in El Dorado* by Patrick Tierney and was organised by the Yanomami Commission and the vice-presidency of the Republic.

This meeting enabled around 700 Yanomami members, including the intermediary *shabonos*,⁵ to meet and express their opinions on such important aspects as health, political participation, environment and education. Binding agreements were signed with the government authorities and non-governmental organisations attending, and whose activities have a bearing on the existence of this people, on points such as the creation of a Yanomami municipality, the granting of permits for research projects, land demarcation, access to bilingual intercultural education, the training of Yanomami teachers and implementation of the Health Plan for the Yanomami People, which forms part of the compensation agreed by the national government with the Inter-American Commission on Human Rights by virtue of the Haximú massacre in 1993.

The need to continue to investigate the Tierney accusations concerning genetic experiments on members of the Yanomami was also agreed, for which reason the text will be translated from English into Spanish. The North American journalist's invitation to speak to the National Assembly was also noted along with the temporary suspension of research permits in the region of Alto Orinoco on the part of the DAI.

Situation of displacement and violation of rights

The serious situation of the Warao, living in the states of Delta Amacuro and Monagas, has caused a huge displacement of these people towards the urban areas as a consequence of a policy of indiscriminate extraction of their natural resources and the implementation of a development model that has infringed upon their way of life, causing them to suffer dangerous health and education conditions, and impacting on their quality of life. The leaders of one community have denounced the fact that many of their brothers have died through lack of medical assistance because, through lack

of staff, there have been no medical consultations for more than three years. Illnesses causing the most deaths include tuberculosis, diarrhoea, sickness, dengue and malaria. The Permanent Commission of Indigenous Peoples and Communities drew up a report on the situation of indigenous peoples, in which it requested that the Warao people should be declared in a state of emergency. However, to date there has been no significant progress.

Another clear case of displacement is that of the Yukpa and Bari peoples of the Sierra de Perija (Zulia state) who, due to the detention of some of their members by the Colombian paramilitary during January and February 2001, have begun to move away from the border, given the lack of a security policy in these areas that takes the existence of these peoples into account. In addition, they have been hounded by the landowners and cattle ranchers of the area, who have been taking the best lands for their farms, leaving them cornered up against the foothills of the Sierra, where they suffer from a lack of water due to a drying up of the sources.

But the most serious case took place in the state of Apure during the month of July, when a Pumé family of four people was massacred by cattle owners in the area, with the aim of taking their land from them. The murderers are on trial, having openly confessed to the crime.

It is clear that, given the above, the outlook for the indigenous peoples of Venezuela seems contradictory and confusing. Peoples are now recognised as such in the legal sphere, with specific rights that should guarantee their subsistence and quality of life, and representation in the different public authority bodies but, in practice, they have suffered and continue to suffer from an absence of measures and actions that would make the constitutional and legal principles they have been recognised concrete, a situation that is reflected in the outrages they continue to suffer and in the lack of awareness on the part of the rest of the population of the respect that should be given to their ancestral ways of life.

Notes and references

- 1 A loose dress, usually white, worn by Guajira women. (trans. note)
- 2 *El Nacional*, 6 July 2001.
- 3 **Tierney, Patrick.** 2000. *Darkness in El Dorado*. New York: W. W. Norton & Company.
- 4 *El Nacional*, 19 August 2001.
- 5 Communal huts. (trans. note)

PERU

The first half of 2001 was characterised by the impeccable transitional government of Valentín Paniagua Corazao, a Cusco politician from the Popular Action party. After 10 years of Alberto Fujimori's government (see *The Indigenous World 2000-2001*), his subsequent flight from the country and the imprisonment of his all-powerful advisor, Vladimiro Montesinos, the Paniagua government was remarkable for re-establishing the institutions fundamental to a democratic state of law and opening up new channels for popular participation and agreement.

In the presidential elections of June 2001, Alejandro Toledo Manrique, won at the second round. Toledo is indigenous, from the Andean village of Cabana in the department of Ancash. Apart from being an anthropologist and very knowledgeable about Andean culture, his wife, Eliane Karp, who is half-Belgian/half-French, also speaks Quechua and has shown a strong personal vocation to work on indigenous and cultural issues.

The beginnings of a fruitful dialogue between the state and indigenous peoples

In early February, a representative delegation of the indigenous peoples of the central forest, organised by the Regional Association of Indigenous Peoples, ARPI, explained the serious situation of vulnerability being suffered by the Amazonian indigenous peoples to President Valentín Paniagua and made a number of requests.

On the basis of this initiative, the Special Multisectoral Commission for Native Communities and the Committee for Dialogue and Cooperation for Native Communities were created. The regional indigenous organisations affiliated to the Inter-ethnic Association for Development of the Peruvian Forest, AIDSESP, decided to form the National Indigenous Commission of the Amazon (CINA) in order to facilitate the dialogue process.

The process implemented on the basis of this experience has been extremely valuable, unprecedented even, in that it has enabled productive joint work to be undertaken between the state, NGOs and indigenous organisations. Its most significant result has been the Action Plan for priority issues, the first public policy document for the indigenous peoples that we know of in Peru. One



of the real achievements of the work was the official creation of the El Sira Communal Reserve, an important forested area of 616,413 has situated in the departments of Huánuco, Pasco and Ucayali, and renowned for housing a great biological wealth and diversity. This reserve will contribute to the survival and development of the Asháninka, Yanesha, Ashéninka and Shipibo peoples, to name but a few.

In the provisions creating the Reserve, the state recognises and protects the traditional access right that the Amazonian indigenous communities have always had in this area for their subsistence activities and its promulgation is “to ensure their development in harmony with their social and cultural values”. In addition to the Sira

Reserve, another secondary achievement has been the promulgation of the regulations governing the Law of Protected Natural Areas, which includes a special system for communal reserves.

On 24 July, the Special Multisectoral Commission for Native Communities publicly presented the Action Plan for the Priority Issues of Native Communities. This plan contains specific actions benefiting indigenous peoples, and which were agreed jointly between the state and civil society through the Committee for Dialogue and Cooperation for Native Communities. The Action Plan contains government actions aimed at fulfilling eight broad priority objectives defined in the decree creating it:

1. To guarantee property rights to land and the legal security of the native communities of the Amazon.
2. To extend bilingual intercultural education to all native communities and at all levels: primary, secondary and higher.
3. To build an intercultural health system and extend public health coverage in the native communities.
4. To build conditions of peace and security for the native communities of the central forest.
5. To guarantee indigenous participation in the management of, and benefits from, protected natural areas.
6. To guarantee the access, use and participation in benefits of native communities in the sustainable exploitation of the natural resources of their environment and the prevention of negative environmental and social damage.
7. To protect the indigenous peoples in voluntary isolation.
8. To respect and protect the collective knowledge of indigenous peoples.

In order to ensure continuity in the dialogue and, given the lack of time in which to complete the Action Plan for long-term (and non-priority) issues, President Valentín Paniagua issued Supreme Decree 072-2001-PCM by means of which the Permanent Committee for Dialogue was created in order to consider the problems of the Indigenous Communities of the Peruvian Amazon. However, as of April 2002, after 9 months of Alejandro Toledo's government, this committee has yet to sit.

Peruvian government “Of all Bloods” possible?

On 28 July, Alejandro Toledo took power, with the slogan: for a government “Of all Bloods”, an allusion to an emblematic work by the

indigenous author, José María Arguedas.¹ On 29 July, Toledo made known the Machu Picchu Declaration on Democracy, the Rights of Indigenous Peoples and the Fight against Poverty, signed by the heads of state of the Andean countries (Bolivia, Ecuador, Colombia, Peru and Venezuela) during the symbolic acceptance of presidential office held in the Machu Picchu citadel.

The said declaration establishes a commitment to promote and protect the fundamental rights and freedoms of the indigenous peoples favouring, in this respect, the formulation and approval of the OAS American Declaration on the Rights of Indigenous Peoples, along with the creation of a Working Group on the Rights of Indigenous Peoples within the context of the Andean Community of Nations.

For its part, in August, the Indigenous Commission of the Amazon, presided over by the Asháninka leader, Guillermo Ñaco Rosas, organised an international consultation and submitted to the government an Institutional Model for the Indigenous Peoples of Peru, which had been debated and developed in a Workshop with the leaders from various regions of AIDSESP.

However, they had to wait until December for a government reaction. On 6 December, the National Commission for Andean and Amazonian Peoples (CONAPAA) was established, presided over by Eliane Karp de Toledo. This body, created by Supreme Decree 111-2001-PCM, presents serious weaknesses in its design and shows that the government has either not taken on board, or has rejected, the institutional set-up suggested by the indigenous sector and has opted for discretionary and personal management of the issues by Eliane Karp. CONAPAA, made up of 17 and then 21 honorary members, is aimed not only at “promoting, coordinating, leading, implementing” but also at “supervising and evaluating policies, programmes and projects” of concern to indigenous peoples. This concentration of consultative and implementational functions is excessive and hinders the development of a solid and effective institution, capable of designing and applying medium and long-term multi-sectoral policies.

Toledo described the creation of this working group as an historic act and added that the programmes proposed would be developed in accord with the Andean and Amazonian communities. However, as of mid-April 2002, CONAPAA had still not formally held a second working session of all its members and nor had the Committee for Permanent Dialogue, decreed by the previous government, been established.

Other indigenous progress in coordination

In October, the Native Federation of Madre de Dios (FENAMAD) drew up a management model agreed between the small logging companies of Tahuamanu and Tambopata and the state, on the basis of strategic agreements for the sustainable development of the department of Madre de Dios. Included among these are the establishment and demarcation of forests for permanent production on behalf of the small forest extractors, and the implementation of a supervisory system shared between the National Institute for Natural Resources (INRENA), the National Police, the associations of small forestry companies and the population of the area. It was also agreed to speed up the Verification Study for territorial demarcation presented by FENAMAD on behalf of the indigenous peoples in voluntary isolation in the department.

From 30 October to 1 November, in the north of the Amazon, representatives of the Shuar, Awajun and Wampi peoples of Peru and Ecuador held their Third Binational Meeting in the community of Chapiza, Peru. During this event, decisions on sustainable economic development and trade integration were adopted, along with decisions on bilingual education and intercultural health, and the Permanent Binational Technical Council was formed.

They also agreed to request identity cards or safe-conduct cards to enable free movement over the border so that members of the Awajun, Shuar and Wampi peoples could visit their families without difficulty and to promote indigenous participation in all binational development projects being implemented on their behalf and on their territories.

Another important area of progress worth mentioning is that of indigenous women's participation. For the first time, in 2001, AIDSESEP established an Indigenous Women's Desk. Albeit with insufficient funds, workshops were held in five of the six regional offices, evaluating and training from a gender perspective. The response and interest from indigenous women has been huge and demanding and they have requested that the work that has been initiated should soon be followed-up. In addition to the workshops, the Women's Secretary participated in various national and international events representing Amazonian indigenous women.

Mining contamination leaves the country's communities in an emergency

We get up at 4 in the morning to graze our animals and the smoke from the Doe Run chimneys is everywhere. It chokes you, it stings

your throat. I have come to complain because our rams are dying, soon we will be left with no animals. Our cuycitos² are also dying.

Before, when they were ill we took them to the vet for treatment and they recovered and got fatter, now no. Since the Doe Run company has been churning out its arsenic and lead-filled smoke, they are worse. Three years ago I had 30 cows, now I only have one. How will I send my children to school? What will we live on? We live on meat, on wool that we sell. Now our animals' hair is falling out, their meat is contaminated with metals...they are dying there where we graze them.

This is the lament of Antonia Segura López, a community member from Huari, and one of the few farmers who managed to show his animals at the Second Exhibition of animals affected by Metal Ore Mining contamination held on Sunday 11 November in the town of Yauli-La Oroya.

Similarly, on 23 and 24 November, in Pasco, the Second International Summit of Communities and Populations of Peru affected by Mining took place, at which more than 600 delegates requested that the government declare a national state of environmental emergency because mining activity was seriously endangering human health through contamination of pastures, rivers, lakes and lagoons, damage to animals, crops and, in addition, a consequent move from the lands, impoverishing the communities living around the mining deposits.

The Summit was organised by the National Coordinating Body of Communities Affected by Mining (CONACAMI) with the participation of delegates from ECUARUNARI (Ecuador) and CONAMAQ (Bolivia). The event, named "Godofredo García Baca and martyrs in the struggle against environmental contamination" had the slogan of "Clean Air, Land and Water" and the Pasco Declaration was signed during this summit.

Hydrocarbons and indigenous territories: the government's Achilles' heel

In addition, in the north-eastern region of the country, the Otorongo Centre for Holistic Ecology denounced the fact that more than 220,000 inhabitants, including populations from the towns of Tarapoto and Lamas and 27 titled indigenous communities, would be affected by the oil exploration due to be carried out on plot 87 by Perupetro and the Advantage Resources, Selva LLC (Burlington) company, the concession to which has been granted without consultation of the affected populations.

Plot 87 comprises an area of 753,412 has., of which 70% is primary Amazonian forest. It falls within the provinces of San Martín, Lamas, Picota and Moyobamba, in the department of San Martín, and the provinces of Alto Amazonas and Ucayali, in the department of Loreto. The plot's area includes three linguistic families: the Quechua family of the Chachapoyas-Lamas group; the Cahuapana family of the Chayahuita ethnic group and the Jíbaro family of the Aguaruna ethnic group, with a total of 27 titled indigenous communities.

For its part, AIDSESEP decided in December to suspend its participation in the national tripartite dialogue on hydrocarbons until the government of Alejandro Toledo and the Commission for Andean and Amazonian Peoples could guarantee equity, transparency and respect for the indigenous organisations.

In spite of AIDSESEP's attitude, on 8 February of this year, the Ministry for Energy and Mines (MEM) distributed Draft Consultative Regulations governing Hydrocarbon Activity on the Lands of Peasant Communities, Native Communities and Indigenous Populations for public consultation. This draft severely mutilates the indigenous proposal for regulating hydrocarbon activities on indigenous territories. The text is accompanied by an Explanatory Report in which "legal and practical" arguments are put forward by the National Mining and Oil Company and Perupetro, which have led to the MEM's decision to eliminate the term "indigenous peoples", among other cuts to the original proposal.

In spite of the fact that AIDSESEP, the Ombudsman and the Technical Office for Indigenous Affairs (SETAI) fully supported the principles set out in AIDSESEP's draft, the DGH (Dirección General de Hidrocarburos) maintained its position in favour of the companies and to the detriment of indigenous rights. The Explanatory Report also provided information as to why all sections relating to compensation, indemnity and economic benefits (to be found in AIDSESEP's initial proposal) had been removed from the Regulations.

Violence and death in Los Naranjos, Cajamarca

The year 2002 began tragically. Early in the morning of Thursday 17 January, a clash between settlers and indigenous Aguaruna from the Naranjos Native Community, in the province of San Ignacio, department of Cajamarca, left 15 settlers dead. The national press highlighted the bloody event in the crime sections but did not go into the events that led to this tragedy nor did they note the public responsibility in this.

The Ombudsman and committees from the Congress of the Republic and government later confirmed that the settlers were living illegally on the indigenous community's titled lands and that the judicial and police authorities had given up trying to remove them after various attempts had been frustrated.

For its part, the Ministry of Agriculture recently decided to declare an old claim of the Naranjos Community legitimate and to cancel the Sub-regional Resolution that granted, in 1997, on behalf of the President of the Republic, one hundred and sixteen property titles on their titled lands.

Important revelations regarding the Camisea Project

On 22 February, the environmental specialist, Patricia Caffrey (USA), presented the preliminary observations of the technical team that has undertaken an Independent Review of the Environmental Impact Studies on the Camisea Gas Project in the Urubamba Valley and Vilcabamba mountain range.

It highlighted, firstly, that the said project did not comply with World Bank standards and international practice, as these prohibit the degradation and conversion of primary tropical forest and critical habitats and do not permit adverse effects upon indigenous peoples and communities, including very vulnerable groups in voluntary isolation.

The rights of the indigenous communities were not being respected due to an insufficient consultation period and process, there was an unfair "negotiation" process, inadequate compensation proposals and it was very likely that the communities would end up in an even worse state due to the Project.

Caffrey recommended that changes be made to the management plans in order to strengthen the measures mitigating direct impacts such as contamination and erosion. The fertile layer of the moist tropical forest of Urubamba is very thin and, once extracted, it would be difficult to reforest, even worse if the rain were to wash away the fertile top soil. She also suggested adopting measures for induced impacts, such as control of access and the accumulative impacts of the project.

Progress and counter progress in the affirmation of indigenous rights

In March of this year, Eliane Karp de Toledo, President of the National Commission for Andean and Amazonian Peoples, presented a pro-

posal for constitutional reform to the Congress of the Republic in order to incorporate a range of indigenous rights.

The proposal, drawn up during a meeting on indigenous rights with the support of indigenous specialists and organisations, proposes recognition of collective rights such as ownership of territories, control over natural resources, promotion of economic development, justice administration, etc.

However, Congress unfortunately failed to incorporate these issues into the official version of the draft Constitutional Reform, and this has caused understandable uncertainty and unease within the National Commission, which hopes the error will be rectified.

But one factor in particular that continues to cause unease is the disregard for indigenous peoples in situations of initial contact or in voluntary isolation, who are ridden roughshod over by unscrupulous agents, either illegal loggers or companies with concessions from Camisea Gas and other new plots that will be put up for public auction in May this year on their territories.

One example of the sacrifices these people in extreme situations of vulnerability are forced to make is the case of the Santa Rosa de Serjali community, belonging to the Yora (Nahua) people who are in a situation of initial contact. After ten months of determined struggle, and with the continued support of the Shinai Serjali Group and AIDSESP, they managed to get INRENA to return to them part of the recovered timber that had been extracted illegally by loggers from Sepahua in the State Reserve, on behalf of nomadic Nahua Kugapakori groups, located in the forests of Urubamba, Cuzco.

Due to the desperate situation in which they found themselves as a result of the depredation of their resources, the shortage of animals and the disruption to their way of life caused by the loggers, the cacique José Dishpopidiwa Waxe and Mario Huidiba, President of the Community, made dangerous and gruelling journeys to Puerto Maldonado (Madre de Dios) and Lima, to call upon the support of FENAMAD and to explain their problems to the appropriate authorities. During one of these visits to Lima, the interpreter, an indigenous Yaminahua, died. He was the community's only contact with the outside world as he spoke the Yora's language as well as Spanish.

Given their scant contact with the national community, the Yora (Nahua) people do not have the cultural resources with which to defend their rights as they only speak their own language and are almost completely unaware of the national organisations and legal framework. In the long, complex and sometimes disheartening process of recovering their illegally extracted wood, they were able to

prove the niggardliness and virtually complicit neglect of INRENA staff in the illegal trafficking of timber.

The Yora are now faced with pressure from Plus Petrol, Hunt Oil and others who, under the auspices of the current government and with the backing of large financial and hydrocarbon institutions, are hoping to get their claws into new plots adjacent to Camisea. It would seem that these powerful interests, which act to satisfy their own energy market needs, do not care that the extraction of non-renewable resources lying under indigenous territories may mean the destruction of the tropical forests and the misfortune and death of peoples who have lived there since time immemorial and who, without them, cannot survive.

Notes and references

- 1 **Arguedas, José María. 1964.** *Todas las Sangres*. Buenos Aires: Editorial Losada, S.A.
- 2 *Cuy, cuyto*: guinea pigs. (editor's note)

BOLIVIA

The great weaknesses being exhibited by the Bolivian state and the lack of application of the most basic rights for peasant farmers and indigenous peoples with regard to land and natural resources have been the focus of tension for several years now. Aware that this weakness is caused by deep structural difficulties that cannot be resolved through momentary agreements or fleeting regulations, the representative indigenous organisations began some time ago to demand reforms of a structural nature.

Peasant mobilisations

In addition to demanding changes to agrarian legislation in terms of :
restricting the land markets, guaranteeing the exclusive provision of :
state-declared lands to peasant farmers and indigenous peoples and :

making the procedure for regularisation of land titles (*saneamiento agrario*) more transparent and speedy, the peasant farmer march "For life and sovereignty", which began on 9 April 2001 in Cochabamba, heading for La Paz, requested the return to the national domain of strategic sectors of the economy (hydrocarbons, telecommunications, energy, transport) alienated during the privatisation process (*capitalización*) that started in the latter part of the 1980s. Given the need to embark upon structural transformations of the state and Bolivian society, which is affected by a generalised crisis, it proposed the organisation of a Popular Constituent Assembly to agree amendments to the political constitution of the state.

The April march was primarily organised by the Coordinating Body for the Defence of Water, which groups together the sectors involved directly in the defence of water resources and which took shape in April 2000 in the context of the "water war" (see *The Indigenous World 2000-2001*), and the peasant coca producers from the tropical lowlands of Cochabamba. It had been hoped that the march would be strengthened through the involvement of urban and rural sectors but this was not to be. The army interceded 12 times in the march which, amidst a complete press silence, managed to arrive in La Paz on 23 April where it found itself isolated, its demands not even considered by the government authorities who left them to be handled by working committees that stretched on over time providing no positive results.

The following July the peasant farmer sector, which comprises mainly Aymara from the altiplano, blockaded the roads in La Paz, achieving great national impact. Unlike the previous demonstration, their demands were limited to requesting fulfilment of the commitments made by the government to this sector, in particular the concession of 10,000 tractors for small agricultural and livestock producers and the granting of credit to an amount of 8 million dollars. This new demonstration also fell victim to military repression and political isolation and achieved no concrete results.

Both events ratified the capacity for mobilisation that the coca farmers of the tropical lowlands of the department of Cochabamba and the indigenous Aymara of the department of La Paz have. But, in contrast to this capacity, the events also demonstrated a lack of coordination on the part of the social sectors and a scant willingness on the part of the state to deal with social demands.



The fight against poverty versus indigenous and peasant farmer demands

Internationally, the Bolivian government was publicising its poverty reduction strategy, the product of a supposed process of national agreement known as “social dialogue”, which was undertaken with representatives of the Municipal Councils and Watchdog Committees.

The strategy emerging from this “dialogue” was focused on strengthening municipal government budgets, particularly the poorest of the country’s municipalities, with funding equivalent to the sum of the external debt cancelled by some countries and multilateral organisa-

tions. This was to be invested in social programmes over a 15-year period. The funding (1,600 million dollars, equivalent to 40% of the total amount allocated to municipalities by the National Treasury), although significant, is still insufficient to reverse the situation of poverty in a country which is second only to Honduras in terms of poverty in Latin America. According to the UN index of Unsatisfied Basic Needs, 59% of Bolivia's population live in poverty and 24% in extreme poverty. In rural areas, where more than 50% of the total population of the country (mainly indigenous and native peoples) still live, the poverty rate exceeds 90% and extreme poverty 60%.

The struggle for land and territory in the lowlands and highlands

In this context, the indigenous issue remained relegated to the second level and did not form an effective part of the official agenda. However, from the second half of 2001 on, the struggle for land and territory was concentrated in the lowlands. Tension and conflict has grown because, in addition to being time-wasting, bureaucratic and complex, the process of regularisation of land titles - through the regularisation process entrusted by law to the National Institute for Agrarian Reform (INRA) - suffers from innumerable irregularities in its application, leading to scant results in terms of indigenous and peasant access to land and territory.

The slowness of land regularisation is demonstrated by the fact that, of the 103 million hectares of rural lands that were to be regularised over a ten-year period commencing 18 October 1996 (the date of promulgation of the Agrarian Law), over five years on, only 10 million hectares have been dealt with, of which the titling of land and territory to indigenous groups and peasant farmers has been minimal.

The indigenous peoples of the lowlands have demanded the titling of 52 territories covering a total area of 24.4 million hectares but, as of April 2002, only 2.05 million hectares have been consolidated, in other words, less than 10% of that claimed. The indigenous peoples of the highlands, for their part, have presented 39 territorial demands for an area of 9 million hectares, of which they have only managed to obtain title to 12,000 hectares, corresponding to the Sicoya *ayllu* (community) located in the department of Potosí.

Although the indigenous peoples of the highlands became involved in the agrarian process later than those of the lowlands, given that their most longstanding demand (Nor Lípez in the department de Potosí) dates from 1998, there are no great conflicts involved in their titling as there are few people living within the areas of their



Information workshop on land regularisation in a Sirionó community. Photo: CIDDEBENI

territorial demands and these are limited to native settlers themselves who have opted for individual titles. Moreover, there is abundant information on the *ayllus* of the west and their location and so there is no justification for further technical studies. The greatest problems refer more to border conflicts with the jurisdiction of municipal sections since the logic of spatial occupation of indigenous peoples differs from the country's politico-administrative division.

All in all, the handling of these demands could be far easier and less costly as it is sufficient to specify the geographic location of the territorial demand and then proceed to demarcate and title it, without entering into the complicated procedure being applied in the lowlands.

One thing that cannot be resolved through the regularisation and titling procedure is the quality of lands of the highland indigenous people for, in the majority of cases, they are highly eroded and unproductive lands. According to the technical studies undertaken by the Agrarian Department, more than 80% of all degraded lands in the country (22.8 million has.) are to be found in the highlands, a large part of them precisely in the areas demanded as indigenous territories by the native peoples of the west, which thus means that minimal areas will be available for agricultural and livestock farming. These levels of degradation have been caused by mining activity, predominant in the region over the last two decades, and by the excessive

division of indigenous property that took place during the Agrarian Reform, which has led to an over-use and saturation of the land.

The agrarian process in Bolivia on the verge of exhaustion

The current agrarian process in Bolivia is losing legitimacy and is on the verge of exhaustion. What originally represented great national hope and deep international commitment seems to have deflated in the face of the state's actions in recognising the territorial rights of indigenous peoples.

Proof of this lies in the fact that the eight indigenous territories (2.8 million hectares) which, by virtue of commitments made following the "March for Territory and Dignity" of the indigenous peoples of the department of Beni (country's southern Amazon region), were recognised by supreme decree between 1990 and 1992 still have hundreds of cattle farmers, loggers, miners and oil companies controlling the lands and the natural resources existing within them. The government decrees of that time were no more than demagogic declarations, and the indigenous territorial rights only provisional and incipient. The situation of other indigenous territorial claims is no different. Power groups are not prepared to "grant" recognition of territorial rights to the indigenous peoples, whilst the state, whose strategic bodies are controlled by these same groups, is not prepared to stand up to them, not even from the logic of liquidating the large unproductive estates (*latifundios*) and encouraging the modernisation of agriculture in line with the demands of the current free market model, and so far less in order to defend indigenous rights.

The movement of the landless

The current failure of the new agrarian process has resulted in the emergence of the landless movement, made up of peasant farmers, indigenous people and migrants who, displaced from the productive apparatus, lack lands and opportunities with which to survive in conditions of human dignity.

The state authorities say it is inexplicable how any landless people can exist in Bolivia, a country covering 109 million hectares and with a population of only 8 million inhabitants. By this reckoning, every Bolivian should own, on average, 13 hectares. However, there are peasant farmers and indigenous people who have not even the most minimal piece of land because, and the state knows this, the land is

excessively concentrated. The medium and large-sized businessmen hog 8 times more land than the indigenous and peasant farmer communities, despite representing only 1% of the total number of agricultural and livestock units. But the medium and large-sized owners not only hold a concentration of land. They have also hogged agricultural and livestock credit and its subsequent writing-off, subsidies and all other advantages, without generating productivity, employment, development or well-being. On the contrary, a good part of them have devoted themselves to encouraging capital speculation, trafficking in lands and indigenous exploitation through debt bondage.

The transformation of this concentrated structure of land and exploitative system of debt bondage is an implicit objective of the agrarian process, which should penalise illegality, return abandoned lands and enable access to the land on the part of those who have little or none. But none of this has been achieved. It is part of the strategy of the power groups to prevent access to land on the part of peasant farmers and indigenous peoples and so not only do they resort to the legal means provided by the procedure itself to delay and bureaucratise the process, and to the Courts of Justice (which represent them and decide in their favour) but they also carry out acts of violence against the indigenous peoples and the organisations supporting them.

Violence as a means of preventing the titling of indigenous lands

Given the meagre progress being made in the regularisation of indigenous lands, violence began to be witnessed in August 2001 when the indigenous people of the Chiquitano territory in Monte Verde publicly complained of the onslaught of illegal persons onto their territory who, in less than 15 days, had cleared more than 400 hectares of forest. The communities re-established the control posts that had previously been set up in 1998 to prevent invasions, and the Forestry Department (*Superintendencia*) began inspections to punish those responsible for the illegal clearing. The Department's commission was intercepted by the supposed owners and threatened at gunpoint to withdraw from the area. The community members at the control posts were also threatened. The aggression reached its peak on 15 September in the municipality of San Javier, department of Santa Cruz, when a group of cattle ranchers and armed persons kidnapped and brutally assaulted a lawyer from the Centre for Legal Studies and Social Research (CEJIS), legal advisor to the Coordinating Body of Ethnic Peo-

ples of Santa Cruz and, in this capacity, responsible for legal support of the demand for titling of the indigenous Chiquitano territory in Monte Verde.

The reason behind such aggression lies in the strong defence the indigenous communities have mounted in order to avoid a number of frauds noted during individual titling procedures from being consolidated. These procedures were based on a Constitutional Court decision that deliberately tried to deny INRA's competence to declare the fraudulent documents invalid.

In the case of land conflicts in the eastern part of the country, the new government (which had already unleashed significant repressive actions against the coca farmers in the Cochabamba lowlands) chose to satisfy the demands of the agricultural and livestock professional associations.

On 27 September, the government signed an Agreement with the Agricultural and Livestock Chamber of the East and the Santa Cruz Pro-Civic Committee, in which it gave the government's word that it would grant full legal security to the "businessmen's" properties which, being found within protected areas, must have been illegally granted in settler areas or during the de facto regime of General Luis García Meza (now imprisoned in a maximum security prison for crimes including drugs trafficking, crimes against humanity and land trafficking). It was during his regime that the worst cases of corruption in terms of the distribution of agrarian property in the east of Bolivia occurred. At the same time, it promised the use of public force against the peasant farmers occupying areas of reserve land and against any intervention on the part of institutions supporting the indigenous and peasant groups.

Some days later, the government signed a Pre-Agreement Act with the *barraqueros* (rubber and Brazil nut producers) of the north Amazon, with a view to consolidating the structure of the region's large estates in favour of 300 members of the Association of Rubber and Almond Producers (ASPROGOAL) and to the detriment of the 70,000 indigenous and peasant farmers of the region.

It was then that, under the auspices of the Civic Committees (which offered to defend the department's lands from the landless peasants by force), the violence extended to other areas of the lowlands. There was a deployment of paramilitary groups organised by the cattle farming sectors and large landowners and they began to attack peasant lands in the Ichilo province, supposedly located in an area of forest reserve. In reality, the peasant farmers are settled outside of the Reserve area, their titled land having been taken over by a private owner.

Moreover, the reserve is controlled by four landowners (including the then Minister of Justice), six timber companies and three oil companies. The attacks then continued in Canandoa, a settlement located 35 kms. from Santa Cruz, where thirty armed persons attacked peasant farmers, set fire to their houses, burnt one child and evicted them from the area with the aim of leaving the place clear for a soya business to move in.

The most serious act, however, took place in the early hours of 9 November, on the estate known as Pananty, located in the Gran Chaco Province, Tarija department, 6 kms. from Yacuiba. That day, the country awoke to the grave news that 40 hired assassins had massacred peasants from the Landless Movement. Six died riddled with bullets, and another 23 were wounded, some of them seriously. One of them died two days later in the Yacuiba Hospital. It was the “Pananty massacre” that finally brought people back to reality, revealing the Bolivian agrarian process for the fiction it was.

The acts of violence then extended to the country’s southern Amazon. On 29 November, the main indigenous leaders of the Baures people were kidnapped by locals working for the cattle farmers, forcing them to sign away half of their territorial demand. As it could do nothing else, a day later INRA issued a resolution by means of which it withdrew the area signed over under duress from the indigenous claim.

Change of government and the fight against drug trafficking as a smoke screen

During the second half of 2001, there was a change of government. President Hugo Banzer was suffering from an incurable illness and so he was substituted by vice-president Jorge Quiroga who, at the same time, changed more than half of the ministerial cabinet. It was hoped that the new leaders of the state apparatus would renew efforts to agree integrated solutions with the social sectors in the face of the deep economic and social crisis affecting the country. But frustrations were great when people realised that the new government had instead chosen to apply a repressive policy by which to avert social demands, the prime victims of this being the peasant coca producers of the Cochabamba lowlands.

The so-called “Dignity Plan”, supposedly aimed at controlling drugs trafficking, has as its main aim that of eradicating coca crops. Initially, the talk was of eradicating only crops that were surplus to national traditional consumption but this was then substituted for a “zero coca” strategy, in other words, the total eradication of the coca existing in the Yungas (lowlands) of the department of La Paz. An-

other component of the Dignity Plan refers to so-called “alternative development”, consisting of an incentive to substitute coca with other crops, such as citrus fruits, chinchilla, skins and others.

The state resources devoted to this purpose (80 million dollars) were completely insufficient for the 40,000 peasant families that live in the region, the vast majority of them migrants from mining regions who, due to the tin crisis in the mid-1980s, opted for new survival strategies. The coca producers’ organisations, for their part, argued that, firstly, such resources would not actually reach them and, secondly, that the difference in exchange values on the market would lead to a lack of economic viability for crop substitution, at equivalent demand and productivity levels, and this would lead to the failure in one way or another of the government’s strategy.

But the main component of the Dignity Plan has been the repressive apparatus, with significant amounts of money destined for the army and the creation and strengthening of military barracks in the area. This has led the coca producers to mobilise. Alongside this, irregular paramilitary forces have been activated, as proved and denounced by the Ombudsman in December 2001. The explanations of the military authorities were surprising to say the least: in situations where the army cannot cope, they have to resort to “reservists”. And it was even more surprising to argue this need given that, in the last two months of 2001, 14,000 troops were dispatched to the coca-producing area of the Cochabamba lowlands (to the town of Chapare), equivalent to 75% of the country’s whole military force. What is perhaps not so surprising in this scenario is the balance sheet of military operations, with more than 10 peasant farmers dead, and many more wounded and tortured. Over the past few years, 57 coca-producing farmers have been killed due to the military repression in the area.

The Land Summit: a government attempt to ease tension

In the midst of growing disillusionment, conflict and violence, and at the request of the Catholic Church, the government decided to organise a Land Summit, in which all social sectors would agree on solutions to the problem of land and territory. Some representative indigenous and peasant organisations, such as the Coordinating Body of Ethnic Peoples of Santa Cruz (CPESC), the National Confederation of Ayllus and Markas of Quillasuyo (CONAMAQ) and the Movement of the Landless (MST) demanded that the government give clear signals

of its political will to find integral solutions, and that it should cancel the Agreement signed with the Agricultural and Livestock Chamber in September 2001. Although, in the event, and given various complaints about its scope, the government did not have the courage to fulfil the said Agreement, neither did it dismantle it.

The announced Land Summit, finally called the “Meeting for Land”, was held on 29 November 2001. The meeting was attended by indigenous organisations from the highlands and lowlands, the Landless Movement and a large number of the peasant farmers’ departmental federations. From the side of business, the Agricultural and Livestock Chamber of the East attended, along with the recently formed Confederation of Cattle Ranchers of Bolivia and its federations and departmental and regional associations, and the Forestry Chamber. For the state, the ministries of Sustainable Development, Agriculture, Peasant Farmer and Indigenous Affairs and Justice were present, along with the Agrarian and Forestry Superintendents, the National Director and departmental directors of INRA, the presidents of the Chambers of Deputies and Senators and the members of the National Agrarian Court. In addition, representatives from the church attended, plus institutions involved in the land issue and international cooperation agencies.

The different sectors presented their views on the issue but, leaving no time for debate, the meeting was brought to a close by the President of the Republic. The speeches made were neither summarised nor systematised and the government later proposed to follow-up the meeting with regional events.

In spite of the meeting, actions against peasant farmers continued. Peasant leaders in the areas of conflict and survivors of the Pananty massacre were arrested for acts of violence. On 31 December, the National Board of INRA issued an Administrative Resolution modifying the technical requirements applicable to the processes of regularisation of lands, making the requirements for agribusiness lands and the medium-sized unproductive properties more flexible.

This highlighted the fact that not only was there no desire for an agreed solution to the conflict but that, in addition, the Meeting for Land had been a simple mechanism by which to distract attention and encourage application of the measures agreed with the business sector. Indigenous and peasant farmer sectors made their attendance at regional meetings conditional upon the prior halting of actions being promoted by businessmen through mercenaries and on the freeing of the illegally imprisoned peasant leaders.

After much delay, at the end of February 2002, the government re-established the Meeting but the social sectors did not attend, and so

the government initiative died a death having resolved not one of the various conflicts for which it was established.

Reforms of the Political Constitution of the State

The crisis in the country, which came about long before the change in government and which, in addition to an economic and social crisis, takes the form of a deep institutional crisis and confrontation between government coalition parties and opposition parties, led to the intervention of the Catholic Church in the search for a party political consensus. In June 2001, an Act of Understanding was signed by which the political parties made commitments regarding actions to overcome the crisis. In addition to changing the composition of the Electoral Court, the approval of a reform of the Political Constitution of the State aimed at broadening civil and political rights was also agreed, with the aim of channelling social protest. The recently installed government formed a committee of civic “dignitaries” – the People’s Council – with the mandate of formulating proposals for the reform, gathering the contributions of the different social sectors by holding departmental and sectoral workshops.

For their part, with the support of private institutions working with the rural sectors, the organisations embarked upon a process of analysis and internal agreement of proposals for constitutional reform, the debate of which had begun with the formal presentation of a project by President Banzer, prior to his resignation.

The first phase of this process culminated in a national meeting in the town of Vinto, Cochabamba, in August 2001. With regard to the planned constitutional reform, the organisations denounced the fact that it related to an agreement between the leaders of political parties “stained by corruption and a lack of credibility”, stating that the proposed reforms sought to consolidate the neo-liberal model and that they would never agree with them even though they were being offered “some sweeteners such as the elimination of the political parties’ monopoly”. They stated that the native peoples and nations had their own proposals for guaranteeing their territorial rights, that concessions over natural resources should no longer be granted, that the land should be for those who work it and not for estate owners who hoard it and that food production should be protected. They

- : denounced the fact that the People’s Council was being used to
- : cover up the reality that changes to the constitution would really be
- : made by the heads of a few political parties and that, instead, the

reforms should be the product of a wide meeting by means of a Constituent Assembly.

The proposal presented by the People's Council

The proposal for reform from the People's Council was formally presented to the President of the Republic last November. By then, the government was in a tight spot with regard to the holding of the Land Summit and the social sectors were hounded by legal persecution and violence.

It was not until the first months of this year that the indigenous and peasant farmer sectors heard the People's Council proposals. The general criticism that has been made of the proposals relates to the fact that, in spite of including some participatory mechanisms and social rights, they have a markedly neo-liberal slant, permitting broad guarantees to foreign investors that go against the national interest, seriously affecting the possibility of indigenous and peasant farmers gaining access to territorial and agrarian property:

The agrarian system

The substitution of "primary control (*dominio originario*) of the **nation**" over agrarian lands with "primary control of the **state**" is proposed along with the elimination of the state power of distribution, regrouping and redistribution of agrarian property. Alongside this, the fundamental principle that "the land is for those who work it", the right of peasant farmers to land provision and the requirement for compliance with the economic and social function of medium and large-sized properties would be eliminated.

These amendments would mean the end of the Agrarian Reform, as the state would not intervene to guarantee lands to indigenous and peasant communities, and would allow the current concentrated land and unproductive estate structure to be consolidated. In the regularisation processes, for individuals who claimed property within indigenous lands, whether legally or illegally, the lands would automatically be consolidated in their favour leaving only the poorest and most isolated lands for the indigenous. In short, the distribution of land would remain subject, firstly, to the law of the strongest and, secondly, exclusively to the laws of the market.

In line with the demands of the development model, it is proposed to eliminate the indivisible and non-seizable nature of peasant and small-scale lands, and the state's obligation to provide a line of pro-

motional credit to the peasant farmers, leaving them forced to resort to commercial banks, providing their property as security. Given the fact that market conditions for agricultural and livestock produce are very difficult for small producers because of the lack of import barriers, it can easily be seen that the peasant farmers would soon lose their lands, unable to produce profitably on them or unable to repay the credit taken out for that purpose.

Finally, the People's Council proposes eliminating the state's role of organising settlement plans for a better distribution of land and natural resources and, instead, would only take on this responsibility in terms of the rational distribution of population. This would seriously affect the indigenous and peasant farmer communities of the highlands, where land is scarce and seriously eroded, as they cannot hope for settlement lands in the lowlands.

Natural resources

In this area the People's Council proposes elevating the Departments to constitutional level as autonomous bodies for the regulation, control and supervision of the exploitation of land, forests, water and all other natural resources. Both indigenous and peasant farmers have repeatedly protested against the system of Departments because they act in a sovereign manner, without any control, disposing of the country's natural resources. The limits established by law are constantly lowered by resolutions of the Departments and, apart from the legal system, which does not function to the benefit of the rights of the communities, there is no power of control over these institutions.

Alongside the constitutionalisation of the Departments, it would eliminate the limits on the state in terms of disposing of renewable and non-renewable natural resources and the obligation to protect and preserve them, along with placing a prohibition on the transfer or allocation of ownership of mines and hydrocarbon deposits. With these amendments, the state, through the Departments, would be able to freely dispose of all the nation's wealth, allocating it to national or foreign companies. These are the regulations that most seriously affect the indigenous and native peoples given that their territories, with their property rights still not regularised, are home to the country's greatest wealth.

⋮ Social and political rights

⋮ Although one of the main justifications for a constitutional reform, the
⋮ amendments proposed by the People's Council, provide absolutely no

guarantee that the sought objectives will be fulfilled. In spite of introducing procedures for semi-direct democracy, such as legislative initiative, referenda and plebiscites, decisions emanating from such procedures nonetheless still remain dependent upon a high majority agreement in parliament and the will of the executive power. Reforms to the Political Constitution of the State were excluded from the people's initiative for legislative change and consultation. In the party political system, the parties' monopoly remains unchanged in the national sphere, which is where they control resources and economic policies.

With regard to citizens' rights, it is established that the individual's equality before the law supposes it to be a state duty to adopt measures of positive action to eliminate inequalities but specific measures are not established in favour of the social sectors traditionally marginalised from development.

And, likewise, in terms of the right of association, movement and private property, the proposal for reform results in a criminalisation of social protest, and of the intervention of organisations that undertake it, along with the resolution of land conflicts in favour of the supposed owners of lands that are claimed by indigenous and peasant farmer communities and the criminalisation of *de facto* actions for their recovery.

Indigenous and peasant farmer reaction: the March for Popular Sovereignty, Territory and Natural Resources

Following the failure of the Meeting for Land, the indigenous and peasant organisations concentrated their efforts on issues of constitutional reform. Coordination Committees held by indigenous and peasant organisations of the high and lowlands in January, February and March openly challenged the proposals of the People's Council and demanded that, for reforms to the Constitution, a Constituent Assembly should be organised in which the social sectors could participate without the mediation of the political parties.

In the face of such fierce opposition to the People's Council proposal, the political parties with greatest representation in Parliament worked to find a consensus on constitutional reform, urged by the President of the Republic to approve the Law before the general elections on 30 June 2002. In the last week of April, it was announced that there was a consensus with regard to reform, although its substance was not made known. At the same time, the Chamber of Deputies :
: approved a draft Law on Sustainable Development. This put the :
: indigenous and peasant organisations and environmental sectors on :
:

the alert because it benefited the forest concession holders with a 50% reduction of the registration fee. They also found out that the government would soon be issuing a Supreme Decree amending the current regulations governing the INRA Law, introducing previously questioned rules with which to encourage the consolidation of unproductive and illegal properties, and that INRA would approve a “technical regulation” increasing the area of land per head of cattle in order to consolidate the regularisation of cattle ranches.

This news not only provoked strong denunciation from indigenous groups, peasant farmers and environmentalists. Their joint rejection of the constitutional reform and the demand for a “Constituent Assembly with the participation of all social sectors without the mediation of the political parties”, the definitive filing of the draft Law on Sustainable Development and the rejection of the rules anticipated by the government and INRA, known as the “agrarian package”, together with the approval of other measures for the full validity of their rights to land, territory and natural resources, were the slogan of the March for Popular Sovereignty, Territory and Natural Resources which indigenous groups, peasant farmers, settlers and the landless embarked upon on 13 May from Santa Cruz. Almost three weeks on from the beginning of this new march, and in the middle of a heated electoral debate, many social sectors throughout the country have added their voices to the demands for a Constituent Assembly.

BRAZIL

Brazil is inhabited by 216 officially recognised indigenous peoples, with an approximate population of 350,000 people speaking 180 languages. There is proof of the existence of 42 peoples in voluntary isolation who live without regular contact with the rest of society. Indigenous people represent scarcely 0.2% of the Brazilian population but play an important role in the country’s political landscape.

420 indigenous lands have been demarcated, covering 87,000,000 hectares and representing 11.55% of the whole national territory.

Another 130 territories are in the process of demarcation, corresponding to 17,508,334 hectares. Most of the indigenous lands are in the Amazon, and cover 20% of the area of that region.

VII General Assembly of COIAB

The VII General Assembly of COIAB (the Coordinating Body of Indigenous Organisations of the Brazilian Amazon) took place from 28 to 31 May 2001 in Santarém, Pará state. 147 indigenous delegates took part in the Assembly, representing 50 peoples and 38 regional organisations from the nine states of the region of Amazonía.

During the VII General Assembly, the progress of the indigenous movement of the Brazilian Amazon was evaluated, particularly in the areas of health, education, land and economic alternatives. Goals and actions for the coming years were defined and a new Executive Committee for 2001 was elected.¹

The General Assembly decided that, for the coming three years, COIAB should prioritise, amongst other things:

- Internal organisation, administration and resource management;
- Coordination with grass-roots organisations;
- The demarcation of indigenous territories;
- The implementation of differentiated indigenous health and school education systems;
- Support to indigenous rights at national and international level, including the Statute of Indigenous Peoples.

The VII General Assembly of COIAB also decided to create the Centre for Production and Culture of the Indigenous Peoples of the Amazon with the aim of “improving the living conditions of the indigenous peoples of the Brazilian Amazon and protecting their natural heritage, spreading their socio-economic and cultural alternatives to society in general”. It was also decided to create a women’s department which, together with the indigenous women’s organisations already in existence, would encourage the promotion of the rights and interests of women and support their coordination at regional level in order to undertake subsequent interventions at national and international level.

The VII General Assembly also decided to establish COIAB representation in Brasilia, the federal capital, given that this city is the political centre of the country, where decisions that impact directly on the lives of the indigenous communities are taken.

The office was established in October 2001 and has a team of two leaders, a lawyer, a communications advisor and a secretary.

COIAB activity in the health sector

Public indigenous health care policies were reformulated in 1999. One of the first changes was a decision to hand responsibility for administering and managing programmes related to the health of indigenous peoples over to the Ministry of Health, through the National Health Foundation-FUNDASA.

Thirty-four Special Indigenous Health Districts – DSEIS – were created with the aim of defining programmes in line with indigenous reality. The cultural, social and linguistic characteristics, along with the geographic distribution of the indigenous peoples, were taken into account when creating each district.

The federal government increased the specific annual budget devoted to indigenous health. Prior to 1999, the maximum value of this expenditure was R\$ 26,000,000.00 (approximately US\$10,400,000) and in 2001 it was R\$ 100,000,000.00 (US\$ 40 million), in addition to resources from other programmes devoted to health in general, for example, basic sanitation.

COIAB, its grassroots organisations and non-governmental organisations signed agreements with FUNDASA, by means of which they obtained funding for primary health care in the indigenous communities. Teams were hired comprising doctors, dentists, nurses, nursing auxiliaries, laboratory assistants and indigenous health workers.² This is improving the quality of services, and has even led to a drop in the communities' mortality rates.

COIAB also participated in the National Conference on Indigenous Health, held from 14 to 18 May 2001. The National Conference is a body made up of representatives of the indigenous peoples, public institutions providing health services to the indigenous communities and employees of the public and private institutions working in that area. The composition of the Conference is based on principles of parity, in other words: 50% indigenous and 50% non-indigenous. Its main aims are to evaluate public health policies at national level and present recommendations for their improvement. The National Conference takes place every four years, under the auspices of the Ministry of Health.

COIAB's involvement was decisive in the definition of proposals for indigenous health care in the fields of management models and health service organisations, health monitoring, strategies for the prevention and control of sexually transmissible diseases, strengthening of social control, training of indigenous health workers, development of human resources for work in different cultural backgrounds, over-



medication and traditional practices, research ethics, intellectual property and patents, production and marketing of food in the communities.

Ex-COIAB leader elected General Coordinator of COICA

The VI Congress of the Coordinating Body of Indigenous Organisations of the Amazonian Basin – COICA, held in Leticia, Colombia from 11 to 15 June 2001, elected Sebastiao Haji Machineri as its general coordinator for the period 2001/2004. Machineri held the post of COIAB’s coordinator from 1994 to 1996.

to which indigenous peoples and other sectors of Brazilian society are subjected. In this respect, the federal government established the “National Committee for the preparation of Brazilian participation in the World Conference on Racism”, with the participation of representatives from public bodies and civil society, including indigenous peoples.

The Committee held the National Conference on Racism on 7 and 8 July in Rio de Janeiro, in order to present proposals to the Presidency of the Republic aimed at orienting Brazil’s participation in the World Conference. Representatives from the Black, indigenous and disabled communities, among other different social sectors affected by racism and discrimination, participated in the National Conference. The conference approved various proposals that were sent to the Presidency of the Republic. Most of the proposals were approved by President Fernando Henrique Cardoso.

Some of the proposals approved were:

- Urgent approval by the National Congress of a new Amerindian and Indigenous Communities’ Statute;
- Finalisation of the demarcation of Indigenous Lands – territorial protection and eviction of invaders;
- Restructuring of the National Amerindian Foundation;
- Approval by the Federal Government and National Congress of measures for the protection of indigenous and traditional knowledge and genetic heritage, including protection of the biodiversity;
- Organisation of a census of the indigenous population by the Federal Government;
- Ratification and implementation of international treaties guaranteeing indigenous rights, such as ILO Convention 169, the UN International Declaration on the Rights of Indigenous Peoples, and the OAS American Declaration on the Rights of Indigenous Peoples;
- Creation of a Permanent Forum on Afro-indigenous Native Rights.

The official Brazilian delegation took prominent part in the areas on indigenous peoples in the World Conference on Racism, which approved the Declaration and Programme of Action against Racism, particularly with regard to adoption of the expression “indigenous peoples”.⁴ Through these documents, the states recognised that the indigenous peoples are victims of racism and discrimination and highlighted the need to adopt constant measures to combat these problems.

Amerindian Statute

Draft bill of law no. 2,057/91, instituting the Statute of Indigenous Communities, has been with the National Congress since 1991.

In 2001, during events related to the World Conference on Racism held in Durban, South Africa, the federal government promised to approve the new Statute of Indigenous Peoples as a measure to combat discrimination against indigenous peoples. This commitment was included in the official Brazilian document presented to the World Conference recognising, among other things, that the current law discriminates against indigenous peoples insofar as it considers them incapable of civil acts.

Meanwhile, the bill of law remained formally paralysed in the Chamber of Deputies during 2001.

Provisional measure on access to genetic heritage

The provisional measure (MP) is a normative act of the President of the Republic that serves to govern urgent issues and is of temporary effect. When the MP comes to the end of its validity, it is possible to republish it in order to renew its effect. An MP comes into permanent effect following its conversion by the National Congress.

The Presidency of the Republic published the first version of MP no. 2,186 in June 2000, with the aim of regulating access to genetic heritage and its associated knowledge. Various sectors of Brazilian society, including NGOs, indigenous organisations and members of parliament, were against the MP because, among other things, it did not respect the discussions underway in the National Congress. The Senate, after four years of discussion, had already approved bill of law no. 306/95, the author of which is Senator Marine Silva (PT-AC), to deal with this issue, and it was now for the Chamber of Deputies to discuss it for its subsequent approval.⁵

When dealing with access to genetic heritage located on indigenous lands, in the second paragraph of article 17, the republished measure provides that the hypothesis of outstanding public interest of the Union must be regulated by a complementary law, under the terms of § 6 of article 31 of the Federal Constitution. Alterations to the republished MP demonstrate that the federal government recognises the legal validity of the request that was made in an action organised by CONTAG.

The MP reasonably protects indigenous interests but it needs perfecting. In this respect, the approval of a law is essential as it would be the most appropriate legal instrument to offer such protection.

The Council for the Management of Genetic Heritage

The federal government published Decree 3,945/01 governing Provisional Measure No. 2,186 of August 2001, which provides regulations on access to genetic heritage and deals with the composition and powers of the Council for the Management of Genetic Heritage. The Council will be made up of representatives of 17 federal public bodies but will not include the participation of indigenous peoples, local communities or any other sector of civil society.⁶

The decree contradicted the demands of indigenous peoples and organisations, who have been fighting for their participation in bodies dealing with their rights and interests. It also went against the discussions that were taking place within the United Nations, which recommended that the states strengthen indigenous participation in those bodies related to the management and protection of the genetic resources existing on indigenous lands and related traditional knowledge.

The indigenous organisations, together with other civil society organisations, are protesting against this government decision and continue to demand their participation in this Council.

Third grade training for indigenous teachers

In July 2001, the State University of Mato Grosso – UNEMAT – created the 3rd grade indigenous teacher-training course, on which 200 students from 35 indigenous peoples of various regions of Brazil are enrolled. The course is of great importance because it responds to the demands of the indigenous communities for indigenous teaching that is in accordance with their cultures and for indigenous teachers to be trained to take charge of the classrooms.

From 7 to 11 November 2001, a “Legal course for indigenous lawyers” was held by the Coordinating Body for the Defence of Indigenous Rights – CGDDI - of the National Amerindian Foundation – FUNAI, and the University of Brasilia – UNB, with the support of the Socio-environmental Institute – ISA. The course was held in the auditorium of the University of Brasilia and dealt with indigenous constitutional rights, specifically tackling territorial rights, biodiversity

and traditional knowledge protection, the right to health and education. Seven indigenous lawyers and seven indigenous law students attended this course.

Meeting of the *Pajés* ⁷

From 4 to 6 December 2001, the “Meeting of *Pajés*. Indigenous wisdom and science and industrial property: reflection and debate” took place in São Luis, Maranhão state, in order to discuss and channel proposals on the protection of the traditional knowledge of indigenous peoples and the genetic resources existing on their lands. Twenty-two indigenous people participated in this event, including spiritual leaders, indigenous lawyers and representatives of indigenous organisations, plus guests from governmental and non-governmental organisations involved in the issue. At the end of the meeting, the “São Luís de Maranhão Charter” was approved which, among other things, states:

1. That our forests have been preserved thanks to our age-old knowledge;
2. As indigenous representatives, we are important in the discussion process on access to biodiversity and related traditional knowledge because our lands and territories contain a major part of the world’s biological diversity and are of great social, cultural, spiritual and economic value;
3. That the Brazilian government should create the space for indigenous communities’ representation within the Council for the Management of Genetic Heritage;
4. That the Brazilian government should establish legal regulations governing access to genetic resources and traditional and related knowledge, discussing this fully with the indigenous communities and organisations;
5. We, indigenous representatives, firmly reassert before the government and international organisations our right to participate fully in national and international decision-making spaces on biodiversity and traditional knowledge, such as the Convention on Biological Diversity (CBD), the World Intellectual Property Organisation (WIPO), the Intergovernmental Committee on Intellectual Property and other bodies;
6. We recommend that countries approve the UN Draft Declaration on the Rights of Indigenous Peoples;

7. As indigenous representatives, we affirm our opposition to all forms of patent granting that stems from the use of traditional knowledge and we request the creation of punitive mechanisms to prevent the theft of our diversity;
8. We recommend the creation of a fund financed by governments and administered by an indigenous organisation, the aim of which would be to subsidize research undertaken by community members.

The Meeting had a great impact in the national and international press. The document approved during the meeting is now the main reference work for Brazil's indigenous peoples when dealing with issues related to protection of the genetic resources existing on their territories and their traditional knowledge.

Federal Union and FUNAI ordered to compensate indigenous Panará

The Regional Federal Court of the 3rd Circuit of the Region issued its decision ordering the Federal Union and FUNAI to pay compensation to the Panará, of Pará state, for damage (humiliation and terror) and 170 deaths caused during the 1970s when they were contacted and evicted from their lands due to the construction of the Cuiaba/Santarém highway. The decision entered into force, in other words, it became irreversible, on 21 November 2001. It is unprecedented because, for the first time, the courts ordered the government to pay compensation to an indigenous community for damage caused to them.

The value of the compensation was set at approximately one million reals, and although this amount cannot repair all the damage caused by the Brazilian state, it will serve to strengthen the self-esteem of the Panará and to support the implementation of restructuring projects for the community. In addition, the decision constitutes a precedent that can be used by other indigenous people when appealing to the courts.

The Panará community lodged the claim for compensation in 1994, with the support of lawyers from ISA. At the same time, the Panará, assisted by ISA lawyers, lodged a legal action requiring recognition of their territory. In 1997, the Ministry of Justice published a decree determining the physical demarcation of the land, administratively recognising the territorial rights of the Panará. Gradually, this community is re-establishing its rights and recovering its dignity for the future.

Condemned for the massacre of indigenous Ticuna

This massacre, which took place on 28 March 1998, occurred in the municipality of Benjamín Constant, in the Alto Solimões region, close to the Brazilian border with Colombia and Peru. On the day of the massacre, representatives from the Ticuna de San Leopoldo, Novo Porto Lima, Bom Pastor and Porto Espiritual communities were surprised in an ambush when they were peacefully meeting to discuss the killing of an animal (bovine) by landowners in the area.⁸

The delay in bringing the trial was due, among other things, to a discussion as to whether consideration of the case came under federal or state competence.⁹ There was also a discussion on the need for a trial by jury, the understanding prevailing in the end that it was a crime of genocide and thus fell under the competence of an ordinary magistrate.

The Ticuna people, COIAB and allied bodies undertook national and international campaigns demanding condemnation of the authors of the genocide during the course of the trial.

Reform of FUNAI

On 1 November, the Ministry of Justice approved Decree No. 1,006 creating the Working Group responsible for proposing reforms to FUNAI. FUNAI's reform is necessary for various reasons: it has scarcely 2,300 officials to deal with all the indigenous communities, its budget is insufficient, the changes in indigenist legislation and general reforms that are taking place in the sphere of the public administration necessarily require its reform and updating in order to be able to provide the public services that fall within its sphere of responsibility.

Programme of “Indigenous Citizenship in Río Negro”

In September 2001, the Federation of Indigenous Organisations in Río Negro – FOIRN, came to an agreement with the State Department for Human Rights, an organisation of the Ministry of Justice. The aim is to facilitate the access to basic documentation for indigenous people of the region who, through problems of transportation, costs in obtaining documentation and even difficulty in communicating in Portuguese, often cannot even obtain their birth certificate. According to estimates from the local authorities, approximately 5,000 indigenous people in Río Negro do not hold electoral cards and can thus not

participate in political elections. The project also aims to consider other problems restricting the exercise of indigenous citizenship and suggest solutions to resolve them.

From November to December 2001, campaigns were held in the town of San Gabriel de Cachoeira and in different communities located along the rivers of the Río Negro basin, in which 2,435 people received birth certificates, identity cards, physical registration papers, work permits and electoral cards, plus civil marriage certificates.

In line with the provisions of the project, from 21 to 25 January 2002, FOIRN, together with the Socio-environmental Institute, organised a seminar on "Indigenous Rights in the Río Negro", in which 155 representatives from 49 organisations forming part of FOIRN participated, in addition to technicians and officials from various institutions involved in this area.

The issues tackled were the demarcation of lands, documentation rights, water resource protection, the genetic resources existing on indigenous lands and traditional knowledge, support programmes for the sustainable economic development of the indigenous communities and public policies in the areas of health and education.

On the basis of the discussions, a document on factors restricting indigenous citizenship was drawn up and proposals for overcoming those factors made.¹⁰ FOIRN decided to send a proposal to the State Department for Human Rights, highlighting the need to continue the project which, according to the Department, stands a good chance of being accepted.

FOIRN's experience, apart from meeting the needs of the Río Negro communities, will serve as a reference for the federal government and other indigenous organisations when helping other indigenous communities and even non-indigenous people from the Amazon who have similar problems.

Conclusion

The above information shows that the situation of Brazil's indigenous peoples is clearly improving. Lands are being demarcated, indigenous communities are participating in organisations dealing with their interests, the justice system is taking important decisions to protect indigenous rights, the indigenous organisations are becoming stronger and guaranteeing their own autonomy and the government is decreeing important measures that will benefit the indigenous communities.

Despite all this, it must be borne in mind that there remain many controversies to be resolved. The bill of law instituting the new Statute of Indigenous Peoples has been held up within the Chamber of Deputies since 1994; the rights of indigenous peoples are violated and, in many cases, administrative measures to re-establish them are not taken or cases are not brought before the courts; the demarcation processes for many lands are paralysed and even others that are already demarcated are being invaded by landowners and others, in addition to frequent invasions on the part of logging companies, fishermen and “*garimpeiros*” (gold prospectors). The government has announced proposals to reform indigenist policy but is not adopting consistent measures with which to take them forward.

The government continues to exclude indigenous people from participating in the bodies dealing with their interests and even in those where they do participate this is only in a consultative manner, with no legislative powers. Policies in the area of health, education and sustainable development are being implemented but still require more support for their consolidation. In addition to this, the progress made by the indigenous peoples of the Amazon has still not filtered through to other regions of the country, where there are serious land problems and where health and education, along with economic activities, are scarce and there are even difficulties in accessing clean drinking water.

The government thus needs to adopt measures to overcome these problems, such as finalising the land demarcation, evicting the non-indigenous people living illegally on indigenous lands and creating programmes of monitoring and supervision to avoid new invasions.

The federal government needs to implement the actions to which it committed during events related to the World Conference on Racism and truly promote the restructuring of FUNAI so that, together with the indigenous communities and villages, this body can have real influence.

Notes and references

- 1 COIAB report 2001. COIAB, March 2002.
- 2 Indigenous health workers are being trained to provide care in their communities.
- 3 Resolution nos. I and II of the VI Congress of COICA – June 2001.
- 4 For the indigenous peoples of Brazil, the adoption of this expression as found in the documents approved by the World Conference on Racism

signifies a step forward, as there had previously been fierce internal resistance on the part of some sectors of the government, who alleged that its use created the possibility of external interference in the sovereignty of the country. With this new step, it is hoped that Brazilian legislation will also begin to consider the Amerindians as indigenous peoples.

- 5 Lima, André, Socio-environmental Institute. Personal communication. June 2001.
- 6 Toledo, Lilia Diniz and Fernando Mathias Batista, Socio-environmental Institute. Personal communication.
- 7 *Pajés: shamans.* (Editor's note)
- 8 Toledo, Lilia Diniz and Fernando Mathias Batista. Personal communication.
- 9 The case reached the Supreme Federal Court– STF, the highest body of judicial power, which decided in favour of Federal Justice to hear and judge the case.
- 10 The main problems highlighted were related to a lack of lawyers to defend indigenous rights, the need to finalise the demarcation of lands in Río Negro and to support economic development projects, and problems of invasion of the rivers by fishermen. (Final Report of the Indigenous Citizenship Project in the Río Negro – FOIRN, March 2002)

PARAGUAY

The government's initiative to reform Law 904/81, the *Statute of Indigenous Communities*, which was announced by the Ministry for the Reform of the Presidency of the Republic on 18 October 2000, is a result of the national indigenist policy of the last 3 years and, in turn, the clearest signal of the state's attitude over this period: one of denying indigenous peoples their rights, their very existence even, giving them the least attention possible in terms of funding and policies.

Reforms to Law 904/81

Approval of the *Statute of Indigenous Communities* in 1981, which recognised the legal existence of the indigenous communities and their right to own their land, indicating a minimum restoration basis of 100

hectares per family in the Chaco and 20 in the Eastern Region, and which also recognised the validity of indigenous customary law, was an unprecedented legal milestone for its time. Moreover, the creation of the National Indigenous Institute (INDI) established, at least in theory, a body with the administrative powers to apply indigenist policy. However, this was no more than another “good” law, of limited validity in practice.

Chapter V of the subsequent National Constitution of 1992, along with Law 234/93, which ratified ILO Convention 169 “Concerning Indigenous and Tribal Peoples in Independent Countries”, extended even more guarantees to the indigenous communities of Paraguay, recognising their condition as peoples, their existence prior to the Paraguayan state and their right to community ownership of areas determined not simply by an arbitrary figure but by the socio-cultural needs of their peoples (Art. 64 of the National Constitution). Nonetheless, land restoration is, in practice, governed by Law 904/81, not by constitutional criteria or by international standards.

There are a number of underlying reasons as to why President Luis González Macchi’s government has proposed a draft bill “Governing the functioning of mechanisms responsible for national indigenist policy”: firstly, the wider process of state reforms motivated by the shortfall in revenue that has accumulated over recent years; secondly, the greater public space now available for indigenous territorial demands, a consequence of the increasingly prominent role of indigenous communities and organisations, which have questioned, based on the legitimacy and legality of the Constitution and ILO Convention 169, the unjust distribution of lands within the country, which forms the basis of political and economic power; and, lastly, the demands of departmental governments to have greater budgets for their welfare programmes, of less economic and political cost to central government. All this can be added to the historic corruption and inefficacy of INDI. These are all undisclosed reasons and arguments as to why the government and its landowner allies have been amassing in favour of a reform of Law 904/81.

Since the draft bill was issued by the Ministry of Reform of the Presidency of the Republic, various voices have spoken out against it. Earlier in the year, the Paraguayan Episcopal Conference (CEP), the Coordinating Body of Leaders of the Bajo Chaco (CLBC), the Network of Organisations at the Service of Indigenous Peoples (“*Red Indigenista*”), the 19 April movement (M19A) and INDI itself all questioned this draft bill. The observations formally relayed to the government not only criticised the content of the bill but also the procedure by which it was drawn up, noting the fact that indigenous peoples were



neither consulted nor informed about this reform, as required of signatories to ILO Convention 169 (articles 6 and 7) when attempting to approve or change laws directly affecting indigenous peoples.

In terms of its content, for example, the draft does not recognise the indigenous people's existence prior to the Paraguayan state as does the National Constitution, a principle that forms the basis for the return of their lands, their right to self-determination and to their own identity. The bill also reduces the minimum amount of land the state is required to give each indigenous family by 50% in relation to the criteria stipulated in Law 904/81. This demonstrates an intention to

minimise, and/or legitimise, the shortfall in territories and lands returned to indigenous people by the state, which is currently far from satisfying the constitutional criterion of article 64.

In spite of this, and in spite of the fact that INDI itself drew up a proposal making known the criticisms of the indigenist organisations and of the Association of Indigenous Supporters (*Asociación de Parcialidades Indígenas* - API) on 30 April 2001, the government presented its controversial draft bill to the Chamber of Senators, which automatically sent it to four committees for their consideration. At the end of May, various indigenous organisations and representatives from the Chaco and the Eastern Region formed a Commission for Indigenous Self-determination in order to participate in the reforms to Law 904/81, and demanded the withdrawal of the government's draft bill and/or deferral of its consideration within Congress, along with a nation-wide indigenous consultation and a one-year period in which to organise this.

Indigenous mobilization

At the beginning of June, the API convened more than 250 indigenous representatives, who arrived in the capital and camped in front of Congress demanding greater involvement in the reform of Law 904/81. President González Macchi promised them this involvement and the API leaders agreed - with the Minister for Education and Culture and the Minister for Women - a period of 30 days in which to undertake a consultation process. This was a point of disagreement with the Commission for Self-determination and other organisations, who were demanding a one-year period for the consultation and wider participation and representation not exclusively mediated by the API. Finally, the API joined the protest to extend the period to one year, signing an agreement with the Commission for Self-determination at the time of the CLBS assembly, held at the end of July.

Two other meetings held in August in Boquerón and Alto Paraguay by members of the Commission for Self-determination ratified the above demands and agreed on the idea of organising a mass mobilisation in order to force the government to comply with them. In the Eastern Region, a number of organisations expressed their concern and claimed the need for consultation with the communities. The National Meeting of Indigenous Women, held under the auspices of the National Coordinating Body of Rural and Indigenous Women (CONAMURI), also demanded that the government provide for indigenous participation, particularly that of indigenous women, when defining policies of concern to them.

Meanwhile, 3 out of the 4 committees of the Chamber of Senators that had received the draft bill from the government were of the opinion that it should be rejected. To their concerns were added questions regarding the formulation and content of the draft bill, put to the Paraguayan state by the Inter-American Commission on Human Rights (IACHR) and the ILO.

On 11 and 12 October, in Pozo Colorado, a mobilisation of approximately 5,000 people from communities from all over the Chaco took place, organised by the Commission for Self-determination. Prior to this, a negotiating committee had met with the President of the Republic, Luis González Macchi, the Minister for Justice and Work, Silvio Ferreira, and the Governor of Boquerón, Orlando Penner. The head of state agreed to make the participation of indigenous people, both men and women, possible by means of a consultation process, arguing that the draft bill could not be withdrawn but that it could be “frozen” in Congress, and recommending a period of one month within which to undertake the consultation by means of a single national indigenous congress in Boquerón, where the indigenous proposal for the law would be approved. Other indigenous demands that were also at the root of the mobilisation were not considered at this meeting, such as payment for land claims already administratively settled.

In the end, the Commission for Self-determination prepared a proposal for consultation that envisages studying a draft law and subsequently discussing it in regional assemblies throughout the country, culminating in a national indigenous congress. Funding will be requested from the government for the assemblies and congress, which will also enable the binding nature of its results to be assured.

Indigenous territorial claims

During 2001, there was no funding available with which to pay compensation for properties that are the object of indigenous claims and, consequently, no claims have been resolved.¹

INDI was initially allocated a budget for its minimum operational costs up until June and, following a request for extra funding that was favourably received by Parliament, it obtained additional funding with which to complete the year. The draft bill on the General Budget for National Expenditure for 2002, presented to Parliament by the government, envisages the sum of 4,049 million guaraníes for INDI (approximately US\$880,000), half of what was allocated the previous year. Counterpart funds for the purchase of indigenous lands, required of the Paraguayan government as part of the plans for mitigat-

ing the socio-environmental impacts of road infrastructure projects (funded in the Eastern Region by the World Bank and in the Chaco by the Inter-American Development Bank) have so far not been budgeted for.

The Agrarian Reform Committee of the Chamber of Senators decided against the expropriation of the 158,000 hectares claimed by the population of Puerto Casado in the department of Alto Paraguay. This population includes approximately 2,000 indigenous Maskoy. This request relates to part of the one million hectares acquired by the Moon Sect in the Chaco. This decision, along with the unconvincing interventions on the part of various national authorities to secure the 158,000 hectares on which half the civilian population of the municipality are settled, questions not only the work of the government in making equal access to productive resources possible but also the validity of its legal system within its own borders.

The decision, taken last year by the above mentioned parliamentary committee and later confirmed by a plenary sitting of the Senate, to reject the expropriation requests of the Sawhoyamaxa² (14,404 hectares) and Xakmok Kásek communities (10,700 hectares), both belonging to the Enxet people, resulted in these communities reporting the Paraguayan state to the IACHR for the arbitrary nature of the said refusal. Following the intervention of this body, the Government requested a friendly solution to both cases and it is hoped that, by the end of the year, there will be an official proposal for these land claims. In another case, relating to the claim of the Yakye Axa community (18,179 hectares), which was submitted to the IACHR last year due to an arbitrary decision of the Supreme Court of Justice against their hunting and gathering rights on the disputed lands, the Government requested a friendly solution and, in this regard, a number of meetings between state representatives, indigenous peoples and their lawyers were held. In principle, the state recognised the lands claimed as being the community's traditional habitat but it was not possible to arrive at a satisfactory agreement because of the action of the INDI president, Olga Rojas de Báez, who defended the interests of the supposed title holders above those of the community. Finally, on 29 Aug. 2001, in an event of the most serious nature, Ramón Ángel de la Cruz Martínez Caimén, the criminal judge of the judicial district of Concepción, while considering a criminal complaint made against the community, stipulated their eviction from their roadside settlement, opposite the lands claimed, ordering implementation of this notice to be effected by INDI itself, the Ministry of the Interior and the Ministry of Public Works and Communications (MOPC). This obviously led to

the immediate withdrawal of the community and its delegated representatives from the process of finding a friendly solution, and they requested preventive measures from the IACHR to avoid their eviction.

In an unprecedented act, the IACHR declared the requested preventive measures, ordering the Paraguayan state to suspend all administrative judicial orders involving the eviction or removal of the community's dwellings. The president of the Supreme Court of Justice requested Judge Martínez to freeze the decision and petitioned MOPC and the Ministry of the Interior to act in accordance with the IACHR's requests. On this basis, a final decision is pending from the Supreme Court with regard to the continuation of the proceedings against the Yakye Axa community and the judge's decision.

Some 250 people from the Ypa'u Señorita community of the Mbya people installed themselves in Asunción on 18 April 2001 to demand implementation of an eviction notice issued against the landless peasants who had been occupying their 2,199 hectares of land since 1993. Innumerable days of protest, and negotiations with a wide range of authorities (heads of the executive, legislative and judicial powers, ministers, presidents of the IBR and of INDI) and with representatives of the peasant sector, finally culminated on 25 June in the peaceful eviction of the occupants and their relocation to other lands. The damage caused to this community's habitat and to the very physical and psycho-social integrity of its members over the years this occupation lasted is, however, largely irreversible. This conflict is the only one in which some kind of solution has been achieved. Yet there are another 10 indigenous communities in the Eastern Region with lands occupied, without any intervention ever having been undertaken on their behalf.

Violations of other rights

Another situation, related to the above, is that of the migration of men, women and children of the Mbya and Ava Guaraní peoples to the country's large urban centres, where they occupy one of the lowest levels on the scale of urban marginalisation. The causes of this migration are many: a lack of security in their native communities, a lack of subsistence alternatives and of official support, unemployment, outsiders profiting from the prostitution of children, etc. Even cultural causes are given, such as a reformulation of the *oguata*³ culture, or respect for personal autonomy, which is also extended to the children. :

Certainly, all these causes are contributory but the fact that the state has not guaranteed sufficient lands to the indigenous peoples of :

the Eastern Region for their material and cultural subsistence must be considered fundamental. According to the media, INDI carried out 17 “return” operations with scant resources, during which approximately one thousand indigenous people were returned to their communities. At least two legal proceedings were implemented in order to bring this “disaster” to an end. The most striking, undertaken by the criminal prosecutor, Rafael Fernández, and the Advocate-General for Children, Cristina Arévalos, included the “rescue” of 58 indigenous boys and girls, and involved the arrest of 11 indigenous adults and even the prosecution of the president and members of INDI’s council for failing to intervene. Finally, following a long journey around prisons, the boys and girls returned to their communities, the president and council of INDI were absolved and the indigenous adults freed without it having been proven that they were sexually abusing the children or that they were benefiting from their prostitution.⁴ What remains clear is that there is an increasingly walked path between the indigenous communities and the cities, between marginalisation and a search for survival, and that urban marginalisation is undoubtedly more damaging to indigenous women and children.

With regard to the health situation of the indigenous peoples, a number of indicators published this year are a good illustration and thus worth mentioning: according to an official from the Pan-American Health Organisation, the number of indigenous people suffering from tuberculosis is ten times higher than the national average, and one of the highest in the world. According to official data, 80% of the indigenous population of the Chaco suffers from jiggers, and two out of every three Hanta virus sufferers recorded this year were indigenous. With regard to education, at the first Congress of Indigenous Education, a Guaraní teacher summarised the situation as follows, “there is no such thing as an indigenous education, only a Paraguayan school education within the indigenous communities”. It is worth noting that the total amount spent on indigenous education is scarcely 800 million guaraníes, or approximately US\$174,000.

In two cases of crimes committed within indigenous communities, the murder of a pregnant Ayoreo woman that was attributed to her husband, and the murder of Heinrich Loewen, an Enlhet from Pese-empo’o, a conciliatory agreement was reached between the families of the victims and the supposed murderers, in accordance with both indigenous customary law and the new criminal procedural legislation. However, application of this legislation has been totally erratic, in some proceedings it is applied, in others not, and in some cases it is totally ignored, as in the case of the criminal proceedings against

the Yakye Axa community mentioned above. It must be noted that in a number of cases of crimes and attacks against indigenous people no progress whatsoever has been made in their investigation, such as the murder of Francisco Arce, a community member, which took place on the farm where he was working.

Conclusions and recommendations

The result of the Law 904/81 reform process - whether it supports or not the indigenous consultation and its results - will be the indicator by which to determine whether policy in the future will be, once and for all, genocidal or a progressive indigenist policy.

Given the above, we recommend supporting the indigenous consultation and recognising the binding nature of its results, with the aim of establishing an adequate indigenist policy not only in legal terms but in terms of the effective provision of institutional, financial and administrative instruments to ensure the return of indigenous territories and the validity of the rights to self-determination and to the development of indigenous peoples. While this process is being implemented, the state must use all alternative methods possible to satisfy the indigenous territorial demands and needs, as well as their demands for improvements in health, education, sustainable development from a cultural and gender perspective, access to justice etc. For this reason, all the different levels of state power must consider themselves responsible for implementing this.

Notes

1. The indigenous demands presented to the Institute for Rural Welfare (IBR) are in excess of a million hectares, to which must be added the many communities with little or no guaranteed land and which, to date, have no information or advice with which to begin a process of territorial recovery. This overall perspective indicates that, of the 500 indigenous communities – in round figures – existing in the country, 6% have little or no titled lands.
2. On the date of its anniversary (19 April), M19A organised more than 500 people to set up a roadblock at the Sawhoyamaxa community in order to protest against the refusal to expropriate lands and to demand indigenous participation in the law reform.
3. This distinctive nature of the Guaraní results in their condition of travelers, transitory in their passage through the world and, in addition, in

the importance for the community ethos of visits between groups that are not limited or restricted to adults.

4. Whilst children bearing the signs of sexual abuse were reported, the prosecutor's file contained not one medical assessment stating this.

ARGENTINA

This report has been written during a period of serious political and economic crisis in the country: social protest, violence and political chaos.

This crisis is the result of a high concentration of wealth and a consequent rise in poverty and absolute poverty, which have been on the increase since the 1990s. Forced to face up to a huge foreign debt and blinded by their own greed, successive governments have implemented state reforms and enforced economic adjustment policies, privatisations, sales of key natural resources and a flexibilization of the workforce.

The course to final collapse

The year 2001 was marked by consecutive failures of the economic methods adopted, leading to greater indebtedness and a proliferation of social protests: the blocking of roads, demonstrations outside the houses of government employees ("*escraches*"), strikes, marches, national stoppages, etc. The response was one of indiscriminate repression, arrest and prosecution of demonstrators. Social protest became a criminal offence. In July, the government decreed a 13% compulsory reduction in state salaries and pensions and a 30% reduction in the national budget, with serious consequences for areas as important as health, education and social welfare.

In a country with a poverty rate of 50%, overall average unemployment of 18.3% and underemployment of 16.3%, never before seen levels of insecurity, corruption and generalised impunity, these measures heralded the final collapse. Faced with the creditor bank's refusal to consider a further request from Argentina, the government declared a financial default in December, confiscated the deposits of private savers and decreed a local currency devaluation of 40%, a



currency which, for the previous ten years, had maintained a one-to-one parity with the US dollar. The population saw this as daylight robbery; supermarkets and businesses were looted, and demands made for a change in economic policy and for the resignation of the nation's president only two years after taking office. The protests, which began peacefully with saucepan-beating in the streets, were brutally repressed by the security forces. In just one day, there were

29 atrocious civilian deaths and murders on the part of the police. The political crisis was such that Argentina had three presidents in the course of just one week. A decision of the Legislative Assembly, controlled by one of the main parties, gave office to Dr. Eduardo Duhalde, who lost the election in 1999. This leaves the country in the paradoxical situation of having a person running the government who has received no legitimacy from the people.

Although the situation is one of generalised uncertainty, there are still some points worth mentioning. Firstly, the people have adopted an attitude of fierce defence of the democratic system and, unlike in earlier days, whilst institutionality is clearly in crisis, it is not in danger. Secondly, a social phenomenon is taking place that is, in many respects, very interesting: this relates to the 'neighbourhood assemblies', which are demanding the replacement of all corrupt political officials by means of a general election, the impeachment of members of the Supreme Court of Justice and the return of all confiscated monies. Although it is impossible to predict the ultimate fate of these assemblies, or what results they may have, they are – for the moment - a positive sign that democracy continues to be exercised.

Government policy and the rights of indigenous peoples

Any evaluation or assessment of the indigenous year must necessarily be seen within the context of the above events. Unemployment, underemployment and poverty, along with restricted budgets for state social welfare programmes have, in some cases, affected indigenous groups more than other sectors of the population. Increased occupations of indigenous lands and territories, along with the appropriation and destruction of their natural resources, ignoring indigenous rights to them, have been observed. Alongside this, there was a growth in indigenous self-awareness, and their organisational strength seems to be gaining fresh impetus. A greater interest in making contact between peoples can be seen, with joint demands being made and a growing trend towards training and education on issues related to their affairs. We will look at this in more detail below.

Ideology

- : Whilst it is clear that there is greater information about, and acceptance of, indigenous peoples in Argentina on the part of some government employees, the majority remain unaware of the legal framework

for protecting the special rights of indigenous peoples. Key areas such as the Ministry of Fuel and Energy, responsible for approving hydrocarbon exploration, are unaware that indigenous consultation and participation is a constitutional right protected by international law, by virtue of ILO Convention 169.

To this ignorance must be added a lack of understanding, or a failure to recognise, the specific nature of indigenous cultures and thus, when proposing and adopting measures targeting indigenous peoples, they continue to implement a reactionary integrationalist/paternalist programme. The deterioration in indigenous territorial rights is considered a “development” problem. So, overlooking the constitutional principle of “traditionally occupied lands” and self-determination (Convention 169), a recent Senate bill prescribed the use the communities must make of their lands (“agricultural and livestock farming, forestry, mining, industry and crafts”).

INAI: no structure, no adequate budget, no indigenous participation

The National Institute for Indigenous Affairs (INAI) was established by law in 1985 as a decentralised organisation with indigenous participation, but the law was never implemented. Two decrees of the National Executive Power in 1991 and 1994 reduced its powers, transforming it into an office dependent upon other bodies. In August 2000, a ruling of the national courts ordered its constitution, within a period of 30 days, within the terms of the law. As of February 2002, this period of time long expired, its legal position remains irregular: it lacks both a structure and its own budget. It has no indigenous participation and its resources are paltry. As a decentralised state organisation, it requires a minimum of US\$ 10,000,000 per year and yet, in 2001, it received US\$ 500,000. Consequently, it was unable to fulfil one of its main objectives, which was to be involved in the processes of demarcation and delivery of lands, and very few indigenous projects received funding.

Current plans and programmes: state of progress

In 1996, the National Plan for Regularisation of State Lands (approximately 2,000,000 hectares) was launched for indigenous communities living in the provinces of Chubut, Jujuy and Río Negro. Agreements were signed with the respective provinces and money was transferred for their implementation. Almost six years on, the situation is as follows:

Chubut: Despite provincial decree 109/97, which created the figure of an indigenous mediator in the verification and measurement process, there has been no indigenous involvement; the Autarchic Institute for Settlement (*Instituto Autárquico de Colonización*) provides scarce and confusing information to the communities and imposes boundaries without consultation. The only property title issued, to the Mallín de los Cual community (9,082 has), is flawed and in violation of indigenous rights as it establishes a ban on the transfer of the lands for a period of twenty years, whilst the constitutional article governing this issue sets no limits or deadlines.

Jujuy: During 2001, this was the province that benefited the most from the Minister for Social Development, at that time president in charge of INAI, native of the province and candidate for national senator in the 2001 elections. In contrast to the province's lack of management and implementation capacity, the Atacama, Kolla and Omaguaca peoples met in a grand assembly of more than 300 people to form the Commission for Indigenous Participation (CPI), which will consider all aspects of the said programme in this province.

Río Negro: The formation of a Field Coordinating Team run by indigenous people has enabled progress to be made in achieving information-sharing meetings with the communities but no measurements have been made, nor titles issued.

International cooperation

Three programmes are receiving international support. The *Ramón Lista Integrated Development Project* (European Union, EU) is targeted at Wichí communities in the Formosa province. It has survived its most critical stage, caused by delays in the allocation of funds and a lack of leadership amongst the management and technical staff. The *Component of Assistance to the Indigenous Population* of the Programme of Assistance to Vulnerable Populations (Inter-American Development Bank, IDB), which covers some of the indigenous communities in the provinces of Chaco, Jujuy, Salta and Formosa, continues to be implemented in spite of bureaucratic prevarications. The project for *Development of Indigenous Communities and Biodiversity Protection* (World Bank, WB), which focuses on the provinces of Salta (Kolla), Neuquén (Mapuche) and Tucumán (Diaguaita-Calchaquí), is still awaiting the formation of its Implementing Body.

Some of the year's events

In contrast to the meagreness of the budget for support to indigenous projects and for paying grants to indigenous students, which have been behind schedule since 2000, INAI did have sufficient resources to undertake "events". In this context, it organised a number of workshops with indigenous communities in different provinces and funded indigenous representatives to travel to meetings of interest to them. Two of these events are described below, by way of example:

Return of the remains of chief Mariano Rosas to the Rankülche people
Panghitruz Güor, born in 1825 and captured by the army in 1834, was handed over to General Juan Manuel de Rosas who acted as his patron, giving him his surname. In 1840, he managed to escape and return to his people. Upon his death in 1877, he was buried in Leubucó where he remained until, in 1879, his grave was desecrated by members of the Desert Conquest expedition and his skull was given to a researcher. For 123 years, it remained in the Natural History Museum of the La Plata National University, from where it was transferred in July 2001 to its original burial place. This act of restitution is worth highlighting as it was not only one of the Rankülche people's demands but also forms an important precedent for future indigenous claims over their historical and cultural heritage.

National Census of Population, Homes and Housing 2001

In fulfilment of a national law, the National Institute for Statistics and Census (INDEC) included a question within a general census of the population aimed at detecting homes with at least an indigenous component.¹ In order to initiate joint work, INDEC decided to consult the indigenous peoples on the way in which the census work should be undertaken and in order to create a basis on which to design and plan the 2002 additional survey. Five meetings were held with representatives from indigenous organisations and communities. The indigenous point of view in all of the meetings was that there had been no participation in the formulation of the law nor in its implementation. In spite of the fact that INDEC consulted various peoples, the majority considered the process lacking in legitimacy. At a national meeting, they therefore produced a document² and the Commission of Indigenous Lawyers in Argentina (CJIA) presented an appeal on the grounds of a violation of constitutional rights, requesting deferral of

the census. The Courts rejected this appeal and, after some comings and goings, alien to indigenous peoples, the census was carried out with the direct participation of indigenous census enumerators and trainers. In spite of this, many of them denied its validity, so much so that INDEC has agreed not to make the results public until the second stage has been completed.

By way of summary

Indigenous demands to INAI were essentially confined to two: 1) the urgent issuing of property titles over their territories and 2) the direct involvement of indigenous peoples in the decision-making regarding all issues of concern to them.

Until these demands are met, the legal defencelessness of the communities will continue to increase. On the one hand, the state admits it is powerless to avoid the occupation and misappropriation of indigenous lands by individuals, and the destruction of their natural resources thus continues without state control. On the other hand, the very same state is encouraging a policy of foreign and/or national capital investment for the establishment of various production activities within these areas. With regard to participation, in 2001 INAI attempted – with no success – to convene indigenous delegates to form the Council of Peoples, an initiative that came to nothing due to a lack of resources.

With neither budget nor political will, it is now clear that the successive Argentinean governments are refusing to listen to indigenous demands. If the required political mechanisms are not activated it will be impossible to guarantee indigenous peoples true recognition of their cultural identity and consequent respect for their special rights. Meanwhile, with masking tape and Band-aids, the plans and programmes for integration will continue. And the complaints and legal actions concerning violations of their rights will increase.

Worsening of conflict over territorial rights

As mentioned above, the delay in issuing property titles is aggravating the situation of legal defencelessness and the daily living conditions of the indigenous communities. It is not possible to list all the disputes here but we will take three examples.

The Lhaka Honhat Association of Indigenous Communities versus the Argentinean State

Proceedings in case no. 12094 of the Inter-American Commission on Human Rights are continuing. This relates to the complaint made by 35 communities of five hunter-gatherer peoples from a territory of 330,000 ha of adjoining lands in the Chaco area of Salta province. In 2000, a friendly settlement procedure was initiated between the parties, which was suddenly cut short in 2001 by the government's refusal to recognise the spatial needs of the communities. Alongside this friendly settlement procedure, it continued to pester the communities in order to force a crack in the chiefs' unity such that they would accept its underhand community by community proposal "immediately and for a much reduced area of land"³. While awaiting a further meeting between the parties, supervised by the IACHR, the Association has pieced together a map with which to precisely define the areas of traditional use and to demonstrate scientifically the basis of their complaint. Meanwhile, the Salta government is secretly authorising a team of engineers to undertake apocryphal agreements between criollos and the indigenous people using arbitrary measurements, and the national government is planning to build a road through the indigenous territory.

Mapuche people versus Repsol-YPF

The historic lawsuit of the Painemil and Kaxipayiñ communities regarding contamination of their lands continues. The conflict concerns the Loma de la Lata gas deposit, the largest in South America. In March 2001, they reiterated their formal complaints concerning contamination of the water table and the "uncontrolled opening of paths, new pipelines and works" without any consultation, despite the fact that it had been agreed that any new works "would be approved by the Mapuche authorities through the Monitoring and Supervisory Committee".

The company ignored the committee, and did not take these demands into consideration. For its part, the government of Neuquén province, legally bound to provide clean water to the communities, is failing to do so. In October, during a demonstration, "children, pregnant women and male members of the communities"⁴ were suppressed and the *Lonko*⁵ arrested. Within the context of a case that the Children's Ombudsman of the Province of Neuquén is taking to the IACHR, a working meeting was held in November in Washington with the attendance of both parties. Faced with the impossibility of reaching an agreement, the IACHR decided to convene a further meeting and undertake a visit "*in loco*" to verify the complaints.

Kolla Tinkunaku community versus Seabort Corporation /Norandino gas pipeline

Whilst the case initiated by the Seabort Corporation for revocation of the donation made to the community by the El Tabacal sugar refinery continues, the communities making up the Tinkunaku indigenous organisation (San Andrés, Río Blanquito, Los Naranjos and Angosto de Paraná) have been affected by two explosions on the Norandino gas pipeline. The pipeline, which transports gas to Chile, was built on their territory without the community's agreement in spite of a case for protection of their constitutional rights being undertaken in their defence and in order to safeguard a species of native wildlife in danger of extinction. Tinkunaku and Greenpeace Argentina requested a change of route due to the dangers that would result from its construction on geologically complex lands, subject to strong seismic pressures and occasional landslips. This request was ignored and the gas pipeline was finished in 1999. It currently runs 70 kms over the indigenous territory, very close to the area of habitation. In March 2001, the gas pipeline exploded, terrifying the people and causing damage to the whole community of San Andrés and to the forest. In January 2002, another explosion occurred, amplifying its impact. Luckily, at that time there were no people in the area. However, 4 has of forest were completely scorched and the effect of the heat has turned the earth to brick. Whilst the National Gas Regulatory Body (ENERGAS) was aware of the situation, it did not supervise the company and now no one knows what will happen when the repairs are finished and the supply re-established.

The indigenous movement

Interestingly, given the general state of affairs, the indigenous movement is coming up with a number of responses and initiatives that are worthy of mention. On the one hand, the conduct of, and mass participation in, the regional meetings on the census demonstrates an increased political awareness at all levels, not only that of the leadership but also that of the community members. Nonetheless, although it would - for the moment - seem unlikely that a nation-wide unity can be achieved, there are indications of a consolidation of groups within regional bodies. This is illustrated by the formation of the *Committee of Indigenous Peoples of the River Pilcomayo Basin*⁶ (Argentina, Bolivia and Paraguay) and its demand for participation in the binational and trinational bodies linked to the Pilcomayo basin, which decide on policies and projects to be undertaken by the member states



Mapping team showing the maps to the Lhaka Honhat community. Photo: Morita Carrasco



After the explosion of the gas pipeline. Photo: Greepeance Argentina

in the said basin. Another is the group *Autoafirmación* ("Self-assertion"), made up of young Mapuche who have begun an interesting movement of cultural recovery and who have spread their voice through an awareness-raising campaign around the census.⁷

At the same time, a greater concern to deepen self-training with regard their rights can be seen, with a view to the process ongoing in the international arena. This is demonstrated by the grants obtained by some to participate in the World Conference against Racism and the United Nations programme of human rights training, and by events such as the *National Meeting of Indigenous Leaders*,⁸ organised by the Council of Indigenous Organisations of Jujuy, and the *First days of reflection on the rights of indigenous peoples* jointly organized by the Commission of Indigenous Lawyers in Argentina.⁹

Notes and references

- 1 It is planned to complete the study with an "Additional Survey 2002" in order to find out the number and composition of all households noted in the first stage.
- 2 The "*Manifiesto de los Pueblos Indígenas de Argentina frente al Censo Nacional 2001*" (Statement of Indigenous Peoples of Argentina regarding the 2001 National Census) can be consulted at the following web page: www.geocities.com/RainForest/Andes/8976
- 3 Map of the Coordinating Body of Lhaka Honhat for the IACHR. More information can be obtained from:
desc@cels.org.ar ; rmasociana@arnet.com.ar
- 4 Communiqué released by the two communities. More information can be obtained from: wajmapu@neunet.com.ar
- 5 Lonko: traditional leader among the Mapuche.
- 6 More information can be obtained from: fungir@ciudad.com.ar
- 7 More information can be obtained from: auafirmacion@yahoo.com.ar
- 8 More information can be obtained from: coaj_jujuy@hotmail.com
- 9 More information can be obtained from:
pueblosindigenas@sinectis.com.ar

CHILE

The current situation of Chile's indigenous peoples, and of the Mapuche in particular, is one of dangerous and oppressive stagnation, caused by a lack of progress in the country in the processing of their demands and arriving at an understanding with the main social and political actors. This situation is the result of the cultural resistance that exists within different sectors of national society, along with a lack of flexibility in the politico-institutional system in Chile, which prevents achievement of the necessary reforms by which to satisfy indigenous land and territorial demands, the search for their constitutional recognition and approval of ILO Convention 169.

In addition, Mapuche demands have suffered from a growing process of criminalization, which is attempting to detract credibility and legitimacy from them. Those sectors most opposed to the indigenous movement are promoting images of supposed separatist intentions and links, thus far unproven, with radical far left groups. This campaign has been promoted by newspapers supportive of the business groups in conflict with the Mapuche. Since the September 11 events in New York, these papers have even circulated stories, unfounded, of supposed links between Mapuche organisations and the fundamentalist leader Osama Bin Laden.

The media have also attempted to conclude that the radicalisation of the Mapuche conflict is due to its links with the EZLN¹ in Mexico and ETA² in the Spanish Basque country. For the Mapuche, this strategy of stigmatisation only seeks to encourage greater police repression, along with the violation of their basic rights and legitimate demands.

Mobilisations and demands

Whilst the year 2000 was relatively quiet in terms of mobilisations and incidents related to the conflict between the Mapuche communities and the government and forestry companies, 2001 was, on the contrary, one of serious clashes, some of which resulted in many arrests and serious injuries. Such was the case of the police shooting of 4 Mapuche in the commune of Tirúa and the shots fired at two other community members in Galvarino and Victoria respectively. To this can be added various raids and police arrests, all characterised by unusually high levels of violence. :

Of the most violent events, the raid on the headquarters of the *Consejo de Todas las Tierras* (on 19 July) has to be mentioned. This is :

one of the country's most influential Mapuche organisations, along with the *Arauco-Malleco Coordinating Body*. A dramatic police operation took place, annoying the leaders who then opposed the action, leading to a violent police reaction resulting in arrests and injuries, among them the leader Aucán Huilcamán who, several months later (November 29) was still in prison accused, along with five other people, of attacking police officers.

The raid led to an unprecedented wave of solidarity among the Mapuche organisations, and brought about the formation of a "common front", which convened a mass march in the town of Temuco (July 25). Its aim was to condemn the harassment and repressive violence caused by the police and judicial operations against the communities and organisations claiming their territorial rights. The mobilisation was organised by the main Mapuche organisations of the Ninth Region and was supported by numerous Mapuche communities and civil society organisations, bringing together some 1,500 people and paralysing the main arteries of the town. The march ended in heavy police repression and serious incidents in the town's streets. In Malleco province (Araucanía Region), the land claims continued, as did the communities' protests against private individuals and forestry companies, leading to serious clashes with the police. As in previous years, some of the large forest owners showed demonstrations of force, threatening to take justice into their own hands if the government did not enforce the Law of Internal State Security.

In Temuco, the closure of the home for indigenous students triggered a wave of protest on the part of Mapuche university students. The pupils "took" the cathedral and organised a hunger strike to pressurise the authorities into finding a rapid solution to the problem. Apart from the issue of student homes, they were also demanding implementation of a Mapuche student policy. Meanwhile, the Pewenche and environmentalists' protests against the ENDESA multinational's Ralco dam have continued in the Alto Bío-Bío. Similarly, Mapuche communities from Temuco, Purén and Gorbea have tried, unsuccessfully, to close the municipal rubbish tips existing on their lands.

The general situation of Mapuche demands has been adversely affected by the severe crisis being experienced by the National Corporation for Indigenous Development (CONADI), a government body whose task it is to promote the development of indigenous peoples. CONADI, weakened and with little capacity to respond to indigenous demands, has fallen into disrepute, accused of corruption and administrative problems in the purchase of land for Mapuche communities, a situation which the government is investigating.



Convention 169 and reforms to procedural criminal law

Legal cases and the new procedural criminal system are two issues of deep concern to Chile's indigenous peoples. However, ILO Convention 169 has still not been ratified. After more than nine years of processing, it has been approved by the Chamber of Deputies and is currently to be found with the Senate. Due to complaints made by right-wing mem-

bers to the Constitutional Court, its approval has now become more difficult as it requires 4/7 of the Senate to pass it, a percentage which those sectors in favour of its approval are unlikely to gain.

Within the context of the modernisation of the Chilean judiciary, a new procedural system is now being applied as a pilot model in a number of the country's regions, one of which is the region of Araucanía. The Mapuche organisations have questioned this system, considering it discriminatory and degrading. Some organisations, such as the Konapewman group of Mapuche professionals, have raised the need to reform the system, incorporating a legal plurality that will enable the acceptance and validity of an alternative law based on customary law. This proposal has been rejected by members of the judiciary and right-wing politicians.

Historical truth and a new deal

In January 2001, the Commission for Historical Truth and a New Deal (see Chile in *The Indigenous World 2000-2001*) was established, presided over by the ex-president of the Republic, Patricio Aylwin, and made up of intellectuals and leaders from all the country's indigenous peoples. Its mandate is to review the past and to formulate proposals for a new deal. Two thematic sub-commissions have been formed on law and development, plus one sub-commission for each people. Six months of work was anticipated in which to gather the historical background detail for the autonomous drafting of proposals to the Commission.

The Commission sat in session throughout the year but the Mapuche did not participate until October as they had a number of objections to, and criticisms of, the initiative. The main Mapuche territorial identities were to be found among the organisations that did finally join the Commission. The Mapuche organisations that preferred to remain outside proposed the idea of replacing this organisation with a "State Commission" in which all the authorities would be represented and which, in addition, would comprise an international guarantor, to ensure the viability and decision-making capacity of the way in which it was run.

Poverty and development projects

- : In July, the results of the National Socio-Economic Characterisation
- : Survey (CASEN) were made known. They revealed – once again – the
- : conditions of extreme poverty in which the rural indigenous popula-

tion live. The survey showed that the Ninth Region, which contains the greatest concentration of rural Mapuche in Chile, is the poorest in the country, with 32.7% below the poverty line. The poverty indicators show a levelling off, even a worsening, of the economic situation of the rural Mapuche population, with figures of those in poverty reaching 50% in some of the communes with the highest levels of Mapuche population. In the First Region, where the greatest percentage of the country's Aymara population live, poverty has increased by almost four percentage points in relation to 1998. For indigenous leaders, the results of the survey, which measures levels of education, employment, income, health and housing, are proof of the failure of government social policies, imposed with little or no criteria for participation or respect for the cultural differences of the indigenous peoples.

In terms of reducing indigenous poverty, President Lagos' government negotiated a loan with the Inter-American Development Bank, IDB. The loan, approved on 28 Feb. 2001, will finance the *Integrated Development Programme for Indigenous Communities* with a credit line of 80 million dollars targeted at benefiting 12,000 indigenous families in 600 Aymara, Atacameña and Mapuche communities. Its objectives include the strengthening of local institutions, an increase in agricultural production and improvements in health and education services. Although the initiative has generally been well received, some Mapuche organisations have criticised its lack of participatory mechanisms by which the communities can define their own priorities and strategies.

Notes and Sources

- 1 EZLN: Ejército Zapatista de Liberación Nacional – the Zapatista Army of National Liberation.
- 2 ETA: Euzkadi ta Azkatasuna – “The Basque Country and Freedom”, the Basque liberation movement.

La Tercera daily newspaper

El Mercurio daily newspaper

El Austral de Temuco daily newspaper

www.mapuche.cl

www.mapuexpress.net

www.mapuche.nl

www.mideplan.cl

www.iadb.org



AUSTRALIA AND THE PACIFIC

AUSTRALIA

Australia's Aboriginal and Torres Strait Islander politics and policy worlds were blown away in mid-June 2001. Geoff Clark, elected head of the national Aboriginal administration, was said in vivid press reports to have been involved in four rapes of women 20 years earlier. Then, a high-profile Aboriginal magistrate, Ms. Pat O'Shane, commented that many women make up rape stories. Then, the former head of Aboriginal Reconciliation, Evelyn Scott, said her children had been abused by an Aboriginal politician, soon said to be O'Shane's brother. Uproar followed.

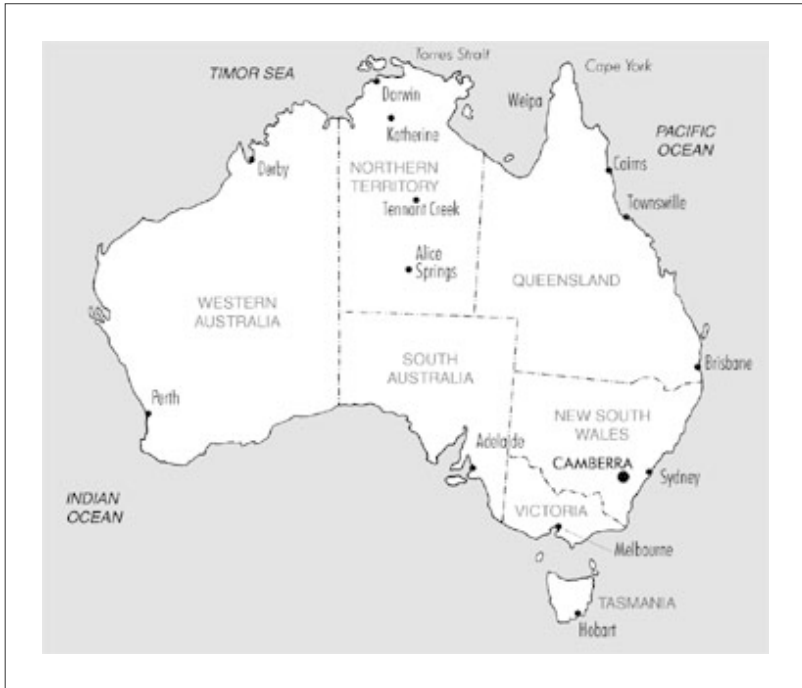
Uproar, hypocrisy and denial

Whites, including politicians, newspaper editors and commentators feigned surprise and outrage at horror stories now widely reported in lengthy articles and TV items around the country. *Feigned* because books, articles, oral and visual reports about the real Aboriginal Australia have been appearing for many years. Worse, Aborigines and their non-indigenous friends and supporters were accused of having "hidden" this unpleasant information.

The *extent* and *acceptance* of violence against women and children within Aboriginal society became the key issues. The lions of white public opinion denounced Aborigines – especially leaders – and their white friends for allegedly "accepting" or ignoring the misery of communities and families. Editorials, commentators, talkback radio callers and hosts demanded that Aborigines act now, and stop talking – stop wasting our time with proposals for political, constitutional, social and economic reforms – and get busy solving their problems. Let's not hear about history, poverty, suffering and lack of funds, they cried; it is time for black people to do something!

In the meltdown from mid-June, it became impossible to speak of any indigenous subject but the physical and sexual abuse of women and children. Interest in other topics labelled one an idler or fool, while no measure – e.g., locking up local black men in razor wire cages to keep them from families – was too extreme for usually sensible people to propose. As with September 11, 2001, one must speak first of outrage to show one's moral seriousness and political correctness.

The shrill excess is clear. Surely white reactions would not be so extreme, so opportunistic, so *grateful*, if they did not allow Australians



the chance to express themselves vehemently on these issues – and at no moral or material cost. *Other* people, not we ourselves, are to blame for our worst and most shameful national problem! We are so good and concerned that we can now be openly upset about it; wallow in weekend newspaper cover stories, features, and photos, a pornography of violence; *and* overlook the role of our settlement, land and funding policies that have created the whole mess.

North-East corner

The most thorough and painful exploration of indigenous community violence in recent years was the work of Professor Boni Robertson and other indigenous women, *Aboriginal and Torres Strait Islander Women's Task Force on Violence*, 1999, sponsored by the Queensland state government.¹ However, the report did not receive the official urgency required so *Brisbane Courier-Mail* journalists Margaret Wenham, Tony Koch and others continued with tough press reports. The Premier said he was moved and launched another inquiry in 2001, headed by

a respected white male but with limited working time and regional focus on the Cape York Peninsula, the great north-eastern point of Australia. Judge Tony Fitzgerald's *Cape York Study* is now online.²

Cape York is already the focus of a special effort by the Queensland Premier's department, the *Cape York Partnerships*, a sort of anti-ideological pragmatic mix of good intentions and practical cooperation between government departments whipped along by the Premier's personal drive and prestige, and by local groups in the troubled communities of the region led by Noel Pearson, a high profile national Aboriginal leader. Pearson himself has led a national debate through a series of strong public speeches stirring up partisan animosities by his attacks on old Labour *confrères*, an approach that has led many to doubt his wisdom. However, in his most full and recent presentation, *On the human right to misery, mass incarceration and early death* (25 Oct. 2001), Pearson strongly and accessibly stated the practical needs and urgency of his approach.³

A quiet public moment in this year of slanging and sorrow over violence came on August 13, 2001, when Noel Pearson and Nunavut's Inuit premier Paul Okalik shared a lunchtime stage at the Brisbane Custom House and told an appreciative audience of the progress in their regions.⁴ Many government officials were in the audience. Okalik's quiet charisma evoked much comment in Australia, where decibels have been more characteristic of recent debate on matters indigenous. He stressed that the political landmarks in indigenous politics were, after all, only practical openings for humble problem-solving and genuine human reconciliation. On August 15, when Okalik spoke in Canberra at the National Press Club, a nationally televised event, with Australia's Aboriginal elder statesman and leading moral force for Reconciliation, Patrick Dodson, the latter related the Inuit case of Nunavut to Aboriginal needs in the centenary year of Australia's Federation (i.e., 2001):

[P]olicy options of governments over the past 200 years or so, and especially since Federation, have kept us as ... playthings [.] At the moment we are a bit like toys that have been discarded but not yet thrown in the bin.

It is because of these uncertainties, and the insecurities of our lives and our future under government control, that we have reawakened the call for a treaty between the government and us.

As a nation, we've got to find the courage to face that prospect and I wouldn't have thought it so daunting. When I deal with lawyers,



Prime Minister Howard visiting Kofi Annan in New York.
Leahy in Courier Mail, Brisbane 5.09.2000

business people, Aboriginal and other groups in society, there are contracts often involved.

A treaty is necessary to...

Recognise Aboriginal people as people with rights to the same standard of service expected by others, but also our rights to be indigenous and to manage our own societies on our own lands at our own pace and in our own way.

... But ultimately, a treaty would represent real "practical reconciliation"...

It will come when we realise that the only alternatives are fear, racism, ignorance and continuing social dislocation.⁵

“Practical reconciliation” is the Howard government’s phrase for the trickle of welfare state programs, its substitute for addressing the agenda of Aboriginal leaders.

Torres Strait Islanders

At the tip of Cape York, Australia's second indigenous people, Melanesian Islanders of the islands and shores of Torres Strait, have continued to seek regional political autonomy and recognised sea rights within Australia. Their latest political proposal, *A Torres Strait Territory Government*, resulting from extensive community consultations, was published in October 2001.⁶ They want a government for all regional residents, regardless of ethnic background, to fit within Australia's constitutional structure. The proposals are moderate and workable.

However, they do not place much emphasis on the major issue for Islanders, sea rights and the power to manage what happens in the seas of their region with its hazardous reefs and rich fishing grounds. In 2001, Islanders won a sensational court case in which they were acquitted of confiscating the fish catch of non-indigenous fishers, a case widely misunderstood as recognising more indigenous rights than it does. The danger for governments is that someday, in a crisis, whether a development project approval or pollution accident, Islanders will realise that despite recent ceremonial handovers of native title they have few rights. Then their supposed "moderation" compared with Aborigines will evaporate.

Self-Determination home and away

The Howard government and some right-wing commentators have been blaming *self-determination* for the problems and violence suffered by Aboriginal people. That term, conflated with *separatism* in such minds, was over-optimistically used by earlier governments to dignify their indigenous policy goals, goals never nearly reached. They also oppose self-determination and its spirit at the United Nations. For instance, at the tail end of the world racism summit (WCAR) in September 2001, the Australian government representative spoke up for the benefits of colonialism.

Another divide opening up *within* the discussion of self-determination was evident at the conference *Rethinking Indigenous Self-Determination* at the University of Queensland in September 2001.⁷ For some, the key issues are political and constitutional relationships, while others seek to convert government program relationships into something like self-government. Neither of these two approaches is workable without the other; both frameworks and daily needs must be addressed. The emphasis today on piecemeal approaches, however understandable in

the current Australian climate, risks becoming a form of official micro-management and continued obsessive control of indigenous people.

The cancelled meeting of the Commonwealth of Nations (former British Empire) heads of government (CHOGM) of October 2001 is to take place in March 2002. Whereas the original plan was for many public events and much scope for local and international cultural, social, and political input, Howard is clearly happier with the new approach hidden far from public gaze (in the name of security since September 11, of course) at a resort north of Brisbane. Unfortunately, the new Commonwealth Association of Indigenous Peoples (CAIP) has been unable to organise itself in time to contribute greatly. However, the moral energy of Honourable Margaret Reynolds, retired Australian senator, minister and part-time academic, who now spearheads much of the Commonwealth's human rights work, and Helena Whall running the *Indigenous Rights in the Commonwealth Project*, University of London,⁸ have seen clear proposals put forward for this meeting. The Commonwealth is one of the few international organisations that has not adopted a commitment to indigenous issues but, with 54 member countries, including many of the best and worst indigenous contexts, there is much scope for active precedent.

Orphan of the Pacific

Australian television news on February 5, 2002, featured foreign minister Alexander Downer meeting United Nations High Commissioner for Human Rights, Mary Robinson. Downer said he told Mrs Robinson that Australia's tough stand against asylum seeking "boat people" was strongly supported by the Australian public. Mrs Robinson was then shown with a sad and gentle smile saying that human rights were not about "popularity". Downer, often portrayed by political cartoonists, those scathing and shrewd chroniclers of Australia's national life, as an oversized and not very bright schoolboy, now looked more the part than ever compared with Robinson as the kind but firm schoolteacher. It was a picture of the Australian situation today.

Having nothing to say or argue but only prejudice to incite, Howard is left simply abusing Mary Robinson as in the Downer case above (Radio interview transcript, Prime Minister's Media Centre, 6 February 2002), or anyone else who disagrees with him. Since the beginning of 2000 (see *The Indigenous World, 1999-2000* and *2000-2001*), Howard has openly opposed international human rights processes and standards, even warning UN head Kofi Annan not to speak

of these matters in Australia and saying they were domestic partisan ploys. Howard's UN visit in 2000 allowed cartoonists to ridicule his aggressively childish approach (see drawing). But the desert prison camps where asylum seekers are held for long periods, and Howard's use of military "special forces" to storm the ship *Tampa* at sea in August 2001, his government's intimidation of the captain and attempts to throw overboard the spirit of international law and basic humanity, his refusal to let further boat people ashore and his "Pacific Solution" of buying prison camp space in poor mini-nations like Nauru have now become an international scandal. Howard enjoys the fuss, posing as defender of Australian prejudice against "elites" at home and abroad. It is the central feature of his politics.⁹ However, clever race strategy using Aborigines or Afghans is still official racism, and that is the problem of the Howard era and government. It has defected from the "first world" moral community.

Howard cares little for international agreements freely entered into by Australia, although he freely admits using those that suit him. Dictates of conscience or the brutalising effects on domestic society of brutal acts of omission or commission towards "the Other" make no impression. Rather, desperate people floating around in leaky overcrowded boats, many of whom have already drowned off Northern Australia, and Aborigines and other minorities serve only the populism of the moment and Howard's *idées fixes*. Meanwhile, Howard rejects notions of international community and obligation apart from the global economic and military macro-facts and is now trying to simplify by signing Australia over to America through free trade and full support for Bush's wars and foreign policies (including rejection of the Kyoto accords).

Conclusions

Now, in mid-February 2002, some chickens are coming home to roost. Several sources and an official report have found that the Howard government knew for a month or more during the election campaign that its lurid tales of boat people throwing children overboard were untrue, while it misused military and civil personnel and powers to manipulate political and electoral affairs (all news media, 12-15 Feb. 2002). Scepticism among the public is great because trashing the image and rights of vulnerable people for political self-aggrandisement is such a "John Howard" thing to do! Howard has responded typically. (1) He has blamed a former minister, and his government is blaming subordinates, while forbidding Defence officials to com-

ment. (2) He has said there is no issue at all but only Labour whining over the 2001 election they lost. (3) And in his “puffer fish” mode he has proclaimed pompously that, “I don’t apologise for anything that was done in defence of the national interest”. Another day of national uproar, later he tells the country that attempts to know the truth are “politically motivated”, an unseasonable sensitivity in a man who reduces almost all to partisan ploys. The real issue is credibility, integrity, and the fitness to govern of leaders.

As Mike Carlton sums up (*Sydney Morning Herald*, 16 Feb. 2002),

What is starkly clear ... is that senior ministers – most culpably the Prime Minister – did not seek the truth of the matter because the lie suited their political purposes very well, thank you. They were engaged in one of the nastiest stratagems of authoritarian government, which is to shore up that authority by vilifying a minority racial or religious group and inflaming the populace against it. In a multicultural society such as ours, this is almost criminal irresponsibility.

The Howard government’s official motives and statements on human rights, indigenous peoples and asylum seekers are not credible, at home or abroad. There is also a total failure or refusal of imagination and empathy, and of moral solidarity, with fellow human beings. Given the recent behaviour of Howard and his ministers, one may well imagine how *they* would act if caged together in the desert for a few months, or sardined into a leaky boat drifting in the Indian Ocean.

Notes and references

- 1 Report online:
<http://www.qldwoman.qld.gov.au/publications/main.html>
- 2 Report online: <http://www.premiers.qld.gov.au/about/community/capeyorkreport.htm>
- 3 Report online: <http://www.capeyorkpartnerships.com/noelpearson/index.htm>
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- 5 *The Age*, Melbourne, 16 August. 2001.
- 6 Report online: (<http://www.tsra.gov.au/4001.pdf>)
- 7 Proceedings will be published by conference organiser and editor Geoff Stokes, Deakin University.
- 8 Website: <http://www.cpsu.org.uk/projects/indigenous.html>
- 9 See e.g. **David Solomon. 2002.** “Media Manipulation”. *Howard’s Race*, ed. David Solomon. Sydney: Harper Collins.

THE PACIFIC REGION

Pacific Free Trade Area: Controversy over PACER and PICTA

In August 2001, the Pacific Islands Forum (formerly known as the South Pacific Forum) endorsed, and opened for signature and ratification, the Pacific Islands Countries Trade Agreement (PICTA) and the Pacific Agreement on Closer Economic Relations (PACER). PACER is an economic cooperation agreement amongst all Forum members that sets out the Forum region's vision on future trade and economic relations, while the PICTA will, excluding Australia and New Zealand, establish a free trade area among the other 14 Forum island countries after a 10-year transition period.

While the Forum hailed these agreements as providing the basis for increasing regional integration and as a means to effectively prepare members' economies to respond to globalisation, the NGO-based Pacific Network on Globalisation (PANG) sees both agreements merely as stepping stones towards full compliance with the World Trade Organisation (WTO). Although they require ratification by a majority of member countries to become effective, PICTA and PACER may be triggered as early as September 2002, when the European Union (EU) begins free trade negotiations with Pacific States under the Cotonou Agreement.

The EU has indicated that it would seek another five-year waiver of its preferential trading arrangements with the African, Caribbean and Pacific (ACP) countries until 2006 but that, after that, it intends to have a trade regime that conforms to WTO rules. It has therefore communicated to the ACP countries that it wants to create a free trade area with each of the three sub-regions. The EU is facilitating the implementation of the Pacific free trade area by providing technical assistance for the reforms in the respective Forum countries, and funding three experts for the Forum Secretariat, a Trade Policy Adviser, Trade Development Officer and a Fiscal Reform Officer. These legally binding agreements will thus make Pacific islands states conform to WTO trade rules by gradually opening their economies to free trade.

The Forum acknowledged that there may be some adverse social effects but claims the impact "is expected to be small" and temporary. But Pacific civil society and observers remain unconvinced at the Forum's portrayal of the potential social effects when one looks at the

experience and impact of liberalisation and free trade areas in other regions of the world. Non-governmental organisations, community and church groups have expressed concern at the non-transparent manner in which discussions on a free trade area have been conducted.

PANG is particularly concerned about the impact of free trade on the ownership of and access to land. The Pacific region's system of communally-owned land directly conflicts with the view that the resources should be used by those who can put them to the most productive or profitable use and that all should have equal access to the globe's resources.

In response to the Forum, PANG expressed concerns at the impact of free trade on small island communities and called on Pacific governments:

- Not to ratify PICTA and PACER.
- To withdraw from the agreements if already ratified.
- To refer decisions on PICTA and PACER to national parliaments and encourage public debate.

The Pacific faces waves of asylum seekers

In the Pacific, Aotearoa/New Zealand, Fiji, Samoa, the Solomon Islands, Tuvalu and Papua New Guinea are signatories to the 1951 Refugee Convention (although Papua New Guinea has listed reservations to certain articles in the Convention). The signature of France, the United States and the United Kingdom cover their colonies in the region. Nauru has not signed the Convention, even though the government of Nauru has agreed to set up a camp for refugees seeking asylum in Australia.

Compared to Africa, Asia and the Middle East, there are relatively few refugees in the Pacific islands. But it is a growing problem for the region as refugees flee from conflict into neighbouring countries (e.g. from West Papua to Papua New Guinea; Bougainville to Solomon Islands, Timor Lorosa'e to West Timor). Thousands of people have also been internally displaced within countries (e.g. in Bougainville, Solomon Islands and Fiji).

Australia, however, has restricted the rights of refugees from neighbouring countries. With the exception of a handful of West Papuans who have successfully claimed protection and permanent residency, successive Australian governments have refused to consider requests from West Papuans seeking refugee status in Australia.

Pacific peoples reject Australia's "Pacific Solution"

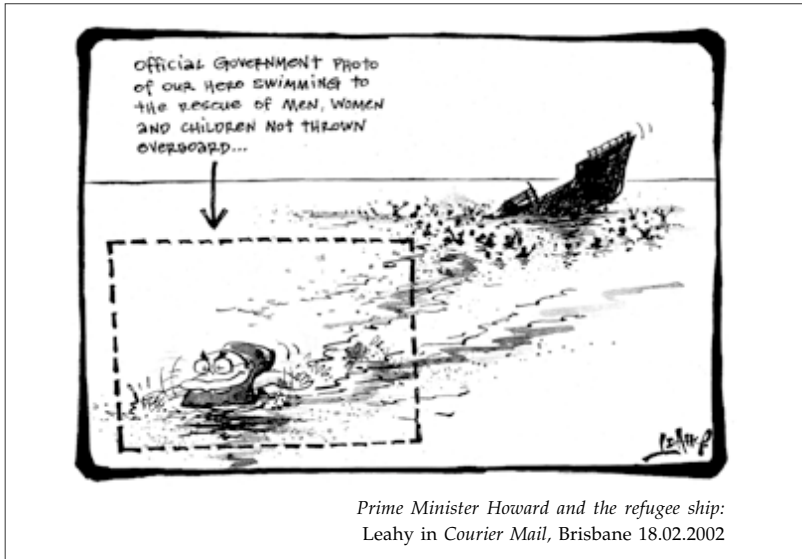
Pacific peoples including chiefs, church leaders and NGOs have strongly opposed Australia's plans to use Pacific islands as "processing centres" in its effort to curtail the flow of asylum seekers heading for Australian shores. The current crisis that began with the Tampa incident in August 2001 escalated when 224 asylum seekers from the Indonesian boat *Aceng* defied the Australian Government for two weeks by refusing to be taken off the Australian warship *HMAS Manoora* to an Australian-built detention centre on Nauru. The deadlock was broken when the Australian Government used force to remove 12 Iraqi leaders, despite Nauruan Government statements that it would only accept voluntary arrivals. Media access to asylum seekers was stopped, making it impossible to obtain accounts from people as to whether they did leave voluntarily.

As well as paying for the costs of establishing camps in Nauru, Australia offered \$20 million to the Nauruan government. While recognising Australia's responsibility to provide development assistance to neighbouring island countries, many people regard this money as a bribe rather than a considered policy that would allocate aid to long-term development priorities. For Pacific peoples, Australia's so-called "Pacific Solution" is just another way of using the Pacific as a "dumping" ground and at the same time evading its obligations under international law.

By January 2002 over 1,550 asylum seekers had been located in detention camps in Nauru and Papua New Guinea (PNG). But the refugee issue is creating tension and uncertainty. In PNG, the Prime Minister sacked the Foreign Minister after he rejected Australia's request to take more asylum seekers "based on the belief that Australia has the capacity and resources to deal with the problem itself". A local village chief from Manus province, where the refugees have been taken, said the refugee problem was putting pressure on the provincial government and creating animosity among the people.

When the Fijian government established a task force in October to study the question, it received strong criticism from chiefs and provincial councils. While the Fiji Human Rights Commission stated that Pacific countries like Fiji have an obligation to look after refugees who enter its territories, many non-government groups believed that because of Australia's comparatively superior financial and economic position and bigger land mass, there was no need to exploit its Pacific neighbours as processing centres for refugees.

It is understood that many Pacific governments are trying to make money out of the refugee situation, and Australia is tying the refugee



Prime Minister Howard and the refugee ship:
Leahy in *Courier Mail*, Brisbane 18.02.2002

issue into aid deals and benefits, and financial incentives. Many Pacific governments have undertaken or are undertaking to receive the refugees without wide national consultation on the issue.

A joint statement by the Pacific Conference of Churches and regional non-governmental organisations appealed to Pacific governments to carefully consider the long-term consequences and impacts of accepting aid deals in connection with refugees. For civil society organisations, accepting refugees bound for Australia for the sake of money will only add more problems and will have adverse impacts on Pacific communities, as well as on the sovereignty of Pacific nations. The statement further adds that accepting Australian aid deals will “make Pacific island governments part of the process that solicits money/profits out of trade in human trafficking, and in this case the asylum seekers”.

Ten Uses the World has for a Pacific island

1. A testing ground for atomic and hydrogen bombs – bravo!!!
2. A target for ballistic missiles and nuclear warheads.
3. A country club for military personnel.
4. An incinerator for unused chemical weapons.
5. A dump for toxic and radioactive waste.
6. A ghetto to put the people whose villages get in the way of 1-5.

7. As a model of a beautiful and pristine environment...and a paradise colony far away from home.
8. Someone to bully when you're too small to bully anyone else.
9. Somewhere to sell your food to when it's past its use-by date. and announcing the latest...
10. A centre to process (read "dump") refugees to avoid your international responsibilities and try to win elections.

Intellectual Property Rights: For a better protection

The protection of the rights to intellectual property has been on the agenda of Pacific governments for decades. But only recently has the Pacific Islands Forum finally taken to task the development of a comprehensive regional legal framework for the promotion and protection of traditional knowledge and cultural expressions.

In June 2001, Forum Economic Ministers discussed a model law for intellectual property rights that would encompass cultural and bio-piracy rights. The model law and a model policy framework, once endorsed, would be taken by Pacific countries in the next few years and adjusted to their different country circumstances in order to be enacted.

However, while the Pacific Region awaits a proper and enforceable legislation to protect its intellectual property rights, reality has forced individual governments to initiate measures of protection and benefit-sharing between bio-prospectors and communities that are the custodians of indigenous knowledge.

But ultimately the absence of adequate legal protection of intellectual property at national and regional level makes small Pacific nations more vulnerable to international bio-piracy.

The example of Samoa

Samoa has signed a "landmark agreement" with a US research group that will guarantee 20 percent of revenue received from the development of an experimental but promising anti-HIV/AIDS compound from the bark of the Samoan "mamala" tree.

The experimental compound is called Prostratin. The research group, AIDS ReSearch Alliance of America (ARA), has announced that the agreement will return 20 percent of any commercial revenue derived from the use of this compound to the people of Samoa who helped American researchers discover the plant-derived potentially

life-saving therapy. ARA said the agreement provides a share in the potential proceeds from the first compound ever licensed by the National Cancer Institute (NCI) of the US National Institutes of Health (NIH) for development by a non-profit research institution.

Signed in September 2001 by the ARA and Samoa Prime Minister Tuilaepa Sailele Malielegaoi, the agreement gives the Samoan government 12.5 percent of the profits. Another 6.7 percent goes to the village Savai'i, next to the Falealupo Rainforest where the healers who provided the initial health information that eventually led to this agreement live. The Associated Press said that the families of two Samoan women, who died in their eighties after passing on their knowledge of the tree's healing powers, will each receive 0.4 percent. The NIH also gets 5 percent of any profits.

In licensing the compound for development, the NCI requested that there be negotiations with the Samoan government for benefits for the Samoan people. ARA, a non-profit group based in West Hollywood, California licensed Prostratin from the NCI in order to explore the compound's ability to protect cells from HIV and to activate a virus that lays dormant in the body and beyond the reach of currently available HIV drugs.

After paying out according to the agreement, the ARA will use any revenue it derives from Prostratin for additional HIV/ AIDS research.

KA PAE'AINA (HAWAI'I)

US Army threatens Makua Valley

Makua Valley is a sacred place. It is the birthplace of Kanaka Maoli, the indigenous peoples of Ka Pae'Aina (Hawaii). To the United States Army, Makua Valley is a sorely needed training area, where troops from the 25th Infantry Division could fire rifles, mortars and howitzers in the closest approximation to combat short of war.

The US Army plans to resume combat training in Hawaii's Makua Valley but local indigenous groups, residents and environmentalists say the training is destroying the valley's cultural, historic and envi-

ronmental legacy. "Our problem with the military is they don't understand the significance of Makua Valley," said William J. Aila Jr., a leeward coast resident and outspoken opponent of the Army's plans. "They're bombing the Earth Mother."

The Makua Valley rises from the leeward coast of Oahu into the volcanic bluffs of the Waianae Mountains, home to a multitude of endangered species. The valley floor is peppered with archaeological ruins, including the remnants of temples where humans were once sacrificed.

The Army suspended training at the Makua Military Reservation two and a half years ago amid a public outcry that followed several bush fires sparked by gunfire. The Army's presence in the valley dates to the 1920s, when the service installed gun emplacements there. After the Japanese attack on Pearl Harbour, the Army confiscated 6,600 acres in and around the valley to train troops for World War II, evicting ranchers who lived there. It still occupies nearly 4,200 acres today.

For decades, the Army and the other services bombed, strafed and otherwise carried out training exercises in Makua Valley with relative impunity. In recent years, however, the training has drawn protests from residents and, increasingly, the attention of federal regulators.

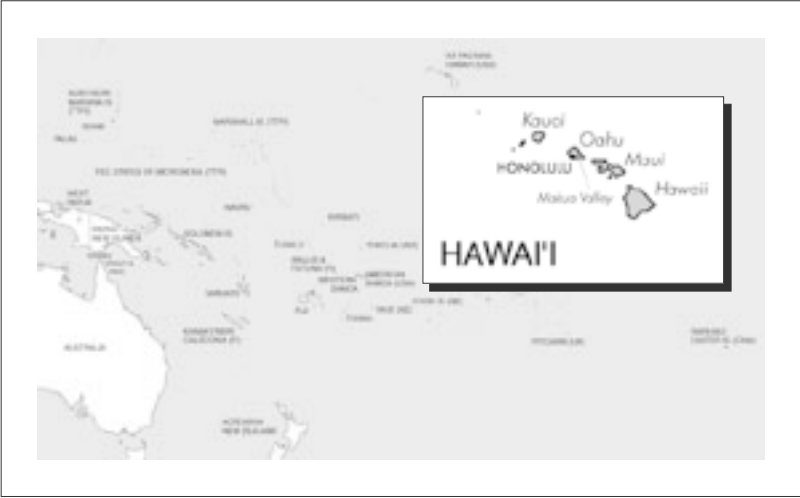
The fires that prompted the Army to suspend training in September 1998 raised concerns among officials with the United States Fish and Wildlife Service about the threat posed to 41 endangered species of plants and animals in or near the valley.

It was then that the Army's legal battle began. A group of residents and an advocacy group, the Earthjustice Legal Defense Fund, filed a lawsuit demanding that the Army comply with the National Environmental Policy Act and conduct a thorough review of the impact that training was having on the valley.

The Army ultimately settled the lawsuit, agreeing not to resume firing weapons in Makua until it had reviewed any potential impact and notified the public in advance. After more than two years of study, the Army announced in December 2000 that it planned to resume training, albeit in a more limited way, with units of more than 100 soldiers conducting operations and firing weapons in narrowly drawn zones.

The 25th Division's commanders argued that they had designed the training to minimize, if not eliminate, the effects on Makua Valley's historic sites and environment, but the plan provoked a new round of protests and a new lawsuit.

This time, the residents contended that the Army had failed to
: conduct a more rigorous and expensive environmental impact study.
: The less time-consuming environmental assessment, they said, did
: not consider a variety of issues, including whether there were alter-



native sites for military training. After protests that included a raucous community meeting in the town of Waianae in January, the division's commanders withdrew their plan, saying they wanted more time to consult with residents and others.

The Army also tried to have the lawsuit dismissed but, on March 1 2001, a federal judge in Honolulu refused.

TE AO MAOHI (FRENCH POLYNESIA)

Tavini makes gains - but Flosse wins again

President Gaston Flosse was returned to power on 6 May 2001, in elections to the Territorial Assembly in Te Ao Maohi (French Polynesia). Bolstered by French Government funding, Flosse's party *Tahoeraa Huiraatira* increased its majority by one seat, winning 28 seats in the 49-seat assembly, with the President returning for his fifth term in office.

The pro-independence party, *Tavini Huiraatira*, won 13 seats in the elections, an increase of two from the last vote in 1996. The autonomist party, *Fetia Api*, promising a "third way", won seven seats, while

Chantal Flores, running as an independent in the Australs archipelago, won the final position in the assembly. Overall, the percentage of votes for the major parties was: *Tahoeraa Huiraatira* - 48.8 per cent; *Tavini Huiraatira no Te Ao Maohi* - 25.4 per cent; *Fetia Api* - 13.1 per cent; *Ai'a Api* - 3.4 per cent; *Taparu Amui no Tahaa Pae* - 0.7 per cent.

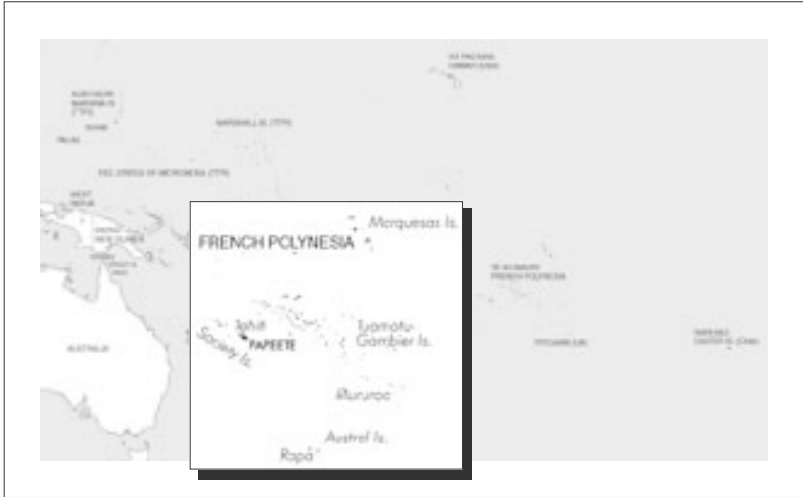
Pro-independence forces had hoped for a better showing in the elections, aiming for 18 seats, but the big loser was long-time autonomist politician, Emile Vernaudon, who has come out in opposition to Flosse in recent years. This benefited *Fetia Api*, led by Boris Leontieff, the Mayor of Arue. Leontieff, a former Flosse minister, is opposed to independence but also critical of Gaston Flosse's corruption and mismanagement.

Another feature of these elections was the new French electoral law requiring parity between men and women on electoral lists. As well as longstanding leaders like Oscar Temaru and James Salmon, pro-independence women such as Tea Hirshon, Tina Cross and Tamara Bopp du Pont were elected on the Tavini list. Other candidates elected on the Tavini list included former trade union leader Hiro Tefaarere of *A Tia i Mua*, Marius Raapato and Vito Maamaatua (director of the pro-independence radio station *Te Reo o Tefana*).

Since the closure of France's nuclear testing centre, the *Centre d'Expérimentations du Pacifique* (CEP) in 1996, France has provided funding of almost US\$200 million a year to the colony. The CEP was the key source of revenue for the Flosse administration, and French President Jacques Chirac guaranteed a similar amount of revenue to Flosse for ten years after the end of testing, to ease the transition into a post-nuclear economy.

Flosse has used his control of the territory's administration to woo opponents over to the majority – in the last government, there were 17 ministers and Flosse has used government patronage to gain support. The magazine *Tahiti Pacifique* reports that some 500 government workers on short-term contracts were encouraged to campaign for Flosse's ruling majority, to ensure that their government employment would be renewed.

The French Government or French corporations control the major media, and pro-independence politicians are regularly censored, with free access only to *Te Reo o Tefana*, the pro-independence radio station in the municipality of Faa'a. Flosse extensively used the new station TNTV for his electoral campaign (critics of the President noted that interviewers on the station seemed to be using question scripted by the President's media office!). In the lead up to the elections, media outlets regularly highlighted current crises in the Solomon Islands, Fiji and Papua New Guinea, in a not-so-subtle suggestion of the dangers of political independence.



Pro-independence candidates sought to mobilise on the ground. On 1 May, just days before the election, hundreds of Tavini supporters rallied and marched around Tahiti carrying the blue and white independence flag, marked with five gold stars (symbolising the five archipelagos of Te Ao Maohi).

A major advantage for the ruling *Tahoeraa* party is the electoral gerrymander that ensures that a vote in the outer archipelagos of the far-flung country weighs far more heavily than a vote in Tahiti or the heavily-populated Windward islands. As a member of the French National Assembly, Emile Vernaudon had sought electoral reform in 2000 to remove this imbalance but legislative changes only led to an expansion of the Territorial parliament from 41 to 49 seats. Politicians from the pro-independence parties are faced with enormous constraints in terms of finance, travel and communications to reach voters in the outer islands, in a country as large as western Europe. In contrast, Flosse used government resources to travel and offer inducements for voting in the isolated archipelagos.

In contrast, 32 of the 49 assembly seats are found in the Windward islands (including the two main islands of Tahiti and Moorea). It was here that Tavini polled best, as Oscar Temaru noted: “In many towns of Tahiti, the opposition still has more support than Tahoeraa.”

FIJI ISLANDS

A better Fiji through the ballot?

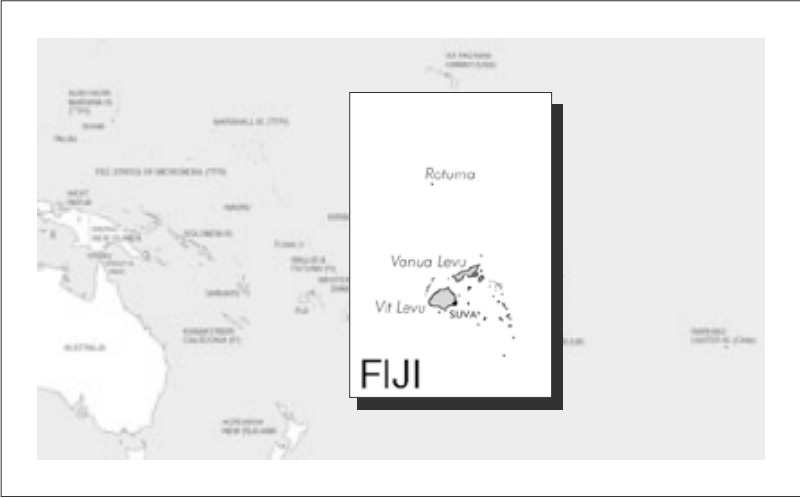
A ruling by the Court of Appeal in March 2001 that the 1997 Constitution remains the supreme law of the land set Fiji on the move for fresh general elections in August 2001. Seventy-one seats were to be contested under the preferential voting system: 23 Fijian communal seats, 19 Indo-Fijian communal seats, 3 General Voters, 1 Rotuman and 25 Open seats.

The Fijian parties and their voters

Voters for the 23 Fijian communal seats were wooed by over 20 political parties with an array of ideas, attitudes and personalities. A sign perhaps of the various differences in politics and policies among the indigenous Fijians with regard to what is needed to safeguard their rights and interests. But the number of parties also reflected attitudes of provincialism and in-fighting among Fijians that were heightened after the 19 May 2000 coup. It also reflected the continuing search for good leadership, ideals and development that will benefit the Fijian people.

Central to the debate on Fijian rights and interests was the 1997 Constitution. Two of the new Fijian political parties formed in the wake of the attempted 2000-coup, and which emerged as frontrunners, the *Matanitu Vanua* (Conservative Alliance Party) and the *Soqosoqo ni Duavata Lewenivanua* (SDL), thus announced their intention to change the constitution to guarantee indigenous Fijians political paramountcy.

Tied to the question of political paramountcy was the question of what policies must be put in place for Fijian development in their own land. The SDL party, led by caretaker Prime Minister Laisenia Qarase, was holding their "Blueprint for affirmative action for indigenous Fijians" as a trump card. The *Soqosoqo ni Vakavulewa ni Taukei* (SVT) party, which ruled the country from 1992 to 1999 under Sitiveni Rabuka, had to struggle as many of their members had defected to the SDL and the Conservative Alliance. Now led by Filipe Bole, the party took a more moderate stand opposing the SDL blueprint as racist and, while they supported a review of the 1997 Constitution, they said that Fijian political supremacy was not needed. Former Prime Minister and 1987 coup leader Rabuka pulled out of the elections citing personal reasons. On the other



hand, the 19 May 2000 coup leader George Speight and his accomplices Ratu Timoci Silatolu and Ilisoni Ligairi were granted permission by the Court to contest the August elections. Speight and Silatolu contested under the Conservative Alliance banner while former British SAS soldier Ligairi stood as an independent candidate.

Moderate Fijian political parties like the Fijian Association Party under Adi Kuini Speed, the Party of National Unity (PANU) and the New Labour United Party (all formerly part of the deposed People's Coalition government) decried the idea of Fijian political paramountcy but called for better Fijian leadership. These parties, together with the Labour Party, have a more multiracial character, although both the Conservative Alliance and SDL also fielded Indo-Fijian candidates and said they too believed in multiracialism, as long as Fijian interests and rights were safeguarded to their liking. But among the Fijian political parties, there were many that were clearly provincial in nature, and banking on their strongholds in the provinces from which they were created to pull them through.

The country's minority groups, called "general electors", had three communal seats in Parliament, which were contested by the United General Party and the General Voters Party.

Land and resource ownership, and land and resource use, remained a key issue. Who should make the decisions on these and how should these decisions be made, as well as how the benefits should be distributed were key questions. Critical in this was the role of the Native Lands Trust Board (NLTB), which is the trustee of all Fijian-

owned land, and the Great Council of Chiefs (GCC), which has the final word on any legislation that affects indigenous Fijians.

The Indo-Fijian parties and their voters

Unlike their Fijian neighbours who had a lot of parties to choose from, the Indo-Fijians remained with the historical question of whether their votes for the communal seats would go to the Labour Party under Mahendra Chaudhry or to the National Federation Party, now led by trade unionist Attar Singh. Some challenges, though, were expected from the breakaway Labour faction and from those Indo-Fijians that had decided to stand under the banner of Fijian parties.

The former ruling Labour party, which overwhelmingly won the 1999 election, continued to bank on its multiracial platform, its express commitment to workers and the poor, and continued strong support in the cane belt areas to see it through. But Labour also faced an uphill battle as the party had recently split in two factions, former Deputy Prime Minister and Labour stalwart Dr Tupeni Baba leading a New Labour United Party made up of members unhappy with the leadership of Chaudhry. How this would affect the number of seats won remained to be seen, as the two parties have similar policies but different personalities. In fact, it can be argued that there are many political parties in Fiji not because people have different policies and ideas but because politicians do not like each other, or are unhappy with each other's leadership.

For Indo-Fijians, the issues were also about their rights in a country many of them call "home". Leaders like Chaudhry and Attar Singh had called the affirmative action blueprints presented by Fijian politicians as 'discriminatory' towards them. They also wanted to see the plight of tenant cane farmers resolved in a satisfactory manner, either through compensation or resettlement schemes. Many were simply concerned with economic and social issues.

Due to the events of 19 May 2000 and following, the focus of political parties prior to the elections was on the 1997 Constitution, affirmative action and land. But, learning from the 1999 elections, in which the Labour party emerged victorious through a manifesto strong on economic and social issues such as removal of value added tax and privatisation, education benefits, housing, land etc., many political parties also released manifestos promising voters economic and social relief.

After a year of debate and discussion on political and constitutional issues, an exhausted and weary public simply seemed deter-

mined to see a government committed to addressing good governance, rule of law and economic and social well-being. But security and stability remained in the back of people's minds as the political upheaval of 2000 continued to haunt Fiji.

Elections highlight Fiji's political racial rift

After two years of dramatic changes, Fiji's political landscape changed again when the three-month-old Soqosoqo Ni Duavata ni Lewenivanua (SDL) party won the August 2001 general elections. Led by former interim Prime Minister Laisenia Qarase, SDL won 32 seats in the 71-member Parliament. The Fiji Labour Party, which governed for a year after their overwhelming victory in the May 1999 elections before being deposed in May 2000 by the George Speight-led attempted coup, came in a close second with 27 seats. The Labour Party was always expected to emerge as a strong force after the elections given that its support among the Indo-Fijian voters remained largely intact, and that for the 19 Indo-Fijian communal seats it faced only the struggling National Federation Party and the newly-formed breakaway New Labour Unity Party.

But the SDL's overwhelming win among the 23 Fijian communal seats surprised many as they faced over 10 Fijian political parties and, in winning, SDL completely wiped out well-established Fijian political parties such as the former ruling Soqosoqo Ni Vakavulewa ni Taukei (SVT) party, once led by Sitiveni Rabuka and the Fijian Association Party under former Deputy Prime Minister Adi Kuini Speed. The *Matanitu Vanua* Conservative Alliance, like the SDL only months old, also broke ground winning six seats, including all the communal Fijian seats in Fiji's second largest island Vanua Levu. The party's imprisoned candidate, George Speight, won his seat from his stronghold. The Conservative Alliance stood in support of the 'cause' of the 19 May 2000 coup, namely the paramountcy of Fijian rights and interests, and called for the release of and amnesty for George Speight and fellow leaders of the coup imprisoned on Nukulau island.

The breakaway New Labour Unity Party led by former Labour stalwart and Deputy Prime Minister Tupeni Baba won only two seats and, in essence, only succeeded in undermining the Fiji Labour Party's chances of victory. Baba, who broke away from former Prime Minister Mahendra Chaudhry, is now facing a leadership challenge within his own party with one of their two MPs insisting on being part of Qarase's cabinet.

Analysing the election results

The reading of the 2001 elections can be measured by looking at the victors of the communal seats. Victories in the 25 open seats did not tell much but show that the SDL (like Labour in 1999) benefited from the preferences of the moderate parties who had ganged up against Labour leader Chaudhry. It also emphasised what many had been saying for some time, that the preferences system was flawed, easily corrupted and manipulated by political parties, and that Fiji's voters were still not ready for it. While the policies of the 'Moderates' was closer and more in line with the Fiji Labour Party, they handed victory after victory to the SDL in the open seats when they put SDL before Labour in their last preferences. The SDL won 13 open seats while Labour won 8. The results of the communal seats confirm that the major ethnic groups are clearly politically divided. Indo-Fijians remain strongly with Labour, while Fijians have grouped themselves with the ideals and policies of SDL. Labour and SDL have very different proposals and policies as to how to achieve progress, stability and unity in Fiji. The personalities and ideals among the leadership of the two parties are also strongly opposed to each other. The SDL won 18 of the possible 23 Fijian communal seats, with the other five going to the Conservative Alliance. The Labour party won all 19 Indo-Fijian communal seats.

Even before the results of the elections were known, SDL leader and now Prime Minister Qarase stated that he could not and would not work with Chaudhry. This statement put him in hot water after the elections when he was required under the 1997 Constitution to invite any party that won 10 per cent of the votes to join him in cabinet to form a multi-party government.

The framers of the 1997 Constitution had included the concept of a multiparty cabinet as a way of getting opposing political parties to consult each other in the governing of the nation.

With Labour the only party reaching this 10 per cent threshold, Qarase was obliged to invite the party to join him in cabinet, which he did so, grudgingly pointing out that since their policies were opposed, there was no "sufficient basis for a workable partnership with you in my cabinet".

To Qarase's stunned surprise, Chaudhry accepted the offer, citing in his response that "in a spirit of national reconciliation" he looked forward to working with the SDL to rebuild Fiji, and that "cabinet decision-making in government should be on a consensus-seeking basis especially with regard to key issues and policies".

Qarase, borrowing from Chaudhry's decision in 1999 to exclude the SVT from his government as they had imposed conditions, responded by advising the President that he commanded the majority and the swearing in of his new government should begin. This was immediately done. After successfully negotiating with the smaller parties and independents, including the Conservative Alliance whom he browbeat to drop their demands for amnesty for George Speight and his group, Qarase now had the numbers to form a government.

But pulling the smaller parties and independents in to join him meant the former banker had to give them some ministerial portfolios. If the Labour Party were then to also join him in government with an entitlement to 38 per cent of the cabinet line-up, he would have faced a situation where the SDL would have become a minority in the Cabinet even though they won the election.

In his response to Chaudhry, Qarase stated that the Labour leader had imposed conditions that were unacceptable to him, and would render his government unworkable. Chaudhry responded that he had accepted the invitation to join the Cabinet unconditionally. What irks many observers is that there was no dialogue or attempt at negotiation in the "spirit of the constitution", just a simple offer of invitation, accepted but then rejected.

KANAKY (NEW CALEDONIA)

New government in Kanaky

A new President and Vice-President were elected on 5 April 2001 in Kanaky (New Caledonia), as former President Jean Lèques chose to step down following recent municipal elections. Lèques was replaced by Pierre Frogier, also of the conservative settler party *Rassemblement Pour la Calédonie dans la République* (RPCR). In a significant move, Kanak independence activist, Déwé Gorodé, was elected Vice-President of the Government of New Caledonia, replacing Leopold Joredié of the *Fédération des Comités de Co-ordination des Indépendentistes* (FCCI).

Lèques, the long serving mayor of the capital, Nouméa, was re-elected in municipal elections in March. He announced that he would

prefer to focus on the municipality rather than continue as President of the country, and his resignation meant a change in all eleven government positions.

Déwé Gorodé's election as Vice-President reflected legal and political battles over the last two years to ensure that the RPCR/FCCI majority in the government did not override the need for "collegial" work to implement the 1998 Nouméa Accord (signed in May 1998 between FLNKS, anti-independence RPCR leader, Jacques Lafleur, and French Prime Minister, Lionel Jospin). In the first government established under this Accord in 1999, the RPCR and FCCI had seven members while the FLNKS had four. In the April 2001 vote in Congress, three FLNKS and one *Union Calédonienne* (theoretically a member of the FLNKS pro-independence umbrella) were elected: Roch Wamytan (President of the *Union Calédonienne* UC), Déwé Gorodé, Tino Manuohalalo and Gérald Cortot. The 11-member government further consisted of seven RPCR/FCCI coalition members.

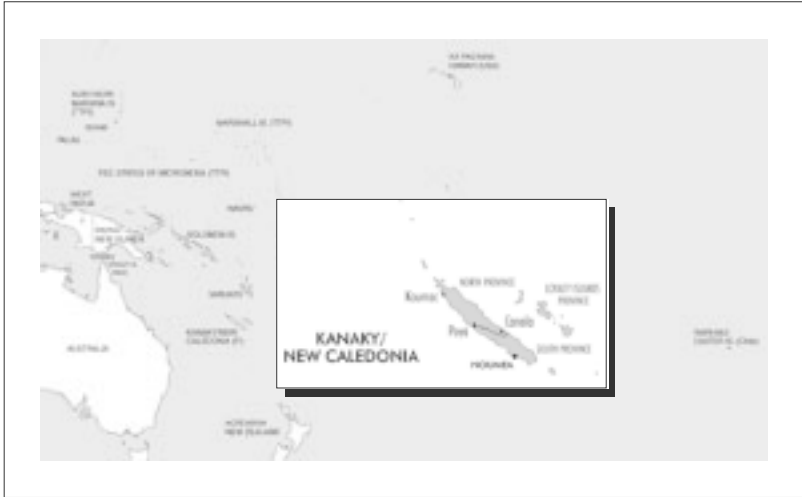
The municipal elections and the composition of the new government reflect the ongoing balance between pro- and anti-independence forces in the country. The election of poet, writer and activist Déwé Gorodé as Vice-President was an important affirmation of her work in the first government and the strength of Palika in the pro-independence coalition FLNKS. It also highlighted the increased number of women in the Congress following the May 1999 elections.

The votes for municipal councils saw a major increase in support for the pro-independence party Palika. The other major pro-independence party *Union Calédonienne* lost ground because of internal divisions, leading to a splitting of electoral lists and the loss of two municipalities to the Right (with an LKS-RPCR-FCCI coalition winning in Maré, and the RPCR winning in Poya).

FLNKS boycotts New Caledonia Government

In October 2001, FLNKS decided to withdraw from government and instructed its members to boycott cabinet sessions. The decision was sparked by a ruling in Paris by the French State Council, which invalidated the appointment of a FLNKS as member of government, thus curtailing the representation of FLNKS in the government

The ruling related to FCCI's formal protest against the election of FLNKS candidate Tino Manuohalalo to the new government.



Manuohalalo is a member of the *Rassemblement Démocratique Océanien*, which is made up of Wallisians and Futunians who support independence for Kanaky. FCCI claimed their candidate, Raphael Mapou, had won the same number of votes as Manuohalalo but had lost the election on a technicality. FCCI's anger over the election in part reflects the showing in the March 2001 municipal elections, when they lost their mayoral positions in Yaté, Canala and Belep to pro-independence candidates.

The State Council's decision means that FCCI gains one more seat (it now has eight) and FLNKS loses one of its seats. The tribunal, which is France's highest jurisdiction, did not follow a request that was contained in FLNKS' submission: the pro-independence party's President Roch Wamytan wanted the government to be dissolved altogether.

In reaction to the decision, a special FLNKS meeting resolved that as a result of Tino Manuohalalo's invalidation, Déwé Gorodey, Vice-President, and Roch Wamytan, in charge of customary and traditional affairs would not take part in the government until the stance was reviewed at the FLNKS annual congress.

The decision to boycott by the Kanak independence movement was the culmination of months of protest against failure on the part of its partners in the Nouméa Accord, the anti-independence coalition RPCR and the French State, to uphold the "spirit" of the Accord and implement the principle of "collegiality" and power-sharing in government.

SOLOMON ISLANDS

A nation in doubt

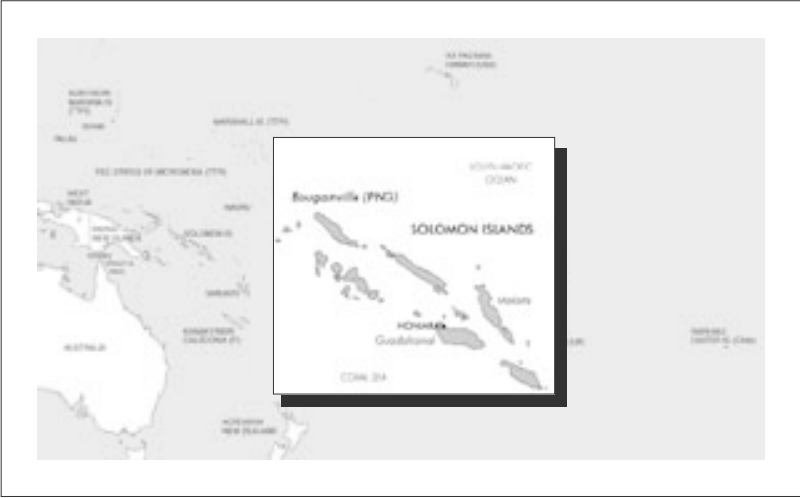
The civilian coup of June 2000 literally destroyed the Solomon Island's nation for everyone, the coup leaders included. It devastated its social fabric—people found it hard to trust one another. In itself, the coup almost destroyed the national economy—only small amounts of money became available, there were fewer jobs than before, certainly far less education, health, transport and social assistance. Its most destructive element, however, has been the undermining of people's trust in government—citizens no longer accept this authority.

Some of the Solomon Island's elite saw this police-aided civilian coup as a quick way of changing a world that was quickly shifting about them. The Solomon Islands Alliance for Change (SIAC) Government was gingerly pushing for greater transparency, financial accountability and equity investment in development, which were not to their liking. Too many opposition members were beginning to experience a world that was challenging the corruption, mismanagement and outright thievery that had become normal operating practice during past governments. Yet these very same practices made a strong comeback with the new administration. Solomons' basic security remained weak. The police was "requesting" criminals to stop stealing vehicles: cars, buses and trucks. Militants were rearming with guns stolen from the Tangarare armory. Buses and cars, stripped of their number plates, many stolen, were brazenly running along Honiara's streets with little fear that the drivers would be pulled over, questioned and arrested. A former Isatabu militant was arrested and later found brutally murdered at Mount Austin. Although a suspect was quickly arrested, he was released just as quickly and was soon seen walking around freely. The number of criminal acts mounted daily.

This was the security picture and social dimensions that voters faced as they prepared for national elections on 5 December 2001. The last four years have radically changed the Solomons historically from a nation with a great future to one that is in doubt.

Silence greets election of new Prime Minister

: National joy at holding an almost incident-free election quickly turned
: into dismay for many Solomon Islanders as they witnessed newly-
: elected politicians selling their votes and political stance to the high-



est bidder. In less than two weeks, the country once again repeated the deadly process of shooting itself in public. The country's recent history of self-inflicted wounds once more reared its ugly head.

While the whole world watched, dozens of international election observers from the Commonwealth, United Nations, the Pacific Islands Forum and citizens from more than a dozen nations toured polling booths across the nation and officially declared the Solomon Islands' sixth national election "fair and free". In spite of the island's vast ocean distances, scattered remote polling booths and poor transportation infrastructure, the election results took less than three days to complete. However, no sooner had the election results been confirmed by the Governor General than the jockeying for political power took up the total attention of the 50 newly-elected members.

The nation rightfully congratulated itself on a job well done. In spite of the threat of high-powered guns in some constituencies and physical difficulties faced by polling authorities, the International Monitors gave the national election the thumbs up. Although there were some minor incidents of voters unable to find their names on the electoral role, improper sealing of ballot boxes and other small disturbances, on the whole, the task of electing the new parliamentarians went off without any major hitch.

However, many quickly became distressed with the 50 newly-elected members when almost immediately they began to flex their newly-found political muscle irresponsibly. The new parliament saw 18 members from the previous parliament retain their seats, while a

whopping 32 new members got elected. It seems evident that a good number of the newly-elected members arrived in Honiara flat broke. They had spent their last dollar campaigning and some had gone into serious debt to win a seat. Although campaign financing regulations stipulate that they stay within the \$5,000 bracket, many candidates had spent much more and the political stalemate was a golden opportunity to return some of this investment to their “backers”.

In the two weeks that separated the national election and the election of a new Prime Minister, the nation was thrown into political confusion. Five men with various party backing ran for the position. Sir Allan Kemakeza gained 29 votes on the first ballot count and effectively won. But the excessive political shenanigans, the lack of personal integrity and obsessive self-centeredness have seriously damaged the nation in donor eyes and confused the people all the more.

The 2001 electorate, unfortunately, had sent a series of mixed signals. It completely threw out the former government ministers and backbenchers who had practically ruined the country but also voted in others of dubious reputations. It brought back to the house many of the men who had been overthrown in the June 2000 coup but voted in others who had closely aligned themselves with the coup masters.

But it was clear for all who wanted to see that voters across the nation wanted a radical change from the past. That was the primary message. The country had suffered grievously and change for the better was asked for. However, a number of those elected were a throw-back to the past rather than a step to the future.

The people’s stunned silence on hearing the election of the new Prime Minister confirms the view that positive change may not be coming for a while but that, once again, “business as usual” will take centre stage.

BOUGAINVILLE

Legal challenges for Bougainville

On August 2001, a peace agreement was signed between the Papua New Guinea (PNG) Government, the various groups that fought in the Bougainville war and the North Solomons’ provincial government.

The PNG Parliament was adjourned and it was decided to dedicate a special session to discussing the Bougainville peace plans. Prime Minister Mekere Morauta said the aim of the special sitting was to ensure that Parliament was not distracted by other issues and party politics.

In January 2002, the PNG Parliament finally voted in favour of the Peace Agreement and unanimously passed constitutional amendment bills that will pave the way for an autonomous Bougainville Government by the end of the year, and a referendum on independence for the island in 10-15 years. The vote is the first vote on the issue, with the second and final one later in 2002.

Apart from the legal and other constitutional hurdles that first had to be overcome in order to reach this important result, the thorny issues of the disposal of weapons by former combatants and reconciliation had to be addressed. Village chiefs were therefore asked to exercise their authority in carrying out the weapons disposal plan, and traditionally-based reconciliation ceremonies were used to bring victims and perpetrators together in order to heal their communities who, after a decade long civil war, have been left bitterly divided.

The key provisions of the bills are that they will give effect to establishing an autonomous government on Bougainville, and will allow the island to have its own disciplined forces, banking system, its own constitution, and its own aviation and shipping rights. It also allows the island to conduct foreign relations and external migration, and have its own post and telecommunication networks.

PNG and US object to Bougainville lawsuit against Rio Tinto

The Papua New Guinea and United States governments have both opposed the multi-million dollar class action lawsuit brought against mining giant Rio Tinto by Bougainville landowners led by Francis Ona. Bougainville landowners have taken action against Rio Tinto for alleged genocide and environmental damage in operating the giant Panguna copper mine on Bougainville. The lawsuit was mounted in the US Federal District Court before Justice Margaret Morrow in April 2001.

The lawsuit alleges that Rio Tinto, acting in concert with the PNG Government, was responsible for despoiling the environment of Bougainville, committing “various atrocities” and “war crimes”, including a military blockade that kept medical supplies from the island as well as killing, bombing, rape and pillage. The action is being mounted

by the legal “czar” of US civil class actions, Steve Berman, a multi-millionaire from successful suits against cigarette-maker Philip Morris.

The PNG Government has been trying to block the lawsuit. Documents show that PNG had warned the United States that relations could be seriously undermined if it allowed the class action to go ahead in the US District Court. It had also warned that the current peace process on Bougainville Island could be derailed by the action.

In an unprecedented move, the US State Department wrote to the judge hearing the case, saying that if the class action suit went ahead, it would affect US relations with PNG. The documents also show that the PNG Government forced its Ambassador to the United Nations, Peter Donigi, and Attorney-General Francis Damem to withdraw their approval for the lawsuit.

On March 25 2002, Justice Morrow dismissed the action brought by the Bougainville landowners with a statement of interest saying further adjudication of the case might adversely affect US foreign policy interests.

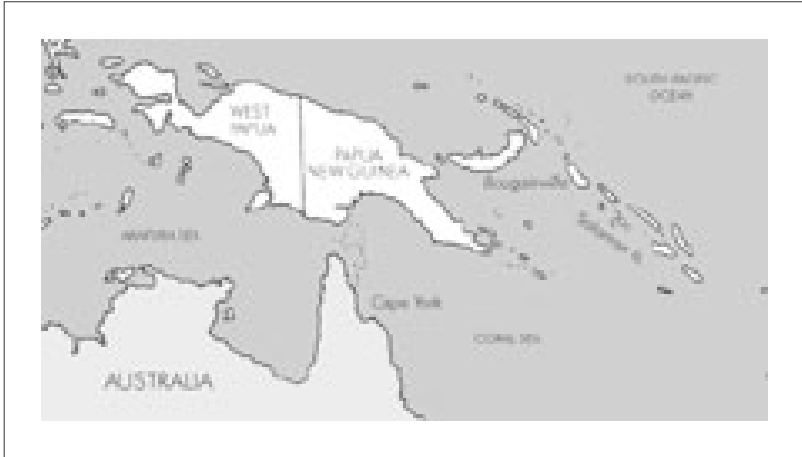
WEST PAPUA

UN officials admit: “1969 Act of Free Choice” was a sham

In November 2001, UN officials who conducted the 1969 vote by tribal chiefs admitted publicly that most citizens of the province covering the western half of New Guinea Island were intentionally excluded.

When the Dutch originally granted independence to the Indonesia archipelago in 1949, they retained control of Papua, arguing it had no ethnic, linguistic or cultural links with the other islands. Unlike Indonesia’s mainly Malay inhabitants, Papuans are racially distinct Melanesians. While 85 percent of Indonesians are Muslims, Papuans are either Christians or animists.

The Netherlands announced it would grant statehood to Papua and set up a local legislature on 1 December 1961. Indonesia reacted by launching a series of cross-border incursions. The invaders were easily routed by Dutch marines. But the US administration of Presi-



dent Kennedy feared a military defeat could drive Indonesia into the Communist bloc and pressured the Dutch to hand over the colony.

The Dutch eventually agreed and, in 1962, the United Nations was brought in to prepare a “one man, one vote” referendum for self-determination by 1969. Within a year, however, the world body relinquished administration of the region to Jakarta, and left Suharto’s military dictatorship in charge of preparing for a democratic plebiscite. The Indonesians, sensing overwhelming opposition to the takeover, decided to canvass only 1,025 handpicked supporters. The result, not surprisingly, was a unanimous vote for integration. Lobbied intensely by Washington, the UN Security Council endorsed the vote.

“Suharto was a terrible dictator,” a former UN official said. “How could anyone have seriously believed that all voters unanimously decided to join his regime? Unanimity like that is unknown in democracies.” “It wasn’t our most glorious hour,” said Brian Urquhart, another retired UN undersecretary general. “It was arranged to have the UN put the seal of good housekeeping on the easiest but not necessarily most democratic way to resolve the problem.”

Papua Council rejects autonomy

Opposition to rule from Jakarta appears almost universal among Papuans. Independence activists galvanized by the UN-supervised referendum in 1999 that allowed nearby East Timor to break away from Indonesia and become independent after years of fighting Indo-

nesian forces, are demanding a similar plebiscite for West Papua. But the Indonesian Government is adamant about holding the region, the nation's biggest and home to rich natural resources.

The Indonesian Parliament passed a special autonomy bill for West Papua on 23 October giving the much neglected province greater power and revenue, but full independence and human rights remains the main issue for West Papuans.

Meeting on 19-20 October before the bill was passed, the Papuan Presidium Council dismissed the special autonomy provisions as ignoring the aspirations of the Papuan people and showing "no understanding of the real substance of the Papuan question...The enactment of the law [...] is yet another example of the way in which the fate of the Papuan people has been decided by others..."

In a statement released after their meeting, the Presidium Council stated that it "firmly rejects special autonomy for Papua and will wage a peaceful and democratic struggle for the restoration of the political rights and sovereignty of the Papuan people". The Papuan Consultative Assembly and the Second Papuan Congress in 2000 had mandated the Presidium Council to represent the Papuan struggle to uphold their civil and political rights by peaceful means, while giving priority to a dialogue to rectify history, within West Papua and internationally.

As such the Presidium expressed deep appreciation to the leaders and people of the member states of the Pacific Islands Forum for their solidarity and support for the Papuan people's struggle, and again urged the Dutch Government, Indonesia, the United States and the United Nations to honestly and responsibly reconsider their role in the political conspiracy in the 1969 so called "Act of Free Choice" that robbed Papuans of their sovereignty.

Call for non-violence

The Presidium urged for a stop to the intensification of military operations by the Indonesian military and armed resistance by the Free Papua Movement (OPM). While expressing the "highest respect" for the 36-year guerrilla struggle by the OPM for an independent Papua, the Presidium called for an end to armed confrontation. They urged the OPM to work together and press for peaceful efforts, and urged all Papuans to "resist all forms of provocation and the policy of divide and rule and to do everything in their power to strengthen unity". The Indonesian military and police were urged to stop their "habit" of using repressive military operations and

adopt a more humane approach that respects the dignity of the Papuan people and their basic rights.

The mysterious killing on 10 November 2001 of Theys Eluay, a prominent pro-independence politician, has, however, added to tensions. Many Papuans accuse the government of responsibility for the death of Chief Eluay, who was found strangled after attending a dinner with Indonesian army commanders.

Papuans lobby for observer status at Forum

Papua Council is seeking observer status at the Forum, especially after the Tarawa Communiqué of October 2000, which for the first time took account of the West Papua issue and the Forum's subsequent decision to accept Indonesia's request to be a Post-Forum dialogue partner.

In July 2001, a West Papuan delegation visiting Fiji as part of a regional consultation with Forum member countries held consultations with the Forum Secretariat and the interim government of Fiji to "discuss among other things, agenda prospects for the upcoming Forum meeting in August to be held in Nauru". Besides consultations at government level, the Papuan delegation also met with the NGO community to update on the current political situation in West Papua and the implications of the ongoing leadership crisis in Indonesia.

When asked whether the acceptance of Indonesia as a post-Forum Dialogue Partner is seen as a threat, Franzalbert Joku, the Presidium's international spokesperson, said that the Papua Council sees the inclusion of Indonesia as a positive move towards peaceful resolution of the West Papuan conflict. The Papuan delegation also acknowledged the importance and long-standing support of the NGO community in advocating Papuan right to self-determination and independence and renewed its call for greater and more active support in the lead up to the next Forum meeting. But while the Papua Council is lobbying for representation at the Forum, Indonesia has called on Forum member countries to be prudent in dealing with the West Papua issue, and strongly opposes the idea of admitting West Papua as an observer "because West Papua was already represented by Indonesia". However Joku warned that the equation would not be complete if Papuan leaders were not consulted over the future of West Papua, hence the need to invite them to the negotiation table.

West Papua's call for independence from Indonesia has gained considerable support among Pacific countries and leaders and will certainly remain on the agenda of the Pacific Islands Forum for the

coming years thanks to the support of regional civil society and individuals. In particular, the Papua Presidium Council is hopeful that the Forum will grant West Papua the status of “observer” at its future summits and that Pacific governments, through the Forum, will be persuaded to recognise the West Papuan people’s right to self-determination.

GUAHAN (GUAM)

Guam at centre of Pacific military build-up

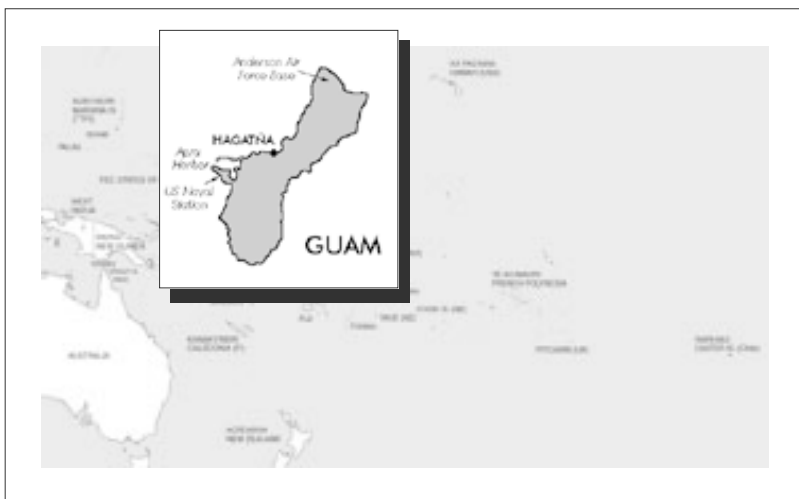
As in the past, the islands of the north Pacific are a crucial site for US military deployments in the Asia-Pacific region - Kwajalein Atoll in the Marshall Islands is used for US ballistic missile tests and Hawai’i hosts the US Pacific Command and 7th Fleet. A recently released Rand study clearly states that “there will be renewed energy to examine how America will project power and secure a favourable strategic balance in the Asia-Pacific region”.

The Rand Corporation report, *“The United States and Asia: Toward a New US Strategy and Force Posture”* released by the Pentagon in 2001, expresses concerns about growing opposition to US troops and recommends shifting US forces towards Guam, the Philippines, South-east Asia and other countries close to Taiwan.

The study recommends a huge Air Force build-up on Guam, adding as many as 200 fighters and bombers to the island’s forces. Because of uncertainty about future basing privileges in Japan, the Philippines and Korea, Guam “should be built up as a major hub for power projection throughout Asia”.

The report urges that a large stockpile of munitions, spare parts and other equipment should be collected on Guam, sufficient to support deployment of as many as 50 bombers and 150 fighter jets “anywhere in the region”. A big Guam build-up is part of an “integrated regional strategy” recommended for the region. Hawai’i could also end up basing more US forces, the study said, if peace is achieved on the Korean peninsula and fewer American troops are needed or wanted there.

There is evidence that this build-up on Guam is already underway, as shown by new military deployments, and military exercises in waters near Guam.



New deployments

In August 2000, the US Air Force confirmed that it had moved “an unspecified number” of conventional air-launched cruise missiles to Guam, which air force officials said “will allow the USA to respond more quickly to crises, particularly in the Asia-Pacific region” (*Jane’s Defence Weekly*, 6 September 2000).

Guam is used for stopovers by US vessels after military exercises, and during transit to the Indian Ocean. In April 2001, the aircraft carrier *USS Kitty Hawk* visited Guam for flight training exercises and rest and relaxation for more than 5,000 crewmembers.

The US Navy will homeport three Los Angeles class nuclear fast-attack submarines in Guam, starting in 2002. The *USS Corpus Christi* will arrive in April, followed by the *USS San Francisco* in September 2002. The Navy has yet to decide on the third submarine. There will be some military construction for submarine repair and port facilities at Apra Harbour, and the Guam-based submarine tender *USS Frank Cable* and a support squadron will provide maintenance support.

Military exercises

As well as basing US troops, the Pacific is a major area for military war games. In 2001, US Pacific Command held 300 military exercises with 37 countries in the region (*New York Times*, 17 May 2001).

In 2002, the biennial Rim of the Pacific military exercise (RIMPAC) will be conducted for the first time in waters near Guam. Last May, Admiral Thomas B. Fargo, commander of the US Pacific Fleet, said the final phase of RIMPAC 2002 would be conducted in the waters off Guam and would conclude with port visits for several navies at the Guam Naval Station (RIMPAC 2000 included participants from Australia, Canada, Chile, Japan, South Korea, the United Kingdom and the United States, involving more than 22,000 military personnel; 50 ships and 200 aircraft took part in the exercise).

In June 2001, the Northern Marianas' representative in Washington, Juan Babauta, suggested that Tinian be considered for sophisticated military operations in the Asia-Pacific region, particularly for intelligence and telecommunication purposes. Tinian was used as a military base during World War II. It was from Tinian that the US launched its atomic bomb attacks on Hiroshima and Nagasaki in Japan.

But officials in neighbouring Saipan have expressed concern that a series of US military bombing exercises in the area of Farallon de Medenilla, an island north of Saipan, has caused serious destruction in the surrounding reef. Farallon de Medenilla has been used for bombing and target practice by the US military, in preparation for interventions in Asian countries and the Persian Gulf. It was used as a training ground by American soldiers who were sent to Kosovo in the late 1990s.



EAST ASIA &
SOUTHEAST ASIA

JAPAN

In late 2000, the Japanese Government submitted the initial and second periodic reports to the Committee on the Elimination of Racial Discrimination (CERD) for the first time since ratification of the International Convention on the Elimination of All Forms of Racial Discrimination on Dec. 15, 1995. The author does not know why the initial and second reports were combined. CERD considered the report in March 2001 in Geneva.

CERD Considerations

The Ainu Association of Hokkaido (AAH) decided to dispatch delegates to the UN Geneva Office to observe the deliberations and to lobby the committee members by providing them with information on the actual situation, feelings and aspirations of the Ainu people.

For the reports, the Japanese Government used the results of the survey that was conducted by the Hokkaido Prefectural Government. To date, the AAH has pointed out that the basic data, such as the population of the Ainu people and the number of victims of discriminatory incidents indicated in such surveys has never been accurate because the sampling system is as follows. The Japanese Government provides the Hokkaido Prefectural Government with the budget for the surveys, and the AAH undertakes the surveys. In reality, each AAH branch organization visits as many member families as possible in its area to interview the members. However, not all the Ainu people are organized within its membership. Some do not want to be members because they live in strong discriminatory circumstances. Also, there is an assumption on the part of the Japanese Government that only few Ainu people live outside of Hokkaido, which is untrue.

One of the greatest changes following ratification of the treaty was the abolishment of the notorious law, the Protection Law for Former Aborigines in Hokkaido, and the enactment of the Ainu Culture Promotion Law in 1997. In its Concluding Observations, CERD asked the Japanese Government to include in the next report what was promoted, achieved, and what remained the same after enactment. This was a very good proposal because it will create an opportunity for a domestic discussion between the Ainu people and the Japanese Government on the implementation of each of the measures defined by the law.



CERD also pointed out that there were many differences between the surveys in government reports and the information provided by NGOs. It is hoped that, in the preparation for the third periodic report, the Ministry of Foreign Affairs will build a constructive relationship with the NGOs that are making efforts to combat discrimination.

In the “Comments of the Japanese Government on the Concluding Observations adopted by the CERD on March 20, 2001, regarding the

initial and second periodic report of the Japanese Government”, the Japanese Government stated as follows:

Those who live in Okinawa prefecture or natives of Okinawa are of the Japanese race, and generally, in the same way as natives of other prefectures, they are not considered to be a group of people who share biological or cultural characteristics under social convention, and therefore, we do not consider them to be covered by the Convention.

With regard to “the population in Okinawa seeks to be recognized as a specific ethnic group and claims that the existing situation on the island leads to acts of discrimination against it” in paragraph 7:

1) We know that some people claim that the population in Okinawa is a different race from the Japanese race; however, we do not believe that this claim represents the will of the majority of the people in Okinawa. Also, as described in 1(2)(a), those who live in Okinawa prefecture or natives of Okinawa are of the Japanese race, and they are not generally considered to be a group of people who share different biological or cultural characteristics from the Japanese race.

The Japanese Government was mistaken to write, “We know that some people claim that the population in Okinawa is a different race from the Japanese race”. They claim that they are an indigenous people of Japan. The Japanese Government also wrote, “they are not generally considered to be a group who share different biological or cultural characteristics from the Japanese race.” However, the government was not clear as to who considers this to be so. The Japanese Government uses the terms “race” and “ethnic group” as if there were no differences between them.

Furthermore, discussing “biological and cultural characteristics” in the same phrase also indicates that the government does not understand the differences between racial and ethnic groups. The term “biological characteristics” should be used to refer to racial difference and “cultural characteristics” should be used to refer to ethnic difference. This is not only confusing but also has to be pointed out as a great misunderstanding that allows the government to avoid declaring Okinawans as an indigenous people of Japan. Our friends from Okinawa only ask to be recognized as an indigenous people; they have never insisted that they are a different race from the Japanese.

In the comment, the Japanese Government uses the term, “they are not generally considered”, which is not a correct translation when

compared with the comment in the Japanese language version. In the Japanese version they use “*shakai-tsunen-jo*”, which means “in a general social sense”. This means that mainstream Japanese nationals do not regard the Okinawan people as different from them but as belonging to the same ethnic group. It is quite strange that the majority of Japanese nationals should decide which ethnic group is indigenous and which is not. This is a way of oppressing indigenous peoples that is common around the world.

Despite the enactment of the Ainu Culture Promotion Law, the Japanese Government has not clarified whether or not they recognize the Ainu people as an indigenous people of Japan. The text below illustrates this very well. It is taken from a document that was mistakenly passed on to a Japanese NGO and includes paragraphs that were later deleted. It shows the government’s attempt to suppress any mention of the Ainu people as an indigenous people of Japan.

14. *In relation to “the Committee recommends the State party to take steps to further promote the rights of the Ainu, as indigenous people”, in paragraph 17:*

- 1) *As is incorporated in the Basic Policies on Measures for the Protection of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Prime Minister’s Office Announcement No. 25 of September 18, 1997), in Japan, the Ainu, who lived in Hokkaido before the arrival of Wajin¹ at least at the end of medieval times, have been recognized as a race that has original traditions and that developed a unique culture including the Ainu language, which is based on a different linguistic system from the Japanese language, as well as original manners and customs.*
- 2) *However, since there is no fixed international definition of the term “indigenous people”, the question of whether the people of Ainu are actually “indigenous people” in the sense mentioned above needs to be examined carefully.*
- 3) *At any rate, in order to smoothly promote the Utari welfare measures, which are implemented by the government of Hokkaido Prefecture for improving the social and economic status of the Ainu people, the Japanese Government established the Joint Meeting of the Ministers concerned in the Hokkaido Utari Measures in May 1974 and has been striving to enhance the various measures while keeping close contact among the related ministries. In addition, the Japanese Government is engaged in various schemes relating to the Ainu people, such as advancement of measures for promoting Ainu culture as well as disseminating knowledge and raising awareness of the Ainu tradi-*

tion among the public, based on the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Law No. 52 of May 14, 1997) that was established for building a society in which the racial pride of the Ainu people is respected and having the Ainu culture and traditions contribute to development of diverse culture in Japan.

15. *In relation to “the State party is also encouraged to ratify and or use as guidance the ILO Convention 169 on Indigenous and Tribal Peoples”, in paragraph 17:*

Since the ILO Convention includes many provisions other than the protection of workers, which is mandated to the ILO, and the Convention still includes provisions that conflict with Japan’s legislation, the Japanese Government abstained from the vote for adoption of the Convention at the International Labor Conference. The Convention is considered to include too many difficulties for Japan to ratify it immediately.

Discriminatory statements by three politicians of the Liberal Democratic Party

On July 2, 2001, two very influential politicians, Mr. Takeo Hiranuma, the Minister of Economy and Industry, and Mr. Muneo Suzuki, the former Chief of the Hokkaido & Okinawa Development Agency, both made discriminatory statements on the same day.

Mr. Hiranuma stated in his speech in Sapporo, the traditional domain of the Ainu people, that it was because Japan was a mono-ethnic country that the economic rehabilitation following World War II had been so smooth and quick. He was displaying the same ignorance as former Prime Minister Nakasone, who stated in the 1980s that Japan was intellectually excellent because it was a mono-ethnic country, unlike the US, which included Hispanic people. He did not know of the enactment of the Ainu Culture Promotion Law or other measures implemented by the government, despite being a member of the Cabinet. This indicates the intellectual level of Japanese politicians.

Mr. Suzuki, in a press conference at the Club of Foreign Correspondents in Tokyo, stated that the Ainu people were completely assimilated into the Japanese. He meant they were not different from Japanese nationals in that the Ainu people spoke Japanese and attended common Japanese schools. He is from Obihiro City,

Hokkaido and has some Ainu friends. He knows well of the activities of the AAH Obihiro branch in terms of passing on their tradition, worship, and culture (such as dances, songs, the Ainu language, rituals and art crafts) in order to rebuild their identity as an ethnic group. Even so, Mr. Suzuki neglects such efforts and denies the significance of those activities.

The AAH, the most comprehensive organization of the Ainu people, sent petitions to the two speakers. However, it failed to make it clear to the public as to why those statements were discriminatory against the Ainu people. It is sad that the content of the discussions between the AAH and the speakers has not yet been made public, not only to members of the AAH but also to the general public.

Mr. Omi, the current Chief of the Hokkaido & Okinawa Development Agency, made an additional discriminatory statement several months later. He also stated that Japan was a mono-ethnic country. If the incidents related to the former discriminatory statements by Mr. Hiranuma and Mr. Suzuki had been sincerely settled, this would not have happened again.

Note

1. The Wajin who came from Honshu Island were the first Japanese settlers on Hokkaido. (Editor's note)

CHINA

China and Xinjiang in the wake of September 11

Last year's fall-out in Afghanistan has put China in a difficult position, but it has also given the Chinese leadership more room for manoeuvre against what they characterize as terrorist activities in Xinjiang, China's huge westernmost province, whose official name is Xinjiang Uighur Autonomous Region. China had retained friendly ties with the Taliban regime and had developed lively trading links with

Afghanistan, without recognizing the regime diplomatically. At the same time, China was worried that Afghanistan was serving as a training ground for Uighurs who wanted to fight the Chinese rule in Xinjiang. And China's worries were not unfounded. Western news media had, on several occasions, interviewed Uighurs who had come from China to obtain military training in bin Laden's camps.

On a strategic level as well, September 11 has led to a realignment in Central Asia. The cooperation of the so-called "Shanghai-6", made up of Russia, China and four Central Asian states (Kazakhstan, Uzbekistan, Kyrgyzstan and Tajikistan), may be seen as an effort by Russia and China to keep the region under control and counter American influence. But following September 11, Kazakhstan, Uzbekistan and Kyrgyzstan gave the US an opportunity to gain a military foothold in the region by promising the US bases, overflight rights, intelligence sharing, etc. Uzbekistan in particular showed their discontent with the Shanghai-6, formally called the Shanghai Organization for Cooperation (SOC), by staying away from an emergency meeting of the six states in the Kyrgyz capital Bishkek in October last year.

The Chinese government was quick to exploit the new front against terrorism for its own purposes. By September 19 last year, the Chinese Minister of Public Security, Jia Chunwang, had already stated that China was committed to the international battle against terrorism. Then, in October 2001, the Chinese Foreign Minister, Tang Jiaxuan, stressed in a meeting with the American Assistant Secretary of State, James Kelly, that China was battling against what he called "East Turkistan terrorists". This is a terminological *volte-face* from the Chinese side, who until then would not utter the name "East Turkistan" out loud. The intention was clearly to link those who use this term to terrorist activities.

In a report that was released in January 2002, the Chinese government blamed an organization called the East Turkistan Islamic Movement for more than 200 terrorist attacks over the last ten years or more. The report furthermore stated that, since the late 1990s, Osama bin Laden, in cooperation with other Central and West Asian terrorist groups, had trained groups of militants who had returned to Xinjiang and set up secret cells of resistance to Chinese domination.

The Chinese campaign against ethnic unrest in Xinjiang is by no means new. A campaign of "high pressure, strike hard" has been going on for the last five years. But curiously, in several cases, the crackdowns have been against groups whose leaders, in the Chinese news dispatches, are named by their Chinese names. This has led some commentators to wonder if the Chinese authorities wanted to



blame the Moslems for criminal activities, while they are actually cracking down on Chinese-led criminal gangs.

In March 2002, Amnesty International published a report on the situation in Xinjiang which stated that China had, over the past six months, detained several thousand of people, closed mosques, and required key community leaders, including imams, to attend classes for so-called political education. In the report, Amnesty accuses the Chinese government for using the yardstick of “terrorism” for any mild form of protest against Chinese misrule of the region.

TIBET

After more than 50 years of Chinese occupation, Tibetans are still being denied their fundamental right to self-determination. As inhabitants of an occupied country, which is increasingly being colonized by China and in which the number of Chinese settlers continues

to grow, the Tibetans share many characteristics with indigenous peoples the world over. Regarding themselves as an occupied nation, most Tibetans want the return of their former independence. The Dalai Lama's continued efforts to enter into dialogue with the Chinese government on the issue of Tibet's future have not been successful although he is asking for less than independence.

Ongoing human rights abuses

China has taken advantage of the 11th September incident to justify internal repression and to step up government actions against those it labels "separatists", including Uighurs and Tibetans. It remains to be seen whether this will increase the number of human rights abuses in Tibet. During the "strike hard campaign" of the last couple of years, security has already been tightened and the number of death sentences increased. In Tibet, the campaign has primarily been directed towards "political crimes".




In 2001, China's continued and widespread human rights abuses were a central feature of international opposition to its Olympic bid for 2008 and to its accession to the World Trade Organization (WTO). Ignoring world opinion, the Olympic selection panel and members of the WTO sanctioned China's well-documented abuses against its own populace and in occupied territories, including Tibet.

At the 57th meeting of the Human Rights Commission in Geneva, China blocked a debate on the current human rights situation in Tibet and China. However, 30 out of 53 of the member states either voted against China's "no action motion" or did not vote. The EU and like-minded Western nations did not sponsor the USA's resolution on China.

Two Tibet NGOs, the International Campaign for Tibet and the Tibetan Centre for Human Rights and Democracy, participated in the World Conference Against Racism in Durban, South Africa in September 2001. This was the first time that NGOs involved with Tibet were accredited by ECOSOC to participate in a UN conference.

In June 2001, the Fourth Tibet Work Forum was held behind closed doors in Beijing. This high-level meeting placed top-down "economic development" and stability over all other freedoms and rights of the people. Brushing aside the accepted norms of civil and political rights as "Western notions", China continues to call on cultural relativism to justify its human rights abuses. While still claiming that economic development supersedes all other rights, China ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in



-  *Tibet Autonomous Region*
-  *Areas with Tibetan Autonomous Status in Qinghai, Gansu, Sichuan an Yunnan Provinces*
-  *Additional territories claimed by the Tibetan Exile Government*



Placard in Lhasa showing the Chinese conception of the 50 years celebration of "The peaceful liberation of Tibet" in 1951. Deng Xiaoping, Mao Zedong and Jiang Zemin with the Potala Palace and a typical Tibetan landscape as background. Photo: Vivi Walter

February 2001. The International Covenant on Civil and Political Rights (ICCPR) remains to be ratified more than three years after China became a signatory to the document. At the heart of these two international covenants is the right of all peoples to self-determination - to freely determine their political status and pursue their economic, social and cultural development. Throughout China's domination over Tibet's political, economic, social, cultural and religious life, there has been a total disregard for the Tibetan people's right to self-determination.

Development, marginalisation and repression

Tibetans continue to be denied their right to livelihood in their own country. Nomads are, for example, facing excessive taxation and fencing of grasslands, which may eventually destroy their traditional way of life. Tibetans in urban areas experience severe discrimination and a lack of opportunity in relation to employment and business. One of the greatest threats to traditional Tibetan livelihoods is the ongoing environmental destruction caused by China's intensive exploitation of resources, from which very few benefits flow back to the Tibetan people.

China claims to be boosting Tibet economically but policies and infrastructure are designed to consolidate Chinese control over the region and benefit Chinese migrants to the detriment of the Tibetan population. Not only is there an official neglect of their basic needs but Tibetans are not consulted on, or meaningfully involved in, the development of their country. The influx of Chinese settlers perpetrates discrimination against Tibetans, particularly in the urban areas. This includes a wide-ranging bias in employment with preference given to those fluent in Chinese and preferential treatment of Chinese migrants.

In 2001, the construction of the controversial railway between the capital Lhasa and Golmud in Qinghai began. Tibetans fear that the railway will further facilitate the economic integration of Tibet into China and increase the number of Chinese settlers in Tibet. Chinese, primarily Han, already dominate the population in major urban centres. The construction of the railway is part of China's "Western development programme", which not only aims at boosting the economy of the poorer regions but also at integrating them further into China.

: The Chinese authorities have introduced Chinese as the medium
: of education in Tibetan primary schools. Tibetan was the medium in
: approximately 95% of the schools until recently. The level of educa-

tion continues to be low among Tibetans, partly because many more remote areas do not have schools and parents are reluctant to send children to boarding schools, and partly because many parents cannot pay the school fees. A considerable number of children are sent across the border to the Tibetan exile community in India each year in order to secure them a proper Tibetan education. The new education policy in China has led to the closure of all country-level teacher-training colleges in Tibet's Autonomous Region (TAR). Consequently, more and more Chinese teachers are being employed.

The repression of Tibetan Buddhism in Tibet has reached new heights. In addition to the prohibition against possessing a picture of the Dalai Lama, the prohibition against celebrating his birthday was severely enforced in 2001. In at least two cases, monasteries - Serthar and Yachen - in eastern Tibet were partly destroyed by work units. The destruction has especially affected the houses of religious practitioners, who did not originate from the region. Thousands of practitioners, including Chinese Buddhists, have been prohibited from continuing their religious education. In Lhasa, the young Pawo Rinpoche¹ from Nenang monastery near Lhasa was forced to leave his monastery as a consequence of the Karmapa's² escape to India in January 2000. In many other cases, monks and nuns have been expelled from their monasteries or their education obstructed by work units and regulations. It is increasingly impossible to pursue a full Buddhist education in Tibet.

China celebrated the 50th anniversary of its "peaceful liberation" of Tibet during the summer of 2001. As a symbol of the "liberation", a 37 metre high monument representing an "abstraction of Mount Everest" was erected on a prominent spot in front of the Dalai Lama's old winter palace, the Potala in Lhasa. Several thousand Tibetans were asked to attend a ceremony on the square in front of the Potala to celebrate the "liberation" of Tibet, which for them symbolizes the loss of their freedom. At the same time, most Tibetans were told to stay at home and security precautions were extremely tight.

The number of Tibetans in prison for political reasons continues to be high. According to some sources, the number of political prisoners rose to 254 in 2001. The 11th Panchen Lama, now 12, is still under house arrest and international human rights organisations are not allowed to visit him. Chadrel Rinpoche, who was in charge of the mission looking for the Panchen Lama and who was imprisoned in 1995, was not released in 2001 although he had served his 6 year sentence. Several deaths have occurred among prisoners, including a 28 year-old nun, who was serving the last year of a 10 year prison

sentence and a monk in his early twenties who was arrested while attempting to flee Tibet. During the “strike hard” campaign at least 6 Tibetans were executed in TAR.

The Chinese authorities claim to have arrested approximately 2,500 Tibetans trying to cross the border into Nepal in 2001. Approximately 2,500 Tibetans manage to escape to Nepal every year but this year security controls have been tightened partly due to the state of emergency in Nepal. Nepalese border police send an increasing number of Tibetan refugees back into the hands of the Chinese border police. Tibetans do not have refugee status in Nepal. They are expected to continue into exile in India after a short time in the refugee reception centre in Kathmandu. The authorities regard foreigners in Nepal without a valid visa as illegal. The Chinese authorities have become increasingly reluctant to provide Tibetans with legal papers for Nepal.

Notes

- 1 “Rinpoche” is an honorary title meaning “precious”. It is often used for Buddhist teachers (lamas), and for heads of monasteries.
- 2 The Karmapa is the head of one of the four Tibetan Buddhist kagyupa school and is regarded as the third in the overall hierarchy of Tibetan Buddhism.

TAIWAN

Indigenous peoples in Taiwan have lived through many regimes of change, from the Chin Dynasty and Japanese colonization to the present day. In the first 50 years of the current regime, the KMT (KouMinTang, the Nationalist Party) was the only ruling party. The KMT had no real indigenous policies but rather pursued assimilationist programs. And under its superficial democracy, all it did was to nurture a token “indigenous elite”.

The present indigenous movement in Taiwan started in the late KMT era. Like many other activists in Taiwan, the protagonists of the indigenous movement first joined a “non KMT” stream of political dissidents, later gaining a certain affinity with the opposition party, the



Democratic Progressive Party (DPP). In 1999, when DPP candidate Chen Shuibian (now president) was campaigning for his presidency, several indigenous activists organized to encourage him to sign the “Treaty of A New Partnership Between the Indigenous Peoples and Government of Taiwan” (the Treaty) with representatives from different indigenous communities. Signing this treaty, President Chen promised to promote the autonomy of indigenous peoples. Since then, autonomy, a

decades-long dream, has finally been included on the government’s agenda.

New partnership and DPP government

Chen stepped into office for his 4-year term in May 2000. Following his promise made during the campaign, in the Guiding Principle of Government 2001, his prime minister included “mapping out indigenous autonomy” and “investigating and recovering indigenous traditional territories” on his agenda. The head of the Aborigine Peoples’ Council (APC, highest administrative body for indigenous affairs) was also assigned to Yohani Iskakovut, who has long been an indigenous activist and one of the indigenous representatives who signed the Treaty.

In his 18-month term of office (from May 2000 to December 2001), Yohani focused on several important issues, such as the Draft Act on Indigenous Self-Government, Indigenous Language Proficiency Test, Investigation of Traditional Territories and the Revival of Pingpu Communities (the highly assimilated indigenous communities on the plains). Although indigenous activists continue to question whether it is appropriate for APC to predominate in the design of indigenous political systems, and although no satisfactory answer has yet been found, indigenous autonomy is, at least, no longer an illusion. Ideas on autonomy have become more concrete during the course of all these debates.

The cabinet reshuffle after the parliamentary election

One thing that should never be forgotten is that the present situation is the result of negotiations between indigenous activists and a political party dominated by the majority Han people (descendants of Chinese settlers). This means that the agreement can be reconsidered by both sides whenever political realities change, and that the fruit of indigenous activists' endeavours may not last long.

At the end of 2001, elections for members of parliament took place. Although eight seats are reserved for indigenous representatives, it is doubtful as to whether this ensures proper representation of Taiwan's indigenous peoples. The fact that indigenous people belong to different communities is generally recognized. However, except for the APC, these communities mean nothing in the general political system. Instead of recognizing the diversity of indigenous peoples (more than ten groups are recognized by APC), a simple division into two groups, the Mountain Indigenous People and the Plains Indigenous People, has been made, which reflects the assimilationist mentality that still prevails among the ruling Han people. This reservation of eight parliamentary seats does not allow for the representation of all indigenous communities. The seats are allocated according to the ridiculous categorization of mountain or plains indigenous peoples. Another worrying aspect of this doubtfully "democratic" system is that the candidates need more than 7,000 votes in order to obtain a seat in parliament. However, there are fewer than this number of qualified voters in six APC-recognized indigenous communities. Although President Chen also promised a national representative for each indigenous community in the Treaty, he has so far paid only lip service to this.

Due to competing political interests, the idea of autonomy and representation was left far behind in the election campaign. The election resulted in ten indigenous members of parliament (eight reserved seats and two from the party list) who, however, represent only three major indigenous communities. The results once more indicate that, under the existing "democratic" system, most indigenous communities have no chance of getting involved and being represented. Furthermore, given the party nomination system, the indigenous elites are highly dependent on political parties dominated by Han people, which means these individuals may be more concerned with their own political status within their party than with the fight for the rights for their people.

With regard to APC, the government's administrative institution responsible for indigenous affairs, the DPP government, which made

promises to indigenous communities in order to gain their support, initially did appoint an indigenous activist to the position of head of APC. But when the cabinet was reshuffled in accordance with the new parliamentary composition of January 2002, given the upcoming presidential elections in 2004, the DPP assigned the position to a KMT member. This person belongs to an indigenous elite that has been “brought up” by the KMT. Although he was a mayor in a county with a large indigenous population for eight years, he showed little interest in the most pressing indigenous issues, such as self-government, land claims, etc. Accordingly, the work left unfinished by the previous APC leadership may again be postponed indefinitely.

In the late KMT era, indigenous activists selectively cooperated with the DPP, and the DPP showed some openness. But the cabinet reshuffle clearly shows that, given the DPP’s desire to remain in power, the country’s 1.5% indigenous people are too small a vote bank to provide the DPP with sufficient motive to carry out a more decent and progressive indigenous policy.

Call for a Pangcah local chief: the demand for self-government from the grassroots

Apart from the parliamentary elections, another important recent event were the elections for local chiefs and councillors. The elections were more like a head-to-head fight, since the role of local officials is more relevant to the daily lives of people, and the competition of interests even more severe.

Again, the election system for local chiefs in indigenous regions is no less questionable than that of indigenous members of parliament. With the same assimilationist mentality, the indigenous regions are divided into two kinds of administrative areas, the Mountain Xiang (a xiang is the lowest administrative body) and the Plain Xiang. The positions of local chiefs in Mountain Xiangs are reserved for their indigenous inhabitants, but the Plain Xiangs are without such reservation. So under the existing political system Han settlers have long since replaced the indigenous headmen in Plain Xiangs. Lacking an understanding of indigenous culture, the local Han chiefs very often deny or ignore the needs and rights of the indigenous inhabitants.

During the elections for local chiefs in early 2002, a movement to gain a Pangcah local chief was pushed to the fore by some Pangcah teachers in Fongbin Xiang. This is a Plain Xiang, in which 70% of the population is indigenous and most of them belong to the Pangcah community, the

largest indigenous community in Taiwan. And yet for the last half century, not one local chief in Fongbin has been of Pangcah origin.

Stimulated by fierce debates on self-government among young Pangcah indigenous activists and local people, and assuming that a Pangcah candidate not belonging to any political party could be found, these Pangcah teachers from different Plain Xiangs organized to call for a Pangcah local chief in Fongbin.

Such a demand is in itself a compromise with the existing political system. The movement did not aim to radically transform the political system, nor did it ask to change the questionable constituency that has long existed. It merely supported the idea of an indigenous community member taking up the position, and it called for more participation of Pangcah members, and for promotion of indigenous self-government in the campaign.

Although, in the end, a Han candidate won the election once again, the local people had for the first time experienced a Pangcah nationalist mobilization. Under the present party system, the indigenous political elites have limited opportunity or willingness to promote the idea of indigenous autonomy fully. The demand for autonomy and the organization of the grassroots will no doubt form extremely important foundations on which to support and cooperate with the indigenous activists in future struggles.

Conclusion

Autonomy, self-determination or self-government have always been the issues promoted by indigenous activists of different generations in Taiwan. But the debates long revolved around mere concepts. Indigenous activists tried to grab the chance offered them by the present political situation, by manipulating the relations between different political parties as well as their own relations to different parties. They did receive a positive response from the DPP in the previous presidential contest, but the upcoming presidential elections in 2004 have caused things to change. Driven by a desire to stay in power, the DDP has to weigh up the possibility that a progressive indigenous policy might offend its Han voters against the comparably few votes it may gain from indigenous supporters. The recent cabinet shuffle was actually no more than expected.

: It cannot as yet be said whether the new cabinet will carry on
: addressing the issues proposed by activists and promised by Presi-
: dent Chen in the Treaty. But it is very likely that electoral considera-

tions and tactics will ultimately prevail over the commitments made when signing the Treaty, a commitment to redress and compensate for the mistreatment of indigenous peoples and the errors committed by previous Han rulers. Indigenous activists may not have the chance to manipulate party politics as they have done in the past. The test now will be to see whether indigenous activists can mobilize and cooperate with the grassroots in order to gain a better bargaining position with the Han-dominated political parties in the future.

PHILIPPINES

Much hope was generated among indigenous peoples in the Philippines and their supporters by the promulgation of the Indigenous Peoples Rights Act (IPRA) in 1997, during the presidency of Fidel Ramos. The bubble immediately burst, however, with glitches and clashes in setting up the National Commission on Indigenous Peoples (NCIP) tasked to spearhead implementation of the IPRA, Congress' passing (or not passing) of the budget, working out of the relationship with the Department of the Environment and Natural Resources (DENR), and the like. Many of the problems were attributed to a lack of political will on the part of the Joseph Estrada administration at that time, which generally enjoyed popularity among grassroots sectors, and even among the indigenous peoples.

Then along came January 2001 and a change in national leadership, with Gloria Macapagal-Arroyo taking over the reins. As part of her efforts to solidify her government, the new president built upon the tasks upon which Estrada was deemed lacking, among them poverty reduction and the plight of the indigenous peoples.

New President designates Presidential Adviser for Indigenous Peoples' Affairs

In fact, President Arroyo's first executive order established the Office of the Presidential Adviser for Indigenous Peoples Affairs (OPAIPA), which aimed to make the promises of the IPRA concrete. Howard Q. Dee,

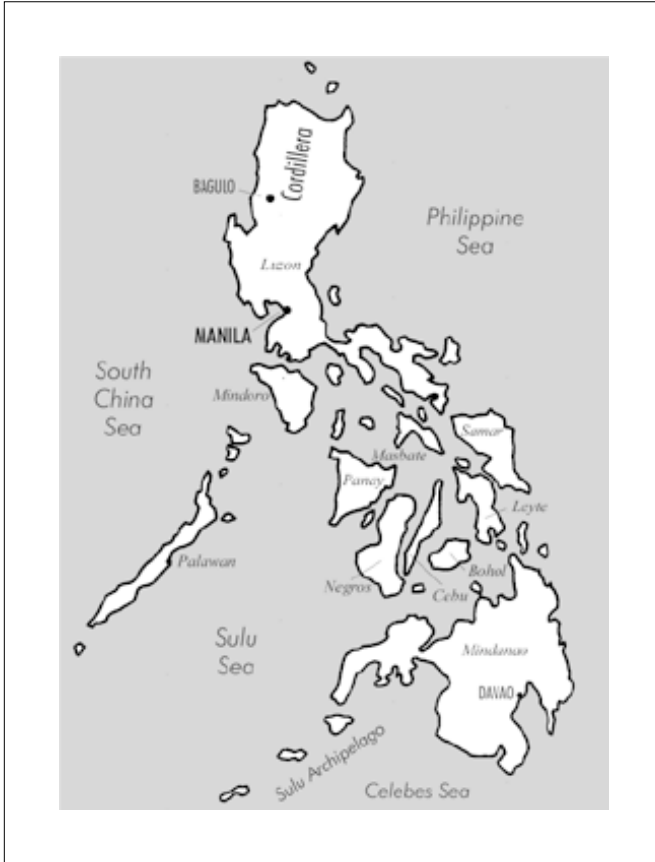
a former member of the government panel for peace negotiations with the Philippine rebels and renowned for his integrity and wisdom, was chosen to head this office. Dee's approach was to harness civil society participation in this endeavour; he called on NGOs, peoples' organisations and indigenous leaders. Together, they decided on the pressing concerns that the OPAIPA should address – the selection of new NCIP Commissioners, formation of the IPRA-mandated Consultative Body to the Commission, review and revision of the procedures for indigenous communities to obtain Certificates of Free Prior and Informed Consent (CFPIC) and Certificates of Ancestral Domain Title (CADT), and a rapid response to emergency IP issues – and formed working groups for these. The timeframe given to OPAIPA was until October 31, 2001, or until a new Commission was formed, whichever came first. Dee held office until the said date, even though the Commissioner to fill the last vacancy was appointed just before that time.

Pressure from various politicians and interest groups was always haunting the OPAIPA. A letter was sent to Malacañang, the presidential palace, signed by twenty Congressmen from Regions 1, 2 and the Cordillera Autonomous Region (CAR) asking the President to withhold the oath-taking of the new commissioners until the “political officials of the region are accorded sufficient time to conduct ample consultation and interaction with the possible appointees.”

Selection of new commissioners

Any recommendations would come to nothing without a complete, upright and working Commission. The timing was right in the sense that the terms of most of the Commissioners ended in February 2001 (one of the seven Commissioners was appointed just before the end of Estrada's rule and so his three-year term would not be over until 2003), thus giving President Arroyo a free hand in this matter. This was a task that President Arroyo entrusted to the OPAIPA.

A working group was formed for this purpose. Derived from a series of consultations with indigenous peoples' organisations and indigenous rights advocates, the group came up with a set of qualifications and procedures for the selection of 6 Commissioners. Dee formed a Selection Committee composed of the DENR Secretary, a social anthropologist, an indigenous leader and headed by the Con-
: venor of the National Anti-Poverty Commission (NAPC). The Selection
: Committee ultimately came up with a shortlist of three candidates for
: each of five of the seven ethnographic regions (as defined by the IPRA),



from which the President could appoint the Commissioner for each of these regions. No candidates could be presented for the 6th ethnographic region where the DENR Secretary comes from, since he came up with his own candidates. Eventually, President Arroyo exercised her presidential prerogative to make a direct appointment of a Commissioner for that region with whom she had personal ties and one who was not so controversial that indigenous peoples and indigenous rights supporters would make a noise about it.

The selection process illustrated the kind of dynamics that the OPAIPA and its working groups had to contend with. For outputs to be meaningful and practical, continuous balancing had to be accomplished: the IPRA provisions (which could not be easily changed and were a long-term prospect), the guidelines of the

Implementing Rules and Regulations (IRR, which may be revised but which, however, may take some time), the varied development approaches of the myriad NGOs involved and, of course, the stands of the various indigenous peoples' organisations and the constraints of a lack of time and financial resources vis-à-vis the desire to be as participatory and broad-based as possible.

By the end of the OPAIPA term, there was great hope in the new Commission since it was, for the most part, comprised of people who had undergone a negotiated selection process and had a record of service to indigenous peoples within civil society.

Formation of the Consultative Body to the Commission

The negative experience with the first Commission had prompted a search for ways of overseeing NCIP performance. One possible way this could be done was by activating the Consultative Body as mandated by the IPRA, which the first Commission did not establish.

There were many problems in relation to this. One was that only the Commission could convene the Consultative Body, and it could do so (or not) as it saw fit. It could not therefore have significant overseeing functions. Another was that both the IPRA and IRR were very vague in describing the specifics for selecting the members of the Consultative Body. The IRR merely stipulated that the Consultative Body would be composed of 35 members, 5 from each ethnographic region, and that gender and sectoral representation had to be ensured. The lack of more specific directives was something that the OPAIPA working group on the Consultative Body tackled.

Apart from the dynamics mentioned earlier, the working group had to deal with the complicated issue of representation. Again, indigenous peoples and indigenous rights advocates were brought face-to-face with the realization that no hard data on Philippine indigenous peoples existed. For one, the population count was based on projections of estimates. For another, there had been no conclusive work on the total number of indigenous groups in the country, including the thorny matter of how to distinguish between groups, sub-groups and communities. What then could be the bases of representation?

Consultations with indigenous peoples' organisations on the initial outputs of the different OPAIPA workshops were held in each ethnographic region during mid-2001. In the course of undertaking these, a process for the selection of the Consultative Body gradually

evolved. Indigenous peoples' organisations were unanimous in declaring that ethnographic regional consultative bodies should be convened. It was also generally agreed that these ethnographic regional consultative bodies would exist independently of the National Consultative Body; i.e., they could convene even without the bidding of the NCIP. Each ethnographic region would determine the manner by which the members of its consultative body would be selected, many of them opting for representation of major groups at the provincial level first. Then each ethnographic regional consultative body would be responsible for determining how to select the five representatives of each ethnographic region to the Consultative Body at the national level. Some recommendations for selection that emerged related to the need or issue to consult about, rotation or election.

The round of consultations ended with a preliminary listing of members of each ethnographic regional consultation. The list again revealed the problems of determining representation: lack of mechanisms for small groups to be included, town-based politicised leaders versus community-based traditional leaders, multiple representation by major groups at the expense of other groups, gender and sector based representation viewed as arbitrary given traditional male-dominated leadership, etc. And there was the added problem of who would finance these ethnographic regional formations, as they were not within the IPRA and IRR, and therefore could not be allocated a regular budget.

As all these had the status of recommendations, by the end of OPAIPA's days, it was left to the new Commission to carry on the work regarding formation of the Consultative Body. To date, however, there has been no movement on this matter. The new Commission declared that its more pressing concerns lay with the finalization of policies on the awarding of recognition to ancestral domains and lands and of Certificates of Free, Prior and Informed Consent, as well as the reorganization of the NCIP.

A crucial factor to keep in mind is that the National Anti-poverty Commission (NAPC) has a council for each of the 14 basic sectors, each with its own consultative council, and that the indigenous peoples are one of these sectors. From the very start of the Arroyo administration, the approach of the NAPC was to synchronize and coordinate NAPC and NCIP thrusts as much as possible. Allegedly, one of the urgent calls of the NAPC Indigenous Peoples Sectoral Council is for the NCIP to immediately convene the Consultative Body.

Review and revision of the procedures to obtain land titles

A concrete expression of the upholding of indigenous peoples' rights is respect for indigenous peoples' self-determination through recognition of their ancestral domains and lands and by ensuring that projects that affect their communities are there with their free, prior and informed consent. Such recognition is thus among the very important provisions of the IPRA, through the NCIP's processing of Certificates of Ancestral Domain Title (CADT), Certificates of Ancestral Land Title (CALT) and Certificates of Free, Prior and Informed Consent (CFPIC). But the first Commission failed miserably in this regard. It granted over 300 CALTs and an undetermined number of CFPICs, many of them under spurious conditions. And while the former Commissioners had approved nine CADTs on the eve of their departure, the actual granting was not pushed through, such that not one single ancestral domain received a title during their time in office. An OPAIPA working group was formed to review and propose a set of procedures for the granting of these certificates, to be presented to the incoming NCIP commissioners as recommendations. In June 2001, during the opening of the Philippine Congress and the President's State of the Nation Address (SONA), President Arroyo committed the government to releasing 100 CADTs to the indigenous peoples within a year.

As the SONA commitment to indigenous peoples desperately tries to race against time, the 100 CADTs seem an impossible dream. Lacking technical know-how, much less funding, the NCIP had, by April 2002 still not issued a single CADT. Aware of these difficulties, the SONA commitment was downscaled in a recent cabinet meeting to 100,000 hectares.

Reorganization of the NCIP

One of the major burdens of the new Commission is that it inherited an NCIP bureaucratic structure, well-known for its entrenched ineptness and corruption. To address this situation, the Commissioners have to deal with so many issues, among them their own inexperience in coping with government bureaucracy, civil service requirements that confine indigenous leaders with no formal schooling to janitorial positions, a Congress that has still not passed the NCIP budget such that there is money for employees' salaries but none for program implementation, regional politicians who play a heavy hand in filling up appointed positions, reconciling the IPRA-defined ethnographic

regions with the geo-political regional structure within which the Philippine government functions, and many more. Now that the new Commission has issued the policies for CADTs/CALTs and CFPICs, it has said that its next priority is NCIP reorganization. An Administrative Order of President Arroyo will provide additional support and will serve as the legal basis for the NCIP restructuring.

Diverging views and approaches

This article is not meant to convey the impression that the indigenous peoples of the Philippines and their supporters all stand behind the IPRA and are jointly struggling for its full implementation. There is a broad range of responses to the IPRA, ranging from those who believe that it sells out indigenous convictions regarding self-determination and the recognition of ancestral domain and land rights, and who therefore do not want to have anything to do with it, to those who see its many shortcomings but are willing to take this opening to further indigenous peoples' rights within the mainstream, and those who like the law and contend that what is merely lacking is its proper implementation.

Then there are the opposing forces, such as mining, logging or agribusiness companies as well as political interests that would love to see the IPRA disappear so that they can continue their exploitation of indigenous peoples' ancestral domains. They would like nothing more than to see the new NCIP fail so that the abrogation of the IPRA can be justified.

In the words of a former key person within the OPAIPA, never before had the indigenous peoples of the Philippines such an array of opportunities within the government: a Supreme Court that has already twice defeated the constitutional challenge to the IPRA; a President who has spelt out specific targets for the upliftment of the indigenous peoples and is willing to allocate a budget for this; and a Commission most of whose members are from the ranks of those recognised to have worked within civil society for indigenous peoples' rights. Whether or not President Arroyo is doing this out of political expediency or because of a genuine commitment to indigenous peoples' self-determination is beside the point if one is to read the situation as presenting indigenous peoples with more choices and opportunities within the mainstream. Within the common vision of indigenous peoples' self-determination, all these conditions shape their hopes and frustrations. At this point in time, the NCIP is being closely watched by all forces. It is a critical factor in determining whether or not hope once again becomes cemented into frustration.

The ongoing crisis: militarization and development aggression

In the meantime, while all this planning and preparation was ongoing, the indigenous peoples had no respite from development aggression and other forms of oppression. Deaths and massacres were perpetrated on indigenous communities in Bukidnon, Zamboanga and Agusan province on Mindanao. There is growing concern at the number of human rights violations against the indigenous peoples, which alarmed even the UN Commission on Human Rights.

In September 2001, President Macapagal Arroyo issued Executive Order No. 18 on the integration of the Cordillera Peoples' Liberation Army (CPLA) into the Armed Forces of the Philippines (AFP). Around 264 CPLA regulars have since become part of the AFP, while 528 others have joined the Civilian Armed Forces Geographical Unit (CAFGU). According to the government, this order is meant to build peace in the Cordillera. It has allocated 60 million pesos to the integration process.

Cause-oriented groups and human rights advocates denounced this measure as an act of grave injustice to the people of the *Cordillera*. CPLA elements have been responsible for the political killings of several leaders and members of the Cordillera Peoples' Alliance (CPA) and staff of development NGOs between 1987 and 1992. Several leaders and members of the CPLA have also been identified in criminal activities such as robbery and extortion. The families of the victims of CPLA atrocities feel that the new government, instead of providing justice, has now coddled this vigilante group, adding more bad eggs to the military establishment. Many fear that this will lead to more instability than peace in the region.

Military operations in the Cordillera hinterlands led to the brutal execution of Mr. Johnny Camareg, a 55-year-old farmer of Betwagan, Sadanga, Mountain Province on August 9, 2001. Three children of Tocucan, Bontoc were also the victims of indiscriminate firing when they were mistaken for rebel forces while they were gathering firewood in the forest. In addition, a 17-year-old student was raped by a certain Sgt. Joel Torallo, based in Besao, Mountain Province. The military unit involved in all these atrocities is the 22nd Special Force of the Armed Forces of the Philippines.

An alarming increase in tribal conflict in Kalinga and Mountain Province has been recorded since the year 2001 to the present. In particular, the longstanding boundary dispute between the people of Betwagan and Bugnay led to the onset of full-scale tribal war on December 2001. This escalation to tribal war was partly instigated by

elements of the CPLA based in Bugnay. Five individuals have already been killed and three wounded as a result of this conflict. Other conflicts are related to boundary delineation, resource-use competition over forests and water sources and criminal incidents. The Boding Pongors Organization (BPO) of tribal elders and the Cordillera Peoples Alliance have been holding series of workshops with elders for the peaceful settlements of tribal conflicts and calling for a stop to tribal wars.

The indigenous peoples of Itogon, especially the Ibaloy of Dalupirip, remain very anxious as construction of the San Roque Dam is due to be completed by mid-2002. In June 2001, an independent evaluation of the NCIP on the dam construction confirmed that there was no Free, Prior and Informed Consent (FPIC) given by the indigenous peoples affected by the dam project. The FPIC is a legal requirement under the Indigenous Peoples Rights Act (IPRA). On March 15, 2002, the Itogon Inter-Baranggay Alliance (IIB-A) submitted a petition to the NCIP to issue a cease and desist order on the ongoing construction of the San Roque Dam. The affected communities have been lobbying the Japan Bank for International Cooperation, the funder of the dam project, to withdraw its financial support from the project.

Lepanto Consolidated Mining Company is set to expand its mining operations within Mankayan towards Bakuna and Buguias in Benguet, and Tadian, Bauko and Bontoc in the Mountain Province. Residents of Colalo, Mankayan are protesting at the expansion of the Lepanto tailings dam complex because it will cover their farms and residential lots. Meanwhile, farmers living below the tailings dam complex believe that the massive silting of the Abra river, and the periodic flooding along its banks, are due to the build-up of Lepanto tailings in the river. There is now growing opposition to the Lepanto's operation from farmers along the Abra River, and those in the expansion area of Lepanto's operation.

The situation in Palawan

The biggest challenge faced by indigenous organizations and NGOs in Palawan at present is the establishment of a nickel refinery by Rio Tuba Nickel Mining Corp. (RTNMC). Mining activities by RTNMC are presently located in the municipality of Bataraza. The proponent, RTNMC, intends to maximise its operations by utilising the existing low-grade nickel ores currently stored in open dumpsites within its concession. This would justify the establishment of a nickel refinery

plant, of a support hydrogen sulphide production plant and limestone quarrying operations, with disastrous consequences for the livelihoods of several Palawan indigenous communities. Some of the areas under serious threat include: Sitio Gutok, Sarung and Kulan-tuöd, Barangay Iwahig and Rio Tuba proper.

Between 2001/2002, non-government organizations in Palawan, headed by the PNNI (the Palawan NGOs Network, Inc.), launched a major fight against RTNMC. Photographic evidence of RTNMC's environmentally destructive practices, and field information have been acquired by both BPP (Bangsa Palawan, Philippines, Inc.) and ELAC (Environmental Legal Assistance Center). From January 9 to 15 2001, various consultations took place between the indigenous communities affected and the local NGOs. As a result, a petition against RTNMC was jointly signed by indigenous representatives, and has been submitted by PNNI to the Department of Environment and Natural Resources (DENR). It would appear that the hydro-thermal metallurgical processing plant application was favorably endorsed by the Palawan Council for Sustainable Development (PCSD) in December 2001, and now awaits final approval from DENR.

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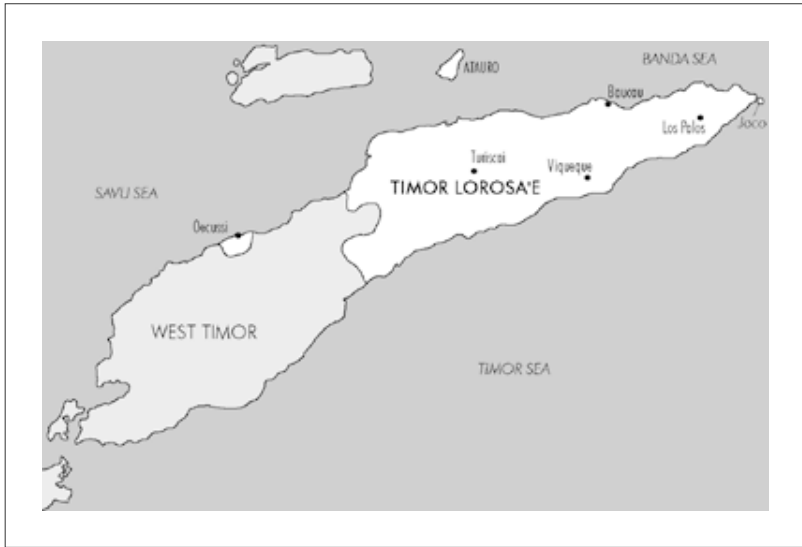
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TIMOR LOROSA'E (EAST TIMOR)

On May 20 2002, East Timor will finally become Timor Lorosa'e - the Land of the Rising Sun - a fully independent nation, and a full member of the UN.



The territory of Timor Lorosa'e is made up of four parts: the mainland, i.e. the eastern half of the island of Timor, 16,384 sq.kms; the Oecusse enclave, which lies on the northern coast of West Timor (Indonesia) 2,461 sq.kms; the island of Atauro, 23 kilometres off the northern coast of East Timor and its capital Dili; and the tiny island of Jaco, 8 sq.kms east of the eastern tip of the mainland. The total population is estimated at around 800,000.

After almost 24 years of Indonesian occupation, and deeply marked materially and spiritually by the outbreak of violence following the UN-organised referendum in August 1999 (see *The Indigenous World 2000-2001*), East Timor has, since October 1999, been administrated by the United Nations Transitional Administration in East Timor (UNTAET) in preparation for independence.

Successful elections

The first step was the elections for the Constituent Assembly, which took place on 30 August 2001 as the country's first elections since the end of Indonesian rule.

Fretilin, the Timorese Front for National Liberation, the party that declared East Timor independent in 1975 and the largest single force in the long fight against occupation, won 57 per cent of the votes,

gaining 12 of the 13 district seats and 43 of the 75 national seats. And yet the results still fell short of the 85-90 per cent the party had been predicting.

Twelve parties are now represented in the 88-seat Constituent Assembly. This reflects considerable public openness and interest in the newer parties. The Democratic Party (PD) and the Social Democratic Party received strong votes in many districts, and they now have the second largest block of seats after Fretilin, with 7 and 6 seats respectively. The Social Democratic Association of Timor (ASDT) will also hold six seats.

Fretilin had hoped that it would win a large enough majority to be able to draft the constitution in the assembly. Given the considerable non-Fretilin vote, such a strategy is now not so easy. At least 60 of the 88 members of the Assembly must approve the constitution for it to be adopted.

Legacies of the past and challenges of the future

For 24 years, the East Timorese had one overriding problem: how to get rid of the Indonesians. Now this problem is gone but since the establishment of the Second Transitional Administration on September 2001, the new nation now faces both the legacies of the past and the challenges of the future.

Relations with Indonesia

Relations with Indonesia are marked by the continuing refugee crisis: approximately one-tenth of East Timor's population – or about 80,000 refugees - continues to be held in Indonesian military and militia-controlled refugee camps, mostly in Indonesian West Timor.

Border security is another issue. Indonesian military-backed militias continue to destabilize East Timor by launching cross-border raids from their bases in the West Timor refugee camps. Many militia leaders say they plan to increase hostilities when the UN reduces its peacekeeping presence in East Timor during 2002-2003.

Citing ongoing human rights abuses and lack of accountability for violations, the East Timor Action Network (ETAN) and the Indonesia Human Rights Network (IHRN) have also urged the Bush administration not to strengthen ties with the Indonesian military in reaction to the September 11 attack on the US. Renewing military relations with Indonesia would set back reform efforts and democracy in Indonesia

while undermining East Timor's security, the groups said. The US has withheld most military assistance from Indonesia since the Indonesian military and militia razed East Timor in September 1999 after it voted overwhelmingly for independence.

Reconstruction and development

The country faces a huge reconstruction task. The Indonesian reprisal in 1999 left the infrastructure (roads, health clinics, hospitals, schools, etc.) in a very poor condition and many houses are in ruins. People lost their livelihoods. Fields and crops were burnt, livestock killed, tools stolen, equipment smashed. Nearly everyone must find the capital, equipment and stock needed to start again.

There is widespread poverty, and poor health services, especially in the rural areas where the majority of the population lives. Maternal and infant mortality rates are high. New figures produced by the World Health Organisation (WHO) in early 2002 show that twice as many women die in childbirth in East Timor than anywhere else in East Asia or the Western Pacific. According to the health organisation, there are only 196 midwives available for a population of 800,000.

Illiteracy rates - particularly among women - are very high. Over 147,000 children are currently attending primary schools in the country's 13 districts. Yet the absence of a standard syllabus, the shortage of trained schoolteachers and school facilities are major problems facing primary education. A new educational system and new school books are also needed since education, until 1998, was based on Indonesian material.

The language issue

One of the greatest challenges lies in the choice of language for East Timor: at least four languages are used and/or preferred, and more than thirty dialects are spoken. While Portuguese has been chosen as the country-to-be's official language, to be used in all official business, the vast majority of the population is not fluent in Portuguese, and Tetun (an Indo-European idiom similar to Malay but with strong Portuguese and other influences) remains the national lingua franca, spoken by most East Timorese at home alongside their provincial dialects. While this may not be a huge problem, a greater difficulty is posed by the fact that, as all official business as well as education has been conducted in Malay (the so-called Bahasa Indonesia) for the last 26 years, this remains the language to which most civil servants are accustomed, including of course teachers - and their textbooks.

Replacing it with Portuguese in the short term would be impossible, while replacing it with Tetun would be impracticable, since Tetun has not been fully developed as a language.

Many East Timorese still doubt the effectiveness of Portuguese as an official language. While most leaders - especially former exiles - would not dream of any alternative, many of their less educated compatriots may still favour the practical use of Indonesia's language instead. A few would like to see Tetun become a written language to replace either. To complicate things further, English has become the trendy language of the youth, after almost three years of massive UN personnel presence (9,000 in the Peacekeeping forces; 2,000 in the civil administration) and of international non-governmental organizations. English is the working language of UNTAET.

Women make their mark

The elections to the Constituent Assembly marked the entry of women into East Timorese politics. Overall, women won 24 seats in the assembly but only 23 of them actually took their places. Women's rights groups in East Timor hailed the development and said the incorporation of a women's rights charter into the constitution would be their next goal.

For many years, the women of East Timor were not allowed to speak out, not allowed to organise themselves. A brutal and foreign dictatorship ruled their lives. Now they may speak out, now they may organise themselves, and now they will participate in the shaping of their country's future constitution. But their problems are far from over.

Many are deeply traumatised by the sexual abuse and degrading treatment they suffered during the Indonesian military occupation from 1975 to 1999. Many were furthermore socially stigmatised and, if the relationship had produced a child, the child would also be stigmatised - as well as fatherless.

As a result of the Indonesian special family planning policy - the KB program (*Program Keluarga Berencana*) - many Timorese women were sterilised when they came to state-run health clinics, often without their knowledge and consent. The purpose of this policy was to change the demographic composition of the population, keeping the number of East Timorese low while more Indonesians from Indonesia were brought to East Timor as "trans-migrants".

: Another problem faced by East Timorese women is the unequal
: gender relationship. In East Timorese society, tradition and custom-
: ary law favours men over women. Among the practices that East

Timorese women's rights activists want scrapped is the traditional dowry system, which they say reinforces a patriarchal society system.

According to Manuela Leong Pereira, the director of Fokupers, the East Timorese Women's Communication Forum, an independent NGO, domestic violence has existed in East Timor for a long time, though largely hidden from public view or discussion. She states:

We rarely read about non-public violence, such as that which takes place inside the home and which is actually more pervasive. This silence is extremely dangerous. East Timor has inherited Indonesia's legal code in which there is no specific reference to domestic violence. The law must also give protection to women facing violence.

Preparing the future

As one of its first actions, the Second Transitional Administration has put a Commission on Planning in place to steer the preparation of the National Development Plan so that it is ready before Independence Day, 20 May 2002. One of its components is the Consultative Commission of Civil Society on Development (CCCSD).

The process for the preparation of a National Development Plan has two core objectives: (1) to fully reflect the needs and aspirations of the Timorese people; and (2) to focus on an action plan for reducing poverty.

The CCCSD is responsible for advising on how institutional elements of civil society, both traditional and modern, can use their networks to maximise the participation of the East Timorese people in the consultation process.

The consultation's major output will be the compilation of the people's vision for East Timor for the medium (2002-2005) to long term (2020), which, in turn, is expected to be incorporated into the final plan for the development of the nation for the next two decades.

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INDONESIA

The high hopes for fundamental reforms after the fall of Soeharto's New Order regime did not generally materialize, as entrenched interests within the bureaucracy and the political system proved capable of protecting themselves. Nevertheless, the end of the New Order and the repression that was its hallmark led to unprecedented freedoms in key areas such as the press and political organization. This also provided a new opportunity for indigenous peoples in all parts of Indonesia to begin to reclaim their rights. A watershed event in this regard was the meeting in March 1999 in Jakarta of representatives from all over the country. The major result of this meeting was the formation of a national umbrella organization called AMAN, *Aliansi Masyarakat Adat Nusantara* or the Alliance of Indigenous Peoples of the Archipelago.

Empowering the regions – empowering indigenous peoples?

One very significant reform, which was carried through energetically, was decentralization. Passed under President Habibie, Law No. 22 of 1999 on Regional Government replaced the two New Order laws on regional and village government from 1974 and 1979.¹ It was something of a panic measure at a time of rising pressure from the regions not just for autonomy but an even looser federal state or, in some cases, outright secession. These pressures were a reaction to decades of repression and abuse by the centralised and authoritarian state led by Soeharto, yet the major forces behind the call for radical decentralization were not based in civil society (which had had to suffer most from the politics of repression) but rather in the local elites, many of them deeply entrenched in the old power structures of the Soeharto regime. While the discourse of the “blue collar” movements for regional au-



tonomy led by these circles demanded the claiming of “traditional rights”, the ethnic groups whom they wanted to enfranchise were mainly the locally-dominant ones, not the often politically and socially marginal indigenous communities. Any discussion of the merits and shortcomings of “regional autonomy” in Indonesia, therefore, must take note that the official (and, indeed, also the NGO movement’s) category of *adat*-based (traditional) rights is much broader than the standard notion of *indigenous* rights in international legal discourse.

The new law went quite far in devolving power to the districts (*kabupaten*), while the powers granted to the provinces themselves were narrowly circumscribed, concerned only with managing matters not assigned to the districts, or involving cross-boundary affairs. As the main beneficiary of decentralization, the district became a fully self-governing entity (unlike before, when it was also an administrative unit under the province and the state) with potentially extensive powers to manage its lands and natural resources as well as to raise revenues (provided for under a separate law). Reflecting the considerable demographic and economic growth of the preceding decades, and harking back to pre-existing autonomous polities from the colonial and pre-colonial period, many New Order districts were divided up into smaller entities, bringing autonomous government significantly closer to local communities.

Those local communities, i.e. villages, were themselves also to a significant extent reorganized under the new law. In a tone very different from the village law of 1979, the new law declares that the village has “authority to regulate and manage the interests of the local community based on its origins and local customs and traditions that are recognized within the system of national government”

(Article 1).² While the authority of the village is limited only to those functions that have not yet been accorded to district or provincial governments, at least the new law makes an explicit reference to indigenous cultural and political traditions. In addition to a directly-elected village head (Article 95), the law also provides for the formation of a Village Representative Council (*Badan Perwakilan Desa*) whose members must be chosen by and from among the villagers themselves. The duties of the representatives are to protect customs and traditions (*adat istiadat*), make village regulations, to be a conduit for the aspirations of the community, and to oversee the running of village affairs (Article 104).

It is, furthermore, specified that district government and/or third parties that are planning developments in the territory of a village have a duty to involve the village government and representative body in planning, implementation and monitoring (Article 110). It is also stated that district bylaws must recognize and honour the rights, origins, as well as customs and traditions of the village (Article 111).

It is noteworthy that in amendments to the Constitution, which were passed in the year 2000, the chapter on Regional Government was greatly expanded and clarified. In the present context, the last clause is especially interesting:

*The state recognizes and honours the adat law communities as well as their traditional rights as far as these remain a living reality and are in line with the development of society as well as the principles of the Republic of Indonesia as a unitary state, as they are regulated by laws.*³

While traditional rights are thus subject to certain qualifications that may have the potential to nullify them, the novel and explicit recognition of such rights in the Constitution provides an important basis for arguing their continuing relevance in given situations.

Another extensive addendum to the Constitution of great significance to indigenous peoples is a new chapter on Human Rights. Particularly relevant sections are Article 28I (2): “Everyone is entitled to be free from discriminating treatment on whatever grounds and entitled to protection against such discriminating treatment”, and (3) “Cultural identity and the rights of traditional communities are to be honoured in accordance with evolving epochs and civilization.”⁴

While the new legislation on regional and local autonomy has been criticized for its ambiguities and the poor quality of its drafting and, of course, for going too far in dismantling centralized state power

in the view of some, it has clearly altered the context of maintaining local or traditional rights very substantially. This is especially so for the large ethnic groups that constitute majorities in their areas and whose members control legislatures and administrations at the district level. To take one example, the Malays in Jambi or Riau province, whether they are considered as tradition-bound or not, are not only fully in control of the governing institutions in the villages where they reside but also at the levels of the district and the province, where officials up to and including the Governor are now of preference recruited on the basis of their ethnic and local affiliation. Compare this to a situation just four years ago, when all these institutions were subverted by the central government for the purpose of gaining access to and exploiting lands and resources. The question, of course, is to what degree the windfall of these momentous changes also benefits those ethnic groups whose political bargaining position has traditionally been and continues to be weakest – the indigenous peoples, and among them in particular those that never produced any kind of educated middle-class who could articulate their demands.

Minorities among minorities: the special problem of marginal indigenous communities

The paradigmatic shift from unitary nation-state to regional autonomy has not so far addressed the special problem of protecting indigenous peoples, especially the very small ones, from cultural extinction and social and economic disintegration. Under the New Order, some of these were targeted for government assistance, provided under the Social Affairs Ministry program for isolated tribes. In practice, what it amounted to was resettlement which, rather than solving basic problems, especially as seen by the groups themselves, caused disruptions and exposed the groups concerned to increased risks of marginalization by uprooting them from their lands and denying them access to their livelihood bases.

With decentralization, the role of the Social Affairs Ministry has been greatly diminished; under President Abdurrahman Wahid it was even temporarily abolished. Its role with respect to traditional communities is reduced to developing general guidelines for districts, which now have authority over both policy, allocation of funds and extending assistance to “isolated *adat* communities” (*masyarakat adat terpencil*), as the target groups are now called. The newly-renamed Directorate for Isolated *Adat* Communities has adopted progressive

terminology in its general guidelines, “empowerment” being a key catchword.⁵ But the technical guidelines that are distributed to regional authorities differ little in substance from the earlier approach, with resettlement still being pivotal in introducing change.⁶ It now remains to be seen what the districts will do with their indigenous minorities.

Small indigenous minorities are faced with a particular problem in being surrounded by ethnic majorities who, too, may claim traditional status and the special rights thereby entailed, and who have now been put in control of overall resource management at the district level through their control of *kabupaten* government. It should be borne in mind that traditional inter-ethnic relations have often been marked by exploitation and discrimination on the part of regionally dominant groups. Examples are forest-dwelling shifting cultivators or hunter-gatherers like the Kubu or Orang Rimba, the Talang Mamak, the Sakai, the Punan, and so forth. It seems, therefore, that the traditionally marginal indigenous communities, especially those who have poor access even to village-level political institutions or who are outside these altogether, such as the Orang Rimba, are in particular need of attention and advocacy support. Those who wish to support the rights of indigenous peoples would thus be well-advised to clarify both priorities and strategies so as to make an impact where it is most truly needed or, at the very least, in order to avoid inadvertently contributing to the marginality of the smaller groups.⁷

Local government and indigenous aspirations

As the ongoing devolution of power from national to district and – to a lesser degree – provincial levels of government has been slow to make an impact on villagers’ lives, many peasant and indigenous communities have started to question the relevance of the state in general in their lives. Indigenous peoples, who were among those groups that suffered the most from decades of bad governance, have started to respond critically to the policy of Local Autonomy. Today, the policy is increasingly often seen as a new venue for the state to expand its control over the people, rather than as an alternative to the previous centralised government and the subversion of traditional institutions at the village level that went with it. Those indigenous communities allied under AMAN have been trying to push local governments to consider crucial aspects of indigenous governance and social systems in an effort to make village government more responsive to local needs. They demand that local-level legislation

should acknowledge the right of local people to be governed by traditional *adat* institutions.

Drafts of Local Regulations reflecting this demand have been produced in some regions, such as in West Kalimantan and Bali without, however, having yet been brought into force. In West Lampung, however, 13 Local Regulations are now in force, establishing local government units and governance practice in accordance with traditional indigenous institutions and practices, and redrawing administrative boundaries along the lines of traditional communal territories. For example, West Lampung's Local Regulation No. 02/2000 replaces the New Order entities *desa* and *kelurahan* with their traditional equivalents, *pekon* and *pertain*. Similarly, Local Regulations in Toraja, South Sulawesi, established the traditional local political unit, *lembang*, as the basis of local government, while Bali introduced the *desa pekraman* for the same function.

The fact that, gradually, cultural diversity is reasserting itself in the shape of resurgent local governance institutions testifies to growing pressure – both from the grassroots and the public – for the recognition of indigenous social systems and ways of life. In this regard, however, it is important that the indigenous movement keep things in perspective and realize that states everywhere in the world have periodically tried to gain credence and loyalty by adopting local terminology, and that the risk of the state trying to manipulate indigenous governance and customary law systems is very real. Even with decentralization as the new buzzword, the chance that the state starts to resemble local society is much less likely than the opposite – that local society continues to be refurbished in the image of the state.

Clearly, the re-introduction of indigenous governance systems as a way of rolling back the impact of state-imposed homogenization, which has destroyed many autochthonous social systems in Indonesia, is an effort that deserves indigenous Indonesians' support. All the while, however, indigenous organizations should be wary of attempts by the state to infiltrate indigenous governance systems with its organs, thus diluting and, finally, subverting them. Thus, in some provincial districts, the *bupati* (District Head) has been promoted to a position of special authority in indigenous governance systems. Such developments have the potential to destroy the realization of the goal of autonomy for indigenous communities. A look at local governments' record on natural resource management is instructive in that respect. Extractive industries that exploit forest resources have not been reined in by the new local power-wielders. On the contrary, forests are seen by most local governments as a prime source of revenue, so that the

private and semi-companies preying on forest resources have remained the same but the revenues generated by taxing them are now making local instead of formerly national elites rich.

Local indigenous communities have traditionally been, and in many cases still are, autonomous social, political and legal entities. Just like the state and the units it invests with administrative functions, the community has a territory, people and the governance system needed to maintain peaceful relations among its members. AMAN, the national federation of Indonesian indigenous peoples, has always made it clear that local autonomy can mean no less than autonomy on a community – as opposed to e.g. district or province – basis. This understanding was formulated in AMAN’s Workshop and Seminar in Liwa, West Lampung, from January 10 to 12, 2002, before the Third Meeting of AMAN’s National Council. Indigenous autonomy in AMAN’s understanding is a bundle of rights the single components of which cannot be separated from each other. The rights entail the right to define the relevant territorial units used in administering the local population, the right to control the management of the natural resources therein, and the right to apply customary law to a wide range of legal issues. Such autonomy is ultimately rooted in and legitimized by locally specific historical experiences and parochial cultural values, which tend to differ from one community to another. This is why we now see the re-emergence of different local political systems, like the *binua/banua* in Kalimantan, the *huta* of Tapanuli, *gampong* and *mukim* in Aceh, *nagari* in West Sumatra (Minangkabau), *marga* in South Sumatra, *pekon* in Lampung, *negeri* in Minahasa, *kampung/ngata/boya* among the Kaili in Central Sulawesi, *lembang* in Toraja, *pamusungan* in West Lombok, *boa/adak* in Manggarai (Flores), *yo* in Papua (Sentani), etc.

Legislative change in the field of natural resource management policies

Another important political event was the passing of Decree No IX/MPR/2001 by the People’s Consultative Assembly (the upper house in the Indonesian “parliamentary” system), which was passed on November 9, 2001. It was the first time the state had passed an umbrella regulation offering a space for agrarian reform and equitable, people-oriented natural resource management. The significance of the Decree is derived from the fact that agrarian reform and natural resource management are now once and for all placed firmly in the

political sphere and no longer seen only as economic bones of contention in the public sphere. Significantly, too, the decree was passed explicitly as a contribution to democratization, the rule of law and poverty reduction. The Decree also relativized the principle of the state exerting control over "...land, water, and its content of natural resources" by specifying that such state control must be "...dedicated to the prosperity of the people", as stated in the Constitution of the Indonesian Republic.

In addition, the Decree is important for enumerating the principles that are supposed to govern the state's revised forestry, mining and agribusines policies, as well as the implementation of agrarian reform. The twelve principles address human rights, cultural diversity, democracy and broad-based popular participation in political processes, gender equality, sustainability of natural resource and agrarian resource use, social and ecological functions of natural resource management and protection for indigenous peoples and their cultures.

However, it is at least doubtful that the current political dispensation will muster the political will to substantiate the decree by developing well thought-out legislative instruments to translate a mere declaration of intent into political practice. Item j, Article 4 of the Decree, insists that future policies on natural resource management and agrarian reform have to "recognize, respect, and protect indigenous rights and cultural diversity" but so far there has been no sign that this or other well-sounding pronouncements will ever be transformed into laws that bite. This is doubly annoying because Article 6 and 7 of the Decree themselves emphasize the importance of follow-up legislation in the form of organic regulations deriving from it. Articles 6 and 7 entrust both the President and the House of Representatives with developing legislative initiatives with regard to agrarian reform and natural resource policies in the "public domain" (under which category indigenous territories and the forests within them still fall, according to official parlance).

Decree No IX/MPR/2001 would not be the first major Act, Decree or Law to die a slow death because of the government stalling the passing of laws operationalizing implementation. Parliament and the bureaucracy delayed the formulation of the first major organic regulation implementing Act No. 5/1974 (or UU No. 5/1974) for no less than 18 years (Government Regulation No. 45/1992 on the Implementation of Local Autonomy), while Government Regulation No. 8/1995 on the Partial Transfer of Governmental Authority from the central government to 26 pilot *Kabupaten* or districts took 21 years to be issued.

One of the major strengths of Decree No IX/MPR/2001 is that it unifies and streamlines a body of scattered pieces of legislation and constitutional provisions relating to natural resource management on indigenous territories that were often contradictory, with the result that the extractive industry and different branches of the bureaucracy could choose which sectoral law they wanted to apply to their case. Forest concession holders (HPH), for instance, usually upheld the Basic Forestry Act, which would only recognize state forest and not acknowledge native title to forests and land. Mining investors, for their part, were able to point to Article 33 of the Constitution that vested ownership of – and therefore the right to offer mining concessions over – subsoil resources in the state. Unlike with the new law, no principle on social and environmental compatibility restricted logging and mining ventures under the sectoral laws that Soeharto had promulgated.

Communal conflict and peace building

For the first four years after Soeharto's abdication, reporting on developments in Indonesia was a task overshadowed by a series of bloody communal conflicts that either directly involved indigenous communities or then destabilized the areas inhabited by them. The protracted ethno-religious conflicts in Poso and Ambon still linger five years after Soeharto, while in other places, many new conflicts have emerged between indigenous peoples on one side and companies, local government, migrants, or even fellow indigenous groups on the other. The list of conflicts involving or affecting indigenous peoples is long: the one between the BPRPI (an organisation of mainly Melayu indigenous peoples) and PTP (State Sugarcane Plantation) and KIM (Kawasan Industri Medan) in North Sumatra, the cases involving the Meratus and Ketungau Dayak in Kalimantan, the hotspots of Jambi and Bengkulu in Sumatra, Dongi-Dongi in Sulawesi, etc.

In the case of the conflicts in Poso (Sulawesi Island) and Ambon (Maluku), the government has initiated and facilitated a reconciliation process. The Malino Agreement (named after a town on Sulawesi) between the government and conflicting parties in Poso and Ambon is one of the results of the effort. However, whereas the government claims to have successfully brought the warring sides to the negotiating table and made them talk peace at Malino, some local NGOs argue that nothing has been achieved yet as the local people on both sides question the legitimacy of those that claimed to represent them in the peace negotiations. Overall, the government – national as well as local – clearly lacks

the imagination to try out new ways of building peace in these deeply divided local societies. A promising alternative channel for successful conflict transformation would be to revitalize traditional *adat* procedures through which the conflicting parties could meet, instead of falling back on the worn-out mechanism of performing rituals of submission attended always by the same “representatives” of the religious groups involved, and of whatever “ethnic” associations and youth and professional organizations offer themselves for these state rituals. Clearly, there is more to these conflicts than the black-and-white of “Muslim” versus “Christian”, or “indigenous” versus “migrant”.

The failure of such categories can be seen in the East Kalimantan district of Paser. There, the proposal to divide Paser into two districts has created substantial tension between the indigenous Dayak Paser and migrants of various backgrounds. It was announced that the northern part of the District of Paser, rich in mineral ore and a magnet for non-Dayak in-migration, would be made into a new, separate district. The Dayak were infuriated by this proposal, decrying it as amounting to segregating the resource-rich areas of the district from the agricultural backwaters and giving the former to non-Dayak latecomers to the district. The conflict in Paser shows a pattern that is also becoming apparent elsewhere in the archipelago, in which decentralization becomes a pretext for expropriating indigenous domains, handing them over to local elites and outside investors.

Indigenous communities who went through protracted conflicts with other parties have accorded the strengthening of indigenous organizations and the revitalization of indigenous institutions the highest priority in their work programs. This new approach is based on the premise that “genuine” reconciliation can only be initiated by “genuine” representatives of warring communities, just as “genuine” claims to ancestral domain can only be put forward by people representing “real” indigenous institutions and governance systems. This revitalization of *adat* institutions has taken place in West Lampung, Mentawai, Toraja, Sanggau, West Lombok, Kei, Buru, Flores and many other places. In Kei and Buru (two Moluccan islands), the role of indigenous institutions has proved effective in settling or preventing conflict.

Once it has spiralled out of control, decisive government intervention and attempts to restore normalcy may be the only way to break the vicious cycle of mutual self-destruction. In such a situation, the state should be there to assist the people in solving problems that are proving too difficult to be solved without outside intervention. However, where people demonstrate the capacity to take care of their own problems and govern their lives themselves, the state should confine itself to assuming a mere facilitating role. The government of the

District of West Lampung is among those newly-empowered local governments that have shown remarkable success in collaborating with indigenous peoples. It has gone quite far in developing community governance based on the functions of indigenous institutions and the role of indigenous leaders. This humbleness and willingness to learn from the local people is a far cry from the national government headed by Megawati Soekarnoputri, whose distance from the needs and problems of ordinary citizens have been laid bare by the arrogant comments some of its representatives had to offer after the great flood that drenched Jakarta and other places in Indonesia in early 2002.

Notes and references

- 1 *Undang-Undang Republik Indonesia Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah*. 1999. Jakarta: Panca Usaha.
- 2 Ibid. This and all other translations in the article are the authors'.
- 3 *Undang-Undang Dasar Republik Indonesia Tahun 1945 Setelah Amandemen Kedua Tahun 2000*. 2001. Bandung: Pustaka Setia.
- 4 Ibid.
- 5 *Panduan Umum Pengembangan Kesejahteraan Sosial Komunitas Adat Terpencil 2000*. Direktorat Kesejahteraan Komunitas Adat Terpencil, Deputi Bidang Peningkatan Kesejahteraan Sosial, Badan Kesejahteraan Sosial Nasional.
- 6 *Panduan Teknis Persiapan Pemberdayaan Komunitas Adat Terpencil 2000*. Direktorat Kesejahteraan Komunitas Adat Terpencil, Deputi Bidang Peningkatan Kesejahteraan Sosial, Badan Kesejahteraan Sosial Nasional.
- 7 For an exposition of the special problems faced by the Kubu or Orang Rimba and efforts to assist them, see Øyvind Sandbukt, "Deforestation and the People of the Forest: the Orang Rimba or Kubu of Sumatra". *Indigenous Affairs* No 2/2000.

MALAYSIA

Landmark court decisions

The year in review saw two landmark decisions in the Malaysian High Courts that will hopefully begin a process aimed at recognising the right of indigenous peoples to their traditional territories.



In the first case, the High Court in Sarawak held that the four Iban natives of Rumah Nor Nyawai longhouse were entitled to exercise their native customary rights over disputed land, the boundaries of which had been drawn by community mapping. The four had sued Borneo Pulp Plantation and Borneo Pulp and Paper Sdn Bhd for trespassing on their land. They also sued the Bintulu Division Superintendent of Lands and Surveys as the authority that had issued land titles to the defendants.

On 12 May 2001, the Miri High Court acknowledged that the native customary rights of the Iban had always been recognised by the laws of Sarawak, from the time of Brooke right up to Sarawak becoming part of Malaysia. The court therefore ruled that native customary rights, which are codified in the East Malaysian states of Sabah and Sarawak, existed long before any modern-day legislation came into force, and such legislation therefore was only relevant in determining how much of these native customary rights had been extinguished. As such, the native customary rights of the Ibans to their settlement (*pemakai menoa*), farmland (*temuda*) and primary forest (*pulau*) had not been abolished by any legislation and therefore these rights still existed until today. The decision, however, is going to an appeal.

In the second case, the High Court in Shah Alam ruled on 12 April 2002 that the Orang Asli of Peninsular Malaysia have a proprietary interest in customary and traditional lands settled by them (but not the “jungle at large”) and that they have the right to use and derive profit from the land. The court also ruled that Orang Asli land enjoyed

constitutional protection under Article 13(1) relating to property. Appropriation of Orang Asli customary land as such could only be undertaken under the Land Acquisition Act and, if done so, compensation had to be paid according to the rates prescribed under the Act. In this case, seven Temuan Orang Asli in Kampung Bukit Tampoi, Selangor had sued the Federal and State Governments, United Engineers Malaysia Berhad (UEM) and the Malaysian Highway Authority (LLM) for the loss of 15.39 hectares of their land, with crops and dwellings on it, when the land was trespassed upon in 1996 to build a highway leading to the Kuala Lumpur International Airport.

The High Court held that the eviction of the Orang Asli was unlawful and that the present occupiers of the land – viz. UEM and LLM – had committed trespass and needed to pay damages for trespass. In another significant ruling, the Court held that the government owed a fiduciary duty towards the Orang Asli and that this was breached when it acquired the land without adequate notice and by only compensating them for the loss of their crops and dwellings.

In both the Iban and Temuan cases, the court accepted maps (showing details of the boundaries and the cultural sites) drawn and produced by the community. However, in an undisguised attempt to prevent such community involvement in producing their own maps of their customary lands, the Sarawak state government had amended the law to state that only those maps produced and certified by a qualified surveyor could be introduced into a court of law. Given the exorbitant costs of such surveys, there is reason to believe that these amendments to the legislation were aimed at thwarting more communities from filing similar suits for native title.

Continuing threats

Nevertheless, aside from these important landmark decisions in the High Court, threats to the traditional territories of the indigenous peoples in Malaysia continue to occur from a variety of sources. Twelve Penan communities in Central Baram, for example, are protesting against the development of oil palm and wood projects on their customary lands, promoted by a private company, Shin Yang Forestry Sendirian Berhad, which was purportedly given the license to the area under the so-called “*Konsep Baru*” (New Concept) of development programming on native land in Sarawak. On 18 April 2002, 32 Penans were arrested and brought to the Marudi police station for setting up

blockades and protecting their land. While most were eventually released, eight still remain in detention and are to be charged in court.

In Peninsular Malaysia, the planned construction of several dams (such as the Kelau dam in Pahang and recently-announced dams on the Jelai and Tembeling Rivers) invariably encroaches on Orang Asli traditional territories. In Sabah, the government is going ahead with the clearing of 220,000 hectares of forest in Kalabakan, Tawau, which are home to several native groups. This is despite the fact that the original reason for such extensive forest clearing – the siting of a US\$5.3 billion Sabah Pulp and Paper mill there – has been shelved for financial reasons.

At the national level, a coalition of 14 indigenous, non-governmental and community organisations – Jaringan Orang Asli Dan NGOs Tentang Isu Hutan (JOANGO HUTAN Collective of Indigenous Communities & NGOs on Forest Issues) – voiced strong concerns and objections to the Malaysian Timber Certification Council (MTCC) over the ongoing attempt to draw up a Malaysian Criteria and Indicators (MC&I) for timber certification. However, when it became clear that their participation in the process was being regarded as an endorsement of the diluted and pro-timber lobby certification criteria, the coalition withdrew from the process, thereby putting the whole Malaysian-style timber certification process in danger of not being recognised internationally.

In essence, the process was highly flawed in that it did not protect and recognise the rights of indigenous peoples and local forest communities who reside in these areas and who depend on the forests for their sustenance. In the case of Sarawak, for example, conceding to the establishment of Forest Management Units (FMUs) – the core units that are to be the basis for supposedly sustainable forestry management – effectively means accepting that all native customary rights in these areas would be automatically extinguished. The goal of the MC&I – to sell timber to high-paying European markets – as such does not promote the interests and rights of indigenous peoples. This alone, the coalition felt, was sufficient reason to withdraw from the process.

Thus, while there are commendable moves in the courts of the land to recognise indigenous rights to land and livelihood, the reality is that encroachments upon and appropriation of indigenous territories is still proceeding ahead with even greater vigour.

THAILAND

The north of Thailand lies in an ethnically diverse area where national boundaries were drawn by external forces, leaving many ethnic groups divided between nation-states. This has inevitably led to a weakening of their ability to present unified voices in the political systems of the countries in which they live.

The peoples of northern Thailand

This problem is shared by the peoples of northern Thailand, referred to by the government as *chao khao*, or “highland peoples”. The use of this term within official Thai discourse reflects the prevailing stereotype of a single group of “highlanders”, which denies the rich cultural, ethnic, historical and linguistic diversity of the indigenous and tribal peoples it refers to. While the official figure lies at a little over 860,000 people, unofficial estimates of the total population of the indigenous and tribal peoples put them at over one million. Even this number is, in fact, too low since it refers only to those groups that have been recognized as “highlanders”.¹ Groups such as the Dara-ung, the Shan and the Palong are either dismissed as too small in population to be officially recognized, or are defined as “immigrant populations”. Those groups recognized by the Thai government as *chao khao* all have very different histories and cultures. The Karen and Lua peoples have lived in northern and eastern Thailand for centuries, predating the arrival of the Tai-speaking groups (such as the presently dominant Thai). Today, they share the land with traditionally migratory peoples such as the Hmong, Lisu, Lahu and Akha, who have since long crossed and re-crossed national borders that were unknown or unrecognized by them.

The complexities of the issues involved and the inaccuracy of definitions currently used are not simply matters of academic concern. They have real and often devastating impacts on the lives and futures of indigenous and minority peoples throughout the region, a fact that is attested by the continued violence and unrest in bordering countries. The Thai government’s attitude towards highland peoples was traditionally one of distance, and an official approach to governing the highland areas was late in coming. For quite some time after the establishment of the Thai nation state, border areas were still viewed as before: as areas of lesser influence in which the role of the



state was primarily to guarantee allegiance to itself. Only in the 1960s, when the issue of opium production began to gain international attention, and as population increase resulted in encroachment by lowland farmers on the traditional agricultural lands of the highland peoples did the government turn its attention to these remote areas. Insurgency in some of the border areas and the neighbouring countries was also cited by the government as a cause for its concern with the highland areas.

This resulted in a three-pronged view of highland peoples as a threat to national security, a threat to natural resources and as the primary producers and traders in illicit drugs. This view has solidified over the years into a deep-rooted official prejudice that continues to inform the policies and laws of the government. These form the social and political environment in which tribal and indigenous communities have had to struggle to maintain their identities within the Thai nation. The struggle has taken the form of political pressure for a voice, for education programs reflective of community and cultural heritage, and for recognition of traditional forms of resource management and land rights, issues essential to community sustainability and security. The results gained from the relatively recent assertion of a formal political presence in Thailand have been considerable, yet the obstacles faced remain firmly in place.

Political participation

Important for opening up a space in which indigenous and tribal peoples could claim a voice in Thai politics was the “peoples constitution” of 1997. This constitution was a watershed event in the development of popular participation in democracy and a source of potential empowerment for marginalized groups throughout Thai society. It was drafted with high levels of participation from the people and enshrines the right of popular participation in decision-making processes at every level of government in the nation. This right has been embraced by indigenous and tribal organizations and they are currently taking an active role within the Thai political system. In 1997, the individual networks of six different tribal peoples combined to form the Assembly of Indigenous and Tribal Peoples in Thailand (AITT), and this Assembly has acted as a formal negotiating partner with the government on behalf of the indigenous and tribal peoples. Its role and characteristics are somewhat unique, as it is formed by thousands of scattered communities who, through their chosen representatives, establish its mandate and its priorities. A number of indigenous and tribal non-governmental organizations work as the Assembly’s secretariat when necessary and it has proved to be a strong forum for exchange and mutual assistance in the years since its foundation. Early in 2002, the Assembly represented the interests of the six tribal networks in direct negotiations with the Thai government, demanding that the issue of conflicting and non-existent legal status documents be addressed and that the right to participation in establishing development objectives in indigenous lands be recognized.

The Assembly also joined forces with the Northern Farmers Network (NFN), a coalition of northern farming communities, in asking the government to continue its support for the Community Forestry Bill currently under consideration. This approach of building coalitions with lowland Thai communities has been an ongoing process for over ten years and the NFN has proved a powerful forum for presenting indigenous and tribal issues to the government. Working predominately on land rights and resource management in forested areas, the NFN has been a leading organization in the development of the Community Forest Bill and in advocating formal recognition of traditional natural resource management techniques.

Legal status

Aside from the Community Forest Bill, two other issues have taken the foreground in the AITT's work over the past year: the issue of personal legal status and the issue of participation in development planning. One of the early achievements of the AITT was the successful conclusion of a process of negotiation with the government, which led to the opening of a one-year period for rapid appraisal of petitions for citizenship and other personal legal status. This period stretched from 29 August 2000 until 28 August 2001 and each of the tribal networks, together with non-governmental organizations and community organizations, began the long process of training and instruction of community members on the documentation required for submitting petitions.

Due to historical and structural reasons, a confusing array of different possible "legal statuses" for members of tribal and indigenous communities exist, and tens of thousands of people remain without any official status in Thai law. These issues of citizenship and legal status are of central importance, for without formal legal status a person has no legal protection of their basic rights, such as access to services or freedom of movement.

On a practical level, the problems are immense. The one-year window of opportunity in which citizenship and legal status issues were to be resolved was woefully short and there remains a lack of understanding about the procedures and requirements for citizenship application. The devolution of authority to consider petitions at local district offices was instrumental in addressing at least some of the practical constraints facing highland communities. The need for si-

multaneous work on a policy level is clear, and coalitions between the AITT, the NFN and the Northern Federation of Peasants were formed early in 2002 to try to bring these policy issues into a debate between the people and the government. Again, the issue of indigenous and tribal rights to legal status was brought to the negotiating table and, with the support of lowland Thai groups, agreements were reached with government representatives on the policy changes needed to facilitate a practical solution to the issue.

Land and forest rights

In addition, and closely related to the lack of recognition of tribal and indigenous peoples as part of wider Thai society, there is a lack of recognition of the right of tribal and indigenous peoples to have access to and control over the management of their traditional lands and resources. The vast majority of tribal and indigenous communities are found in highland areas, where most of the remaining forests that once covered much of the north, north-east and western regions of Thailand are found. Although inhabited and cultivated by indigenous and tribal communities, much of these areas have now been declared protected areas, and consequently fall under the jurisdiction of the Royal Forest Department. Since the establishment of the Royal Forestry Department in Thailand at the beginning of the 20th century, official responsibility for the conservation of all forested areas has been vested in this agency. It is this centralized concept of natural resource management and the inappropriate view of protected forests as “empty forests” that acts to deny and limit indigenous land rights in Thailand.

The Assembly of Indigenous and Tribal Peoples, together with a range of other peoples’ organizations in northern Thailand, submitted a petition regarding forest and land rights issues to the government in April 2002. Despite the strong alliance between lowland Thai groups and indigenous and tribal peoples, direct negotiation with the government failed to produce any results. The issue of indigenous rights over resource management has seen greater progress, with the Community Forestry Bill being developed over the course of the past ten years and presented to the government for consideration in 2000. With years of experience in political lobbying, the Northern Farmers Network and the other organizations sponsoring the Bill succeeded in having the Bill passed by the House of Representatives in late 2001 and it passed before the Senate in early 2002.

If the Community Forest Bill were passed by the government in its original form, it would be the strongest legal instrument available to indigenous and tribal peoples for the protection of their rights to their resources and lands. Although it places a considerable burden of proof on indigenous and tribal communities, and provides only for “government-approved stewardship” and not any real recognition of *a priori* rights, it has the potential to ensure some security of land tenure. However, in April 2002 the Senate saw fit to amend the Bill, removing Article 18 and, with it, the right of communities living in government-declared conservation areas to claim the right, not even to own but simply to manage their community forests. The Senate further restricted and distorted the intention of the Bill by limiting rights to gather forest products and removing the right to change the boundaries of community forests in the future.

Such political and legal processes in claiming land and resource rights is one of two strategies employed by indigenous and tribal communities. The second strategy of equal importance is an ongoing effort to establish a general recognition within the Thai public that highland forest communities are capable and responsible managers of the forest resources of the nation. Prejudice against highland communities and the continuing view of them as “forest destroyers” has been part of the experience of indigenous and tribal peoples for decades. Addressing these negative stereotypes is a long-term battle, but one that has seen some success. Dissemination of information about traditional forestry practices and public fora to explain the concept of sustained use and inter-related management on which traditional systems are based are increasingly being accepted in mainstream media.

It is not only in legal and public fields that traditional resource management is being increasingly discussed. Within communities themselves, clearer articulation of the principles of forestry management is required, as part of the process of pushing for public acceptance. This has resulted in aspects of modern forestry management being adopted and adapted for use in indigenous and tribal communities. The creation of models and maps to display traditional management principles in a manner accessible to the mainstream is now found in almost every highland community. The idea of traditional management as a dynamic and evolving process is accepted at a grassroots level, which again serves to strengthen the fight at a policy and legal level.

The future

One of the gains achieved during the past year is of enormous importance for the future of indigenous and tribal movements in Thailand: The political role claimed by, and given to, indigenous and tribal communities has reached a level whereby communities are able to negotiate formally with their elected representatives. This is undoubtedly due, at least in part, to the support and solidarity existing between a range of poor northern communities and the Assembly of Indigenous and Tribal Peoples of Thailand, along with the involvement of indigenous communities in organizations such as the Northern Farmers Network. However, despite impressive gains over the past year, the obstacles facing indigenous and tribal peoples in northern Thailand remain considerable. The gains that have been made are largely the result of persistent work over the decades rather than years, and yet more decades will still be needed.

Note

- 1 The most recent list of March 2002 from the Tribal Statistics, Service and Dissemination Section, Tribal Research Institute, Chiangmai, includes ten tribes and a total population figure of 899,749.

CAMBODIA

The year 2001 saw numerous advances by indigenous peoples' movements in some provinces of Cambodia in terms of their land rights and protection of the forests and natural resources they depend on for their livelihoods. A new land law was passed in July 2001 that included provisions for indigenous community land tenure and, in March 2002, indigenous villagers in Ratanakiri province prevailed over a military general who had reportedly attempted to defraud them of their ancestral land. Local activists and indigenous community representatives launched advocacy campaigns to monitor the downstream impacts on highland communities of Vietnam's Yali Falls dam, to protect the right to collect non-timber forest products, and to



establish associations for the protection of community forests and fisheries.

At the same time, economic pressure continued to intensify on the resource-rich north-eastern region of Cambodia and its indigenous inhabitants, as plans moved forward for logging and commercial plantations, hydro-power projects and migration of lowland Khmer to the highlands. The trend towards development was illustrated by a comment made by Prime Minister Hun Sen in January 2002, who stated that his dream for the year 2020 was for Cambodia's north-east – now inhabited largely by indigenous communities – to become one of the country's "economic pillars".

National policy

Indigenous communities in some provinces, such as Kompong Thom and Preah Vihear, where few non-governmental organizations (NGOs) are based, are isolated from national advocacy networks. In north-eastern Cambodia, local and international NGOs working with indigenous communities, together with various government departments, have attempted to increase indigenous participation in national and local policy and program development for the highlands.

In March 2001, indigenous community representatives played a strong role in an international conference in Ratanakiri province on “Strengthening Partnerships in Community Natural Resource Management”. Conference participants recommended that government departments and NGOs should consult with indigenous communities on program planning, undergo cultural sensitivity training, make stronger efforts to employ and train indigenous staff members and use local languages in development work.

In early 2002, a newly-established Department of Ethnic Minorities Development within the Ministry of Rural Development began to address threats to indigenous communities through loss of land and forests due to commercial plantations, logging and immigration. A draft national policy on indigenous people that had lain dormant since 1997 was revived for discussion and possible passage by the Senate.

Land rights

Land rights and the arbitrary confiscation of ancestral lands remained one of the most pressing problems for indigenous communities throughout Cambodia.

One example was a large land conflict in Sandan District, Kompong Thom, where a rubber plantation in Tumring commune took 900 hectares from a community predominantly composed of Kuey indigenous people in late 2001. In March 2002, the company clear-cut an area villagers had marked for community forest, felling about 700 resin trees that the Kuey relied on for their livelihood.

North-eastern Ratanakiri province faced dozens of cases of land speculation and confiscation. In a major land rights case that was first brought to court in March 2001, Tampuen and Jarai villagers in Bokeo district of Ratanakiri launched a legal appeal against a military general who had fraudulently obtained title to their ancestral lands,

putting some 900 villagers at risk of landlessness. In March 2002, after a delegation of the villagers met with King Sihanouk, Prime Minister Hun Sen instructed the Ministry of Land Management to purchase the land from the general and return it to the villagers, in exchange for the villagers dropping their lawsuit against the general. In this precedent-setting case it was the first time that indigenous people had challenged a military officer over such a large amount of land. Press attention and advocacy by local and international NGOs helped draw public attention not only to the Bokeo land case but to the widespread problem of indigenous land conflicts throughout the highlands.

In July 2001, the Cambodian National Assembly passed a new land law following extensive consultation with Cambodian and international NGOs and indigenous community representatives. The new law contains provisions for indigenous communities to gain title to their land, either in the form of individual titles for each family or as a communal title for the whole community. Indigenous community land is defined not only as residential and agricultural land but also fallow plots left in reserve as part of the traditional shifting cultivation system.

The right to resources

The protection and management of natural resources increasingly emerged as an issue during 2001, as Cambodian NGOs and local communities, including indigenous representatives, organized advocacy campaigns on behalf of community forests and fisheries, forest policy reform and the right to collection of natural resources such as resin and other non-timber forest products.

Khmer and indigenous communities in Stung Treng, Ratanakiri, Mondolkiri and Kratie who rely on the collection of resin for their livelihoods found representation in the form of a newly-created Cambodian NGO that works to protect the right to collect and sell resin. In April 2001, the Department of Forestry issued an instruction calling for the temporary suspension, in all forest concessions, of cutting of all trees from which people collect resin. Despite this, the resin trade remained under enormous threat as local communities continued to find themselves in direct competition with logging companies for the trees.

Highland communities in Ratanakiri and Stung Treng province, together with NGO partners, launched a network of indigenous activists along the Sesan River in north-eastern Cambodia to monitor and conduct advocacy with regard to the social and environmental impacts of the 720 MW Yali Falls dam, located in Vietnam. The official

Environmental Impact Assessment for the dam only examined the impacts eight kilometers downstream, thereby dismissing the possibility of impacts in Cambodia. However, major negative effects from the dam were felt even before the dam became fully operational in 2001. These included unnatural surges and dramatic fluctuations in the river's water level, leading to loss of fishing equipment and drowning of humans and animals; and changes in the water quality that led to increased skin diseases and illness.

Once NGOs and government officials in Ratanakiri began to receive increasing numbers of complaints from villagers living along the Sesan about the life-threatening changes in the river, several independent studies were conducted with the support of the local government to document the villagers' claims and analyze the social and environmental impacts of the dam in Cambodia.

The Yali Falls Dam is just the first of many dams planned for the Sesan River. The Vietnamese government has announced that in 2002 it will begin construction of another dam, the Se San 3, located about twenty kilometers downstream of the Yali Falls Dam.

Logging and community forestry

During 2001, pressure mounted on the government to suspend operations in all forest concessions as a result of what was perceived as inadequate progress toward developing sustainable forest management plans. Despite this announcement, illegal logging by concessions, as well as soldiers and police, continued to pose a major problem for communities wishing to manage their forest.

A new forest law drafted in 2000 progressed little during 2001. NGOs and local communities continued to have concerns about the draft law, which appeared to promote or justify the use of large areas of forest as forest concessions, and provides the Department of Forestry and Wildlife (DFW) with incommensurate and arbitrary powers of decision regarding forest use.

At national level, work progressed on a community forestry sub-decree that can be used by rural dwellers and indigenous people throughout Cambodia who wish to claim management rights over forest land that is not included in lands that are communally titled. As of writing, a draft sub-decree was under consideration by the Forestry Department and had not yet been passed by the Council of Ministers.

Despite the lack of a community forestry sub-decree, indigenous communities, particularly in Ratanakiri, were able to obtain support

from local authorities and international donors for the development of community forestry associations and community-based natural resource management projects. In Ratanakiri, a number of forest areas have been mapped and approved for community use by the provincial government and handed over to community management. These have included a community environmental and tourism area at O'Chloy waterfall and a similar area around Lum Kat Lake. In January 2001, Ratanakiri provincial authorities and a representative of King Sihanouk signed an agreement with representatives of six ethnic Kreung villages that handed over the protection and management of almost 5,000 hectares of forest to the Ya Poey Community Forestry Association.

On the other hand, in Sandan district, Kompong Thom, logging companies and the Department of Forestry and Wildlife accelerated their logging activities in order to remove as much commercial timber from an area proposed for a community forest before the passing of the community forestry sub-decree. In Sandan, the DFW allowed communities to retain their trees as long as they paid the same royalties on the timber as the logging concessions.

Education

Access to and quality of education remained a primary issue for indigenous people. Indigenous children are less likely to go to school than the average Cambodian child. Many schools are not operating in the highlands and northern plains due to a lack of schools, teachers or students, many of whom are needed at home to help work on farms and around the house. Pre-teen and adolescent girls are especially affected by this. In response to these issues, a number of NGOs in Ratanakiri have started providing non-formal education integrated into development activities and focusing on issues of daily life such as health, agriculture, environment and human rights. Some of these programs have included the use of mother tongue language literacy education to enable and promote access to education. Non-formal education classes are held in nearly half of all villages in Ratanakiri.

A new project in Ratanakiri, funded by CARE Australia, has begun to develop the concept of bilingual community schools. Managed by members of the community, this pilot project will use vernacular language training as a bridge to Khmer literacy and a stepping stone to formal education.

Other non-formal education initiatives have been launched for indigenous youth in Ratanakiri, including summer youth programs

that focus on environmental and cultural issues in order to develop skills in research, photographic documentation, musicology and report writing. In response to the growth in tourism in Ratanakiri, young people are not only learning English but also gaining skills in how to document their culture and explain the importance of the environment to tourists in a program funded by the Australian Embassy.

Health

Health and nutrition indicators among indigenous communities in Cambodia are among the worst in the country. In Ratanakiri, the infant mortality rate is 187:1000, almost twice as high as the national rate of 95:1000.

Malaria is the main health problem in Ratanakiri. Tuberculosis, diarrhoeal diseases, anaemia, childhood malnutrition and acute respiratory infections are also major health concerns. Indigenous communities are at particular risk of HIV/AIDS because of their lack of access to information about the disease and its prevention.

Increased advocacy

Over the past few years, indigenous highlanders in some parts of Cambodia have become more familiar with attending and conducting meetings, participating in national and provincial workshops and learning negotiating skills, understanding that their direct involvement in lobbying on indigenous highlanders' issues at national level could enhance their voice.

An indigenous peoples' resource management advocacy group has been operating since early 2001. It has focused on improving local knowledge of the laws and policies that affect community natural resource management and making indigenous communities' viewpoints heard at the provincial and national level, especially with regard to natural resource management laws and policies. In Ratanakiri, a team of indigenous people, selected by the communities, has begun to work with government land rights information projects, offering legal and human rights information to villagers in their own languages.

An Indigenous Women's Network Ratanakiri (IWNR) was created in 1998 to help indigenous women gain more of a voice in decision-making in communities where village governance has traditionally consisted of male-dominated councils of village elders.

Despite these advances in advocacy, indigenous people remain under-represented in national and provincial government. A rare example is Bou Thong, an ethnic Tampuan from Ratanakiri who is a member of the National Assembly. With his encouragement, indigenous communities in Ratanakiri have begun to launch an Indigenous Highlanders' Association to advocate on behalf of cultural preservation and other issues, focussing particularly on consulting local communities in order to obtain the views of women, young people and the elderly. A first phase of consultation ended in early 2002, involving some documentation of village histories and customary law as well as a survey of community concerns and aspirations. Initial results show that major concerns included the loss of land and forest resources, the impact of the Yali Falls dam and the lack of indigenous representation in government and educational opportunities. Much work remains to be done, however, with regard to indigenous advocacy. While indigenous communities are gaining a voice in some areas, particularly Ratanakiri province, indigenous rights issues have a much lower profile in the northern plains and the mountainous regions in the south, where there is much less support for indigenous people from NGOs and local governments.

VIETNAM

Conflicts over land rights and religious freedom characterized much of the year in the indigenous areas of Vietnam, a country in which the government does not authorize the creation of independent advocacy groups. In February 2001, the government responded harshly to unprecedented mass protests conducted by indigenous peoples in the central highlands calling for greater land rights, religious freedom, and independence.

The Vietnamese Communist Party's election of Nong Duc Manh, a member of the Tay minority, to the nation's top post in April 2001 as General Secretary of the Party did not appear to immediately translate into a more progressive and participatory approach by the government towards indigenous minority communities.

Government policies continued to stress the eradication of traditional shifting agriculture, utilized by many indigenous highlanders,

replacing it with sedentary cultivation of paddy rice and cash crops. In addition, ethnic minority Christians in the northern and central highlands suffered government persecution.

Large dam projects in the northern Son La province, as well as in the central highlands, threatened to negatively impact on the livelihoods of indigenous peoples living along the rivers and to displace thousands of highlanders from their ancestral lands.

National policy

The Vietnamese government made numerous attempts to address the discontent among indigenous communities in the central highlands during 2001, for example, by promising to speed up the titling of land, increase ethnic minority radio broadcasts and offer more educational opportunities to ethnic minority peoples. But, generally, the official approach continued to be one of pressing for the “sedentarization” of indigenous minority farmers. In addition, indigenous communities that have converted to evangelical Christianity – particularly those in sensitive border areas, such as the Hmong in the northwest and the Jarai, Mnong and Ede in the central highlands – came under heavy surveillance and repression.

In September 2001, Prime Minister Phan Van Khai called for more economic development and farming incentives in Vietnam’s poorest region, the six provinces of the northern highlands. These provinces, he said, “should also help their inhabitants change backward habits in production and life, and create favorable conditions for the locals to enhance economic growth.”

In October, the state’s Vietnam News Service announced that the Ministry of Agriculture and Rural Development and the Department for Sedentary Farming, Life and New Economy aimed to wipe out “traditional nomadic life and swidden agriculture” among mountain-dwelling ethnic minorities by 2005.

CEMMA, the government body that oversees ethnic minority programs, was plagued by an ongoing corruption scandal. In early 2001, the Vietnamese Communist Party censured six senior CEMMA officials on charges of bribery. In November 2001, another twelve people were tried in Lai Chau province on charges of embezzling CEMMA funds intended for poverty programs in the northern highlands.



Grievances over land

Land conflicts were a problem throughout Vietnam, including in indigenous minority areas. Government-organized resettlement schemes,

along with spontaneous migration, have quadrupled the population density of ethnic Vietnamese and other migrants in parts of the central highlands since 1975, creating intense pressure on the land and natural resources. Lacking official land use certificates, indigenous people have been increasingly squeezed off their land. Tensions increased in January 2001 with reports that as many as 100,000 more people, mostly ethnic minority peoples from the north, might be resettled in the central highlands to make way for the Son La hydro-power project. At the same time, the economic base of the highlands, pushed towards coffee production over the last decade, has been dealt a strong blow by the plummet in international coffee prices over the last three years. In the past, many indigenous peoples in the central highlands supported themselves on at least several hectares of land per family, on which they practised swidden agriculture. As lowlanders or ethnic minorities from other parts of Vietnam began to encroach on their land, or as state plantations displaced them, such practices became untenable. Today, most highlanders eke out a living by farming rice and, perhaps, a small cottage garden of coffee and peppers on less than a hectare of land, making ends meet by trading in the market or working as laborers for the growing population of ethnic Vietnamese in the region. Any disruption to the household economy - be it a fine imposed for attending a church service or confiscation of a portion of a rice field - can have disastrous consequences on a family's economic survival.

Over the past ten years, local authorities have acquired vast swathes of agricultural land for commercial development, sometimes forcing indigenous highlanders to sell, or by buying from indebted peasants at prices far below the market value. The farmers' loss of livelihood, inadequate payment for land and confiscation of property by local authorities have all fuelled intense anger among indigenous highlanders, particularly over the last decade. The highlanders' resentment at the loss of land has been compounded by the fact that they are finding themselves losing out to the new migrants in terms of education, employment and other economic opportunities.

The central highlands unrest

In February 2001, several thousand members of indigenous minorities (including Jarai, Ede, Bahnar, Mnong and Koho) conducted demonstrations in the central highland provinces of Gia Lai, Dak Lak, Lam Dong and Kontum calling for independence, a return of ancestral

land and religious freedom. Vietnamese authorities deployed thousands of police and soldiers to disperse the protesters. According to Human Rights Watch, in the months following the demonstrations, security forces arrested hundreds of highlanders, sometimes using torture to elicit confessions and public statements of remorse from protest organizers. They also targeted religious gatherings, closed churches, and arrested religious leaders, equating the evangelical Protestantism followed by many of the highlanders with anti-government organizing. In one incident in the Jarai village of Plei Lao in Gia Lai province in March 2001, after raiding the village to break up an all-night Christian prayer meeting, security forces fired into a crowd killing one villager. The police then burned down the village church.

At least thirty-four of those arrested in connection with the protests were tried and given heavy prison sentences during trials conducted between September and November 2001. As of early 2002, ongoing abuses in the central highlands included harassment of Christians, mistreatment of indigenous highlanders deported from Cambodia, and a repressive police presence in the villages.

Approximately 1,500 highlanders fled to Cambodia, where they were given shelter on two sites operated by the U.N. High Commissioner for Refugees (UNHCR). Rights organizations estimate that more than 500 indigenous highlanders who fled to Cambodia during 2001 were forcibly repatriated to Vietnam, where some were arrested and beaten by the Vietnamese authorities.

Religious repression

Protestantism is said to be the fastest growing religion in Vietnam, particularly among ethnic minority peoples in the northern and central highlands. The largest concentration of Protestants in Vietnam is to be found in the latter

Prior to the arrival of Christianity in indigenous areas, the metaphysical beliefs of most highlanders centered around animism, with individual spirits believed to be responsible for the village, water, mountains, agricultural fields, large trees, rocks and other natural phenomena respectively. These spirits are believed to hold immense powers and, if properly treated, watch over the village and can ward off disease, poor crop harvests or other calamities.

From the 1960s through to the early 1990s, the government often discouraged traditional spiritual beliefs and ceremonies practised by indigenous minorities, labeling the practices “superstitious” and “un-

developed". Some highlanders were converted to Christianity in the 1950s as a result of American missionary work, although the practice waned with the reunification of Vietnam in 1975.

In the 1980s, indigenous minorities in the northern highlands began to convert to evangelical Christianity, in part as a result of Hmong language religious broadcasts by the Far East Broadcasting Company, based in the Philippines. By 1999, Vietnamese officials were estimating the number of Hmong Christians at 100,000 believers. For many Hmong Christians, their God is known as Vang Chu ("lord king"), which resonates with Hmong legends and millenarian beliefs about an ancient king who would return to earth to save them from oppression and poverty. Other Hmong Christians follow more orthodox Christian beliefs.

In the central highlands, many indigenous people became attracted to a particular type of Christianity during the 1990s called *Tin Lanh Dega*, or "Dega Protestantism", which brings together aspirations for independence, cultural pride and evangelism. It is currently estimated that between 300,000 and 400,000 indigenous people in the central highlands are Christians.

The unregistered "house churches" of the ethnic minorities in the northern and central highlands are not legally recognized by the government. As a result of the unrest in the central highlands in early 2001, the government increased its repression of Christians in Gia Lai, Kon-tum, Dak Lak and Lamdong provinces. In the northern provinces of Lai Chau, Lao Cai and Ha Giang, the authorities reacted defensively to citizen complaint petitions submitted by Hmong to protest religious persecution by both Vietnamese and Hmong local officials.

At least fifty minority highlanders are thought to be serving prison sentences for their religious beliefs and / or their involvement in the movement for land rights and independence. Human rights groups have received reports of minority Christians being imprisoned, fined, made to do forced labour or pressured by officials to renounce their religion. In addition, minority Christian churches have been destroyed and church property confiscated.

Impact of hydro-electric projects

In June 2001, Vietnam's National Assembly approved the controversial Son La hydro-electric project on the Da River (Black River) in the northern highlands, despite reservations expressed by some deputies about the dam's safety plans (it will be located in an earthquake-prone area) and the fact that it would displace hundreds of thousands

of people. In August, US\$660 million were allocated for relocation costs. Initial plans called for more than 100,000 people to be resettled in the central highlands. Construction is expected to begin in 2005.

In April 2002, construction was completed on Vietnam's second largest hydroelectric project, the 720 MW Yali falls dam on the Sesan River in the central highlands (see chapter on Cambodia). The dam's powerhouse is located in Gia Lai and its reservoir is in Kontum. Since the closing of the main dam and filling of the reservoir in 1996-1998, indigenous communities living along the Sesan River in both Vietnam and Cambodia have experienced flash flooding and dramatic fluctuations in the water level, resulting in contaminated water and a loss of fish, livestock and wild vegetables along the banks of the river. Close to 7,000 people, of whom sixty percent are indigenous minority peoples (Jarai, Bahnar and Rongao), have already been displaced by the dam. Many of the resettled people report severe food shortages and a lack of cultivatable land in their new villages, as well as insufficient government compensation, according to a February 2001 study prepared by Vietnam University's Center for Natural Resources and Environmental Studies (CRES).

Plans also proceeded for Sesan 3, a 300 MW hydroelectric plant on the Sesan River between Gia Lai and Kontum provinces in the central highlands. In addition, Electricity of Vietnam began construction of a 500 KV transmission line from Pleiku in Gia Lai to Ho Chi Minh City (according to some sources to Phu Lam). A third hydroelectric project in the pipeline for the central highlands is the Kanak – An Khe power project on the Ba River, between Gia Lai and Binh Dinh provinces.

This report has been adapted in part from the Human Rights Watch report "Repression of Montagnards: Conflicts over Land and Religion," April 2002, which we gratefully acknowledge.

LAOS

In many ways, 2001 has been a difficult year for the diverse indigenous peoples of the Lao People's Democratic Republic (Lao PDR or Laos). To begin with, the Lao Government, which held its seventh Party Congress in March 2001,¹ has reaffirmed its commitment to

continuing its policy to eradicate swidden cultivation or “slash and burn” agricultur. Although the government originally hoped to achieve this goal by 2000, the plan is now to stop all shifting cultivation by 2005.² However, privately, many provincial and district officials recognise that it is unlikely that this will be possible, as approximately 80 percent of Laos is mountainous, and in many areas opportunities for lowland farming are extremely limited.

Controversial Land and Forest Allocation Programme continuing

Related to the policy to stop swidden agriculture, the controversial Land and Forest Allocation Programme continued to be promoted by the government in 2001 and, in January, 2001, the Minister of Agriculture and Forestry, Dr. Siene Saphanthong, announced that the programme had already been implemented in 7,117 out of 8,500 target villages throughout the country, including 787 villages in 1999-2000. The Minister said that the success in land and forest allocation had been instrumental in reducing areas under “slash and burn cultivation”. Land areas used for “mobile swidden cultivation” were reportedly reduced from 115,000 ha in 1999 to 72,600 ha in 2000, and he said that it was expected that in 2001 swidden areas would be reduced even more.³ Most swidden farmers in Laos are members of various indigenous groups (considered here to include all non-ethnic Lao people), many of whom are living in mountainous and remote areas and, while the Minister did not state how many of the 8,500 villages targeted for land allocation are populated by indigenous minorities, it is expected that the vast majority are indigenous.

Large-scale relocation of shifting cultivators planned

In late 2000 and early 2001, the Lao Government, as part of its slash and burn eradication programme, devised an Agriculture Development Master Plan. The Plan identified three provinces as still having substantial areas of lowland areas suitable for converting to lowland paddy, namely Khammouane, Savannakhet and Attapeu, all in central and southern Laos. Because there is much less lowland area suitable for paddy conversion in northern Laos, the government is now considering supporting large-scale relocation of shifting cultivators from the north to these provinces. In 2000 and 2001, officials told



farmers in many parts of northern Laos that all families without a least some lowland paddy would have to make the move over the next few years. In early 2001, as part of this effort, five ethnic Hmong leaders from northern Laos were asked by the government to go to the southern-most province of Attapeu to determine whether the land there would be suitable for them, and large numbers of their followers, to move to. While they were apparently satisfied with the land in Attapeu, in the end, Attapeu Province officials put a hold on the original plan to move 100,000 Hmong from northern Laos (mainly Xieng Khouang and Houaphan Provinces) to Attapeu. While there may still be some relocation from the north to Attapeu in the coming years, the people in Attapeu are not happy about Hmong people moving there, because the Hmong have never lived in the province. There is concern that conflicts might arise between the Hmong and the

Tai-Lao and Mon-Khmer language speakers who are the original inhabitants of the province.⁴

While it has still not been possible to eliminate all swidden farming, in some areas the government has reportedly been able to stop shifting cultivation. For example, on January 11, 2001, Hatsaifong District, in Vientiane prefecture, held a ceremony to present Nong-phong village a certificate acknowledging the village's "termination of slash and burn cultivation".⁵ Moreover, there are still strong efforts being made in some parts of the country to change the ways of minority groups. Mr. Boualane Silipanya, the Governor of the northern Lao province of Bokeo, was quoted in the Vientiane Times as saying, "If the people don't accept the new lifestyle, it is difficult to help them out of poverty, so we have to modify certain traditions that are not suitable for the new era". He continued, "This year [2002] the province will relocate people who are living in the mountains to more suitable areas in order to enable them to contribute to the national economy and upgrade their living conditions". Education and relocation have been cited as the priority areas for implementation in Bokeo in 2002.⁶

At a workshop organised between December 27 and 28, 2001, Savannakhet Province, in southern Laos, also announced that it had set aside 2.5 billion Lao kip (US\$ 263,150) for land clearing for rice cultivation and livestock production in four mountainous districts populated largely by indigenous Mon-Khmer language speaking peoples. As part of this plan, land and forests will reportedly be allocated to local people "to end slash and burn cultivation". It was reported that the area under this "traditional farming method" in Savannakhet had fallen from 5,392 ha in 1996 to 4,500 ha in 2001.⁷

At another conference regarding the eradication of shifting cultivation sponsored by the Swedish International Development Agency (SIDA) in late 2001, the Ministry of Agriculture and Forestry announced that it was focusing its efforts on the northern provinces of Luang Phrabang, Houaphan, Oudomxay, Phongsaly, Luang Nam Tha and Xieng Khouang.⁸ These are all provinces with a high percentage of indigenous peoples. The main objective of the conference was "to implement the plans on the reduction of shifting cultivation, the reduction of opium plantations and the escape from poverty of the people in rural areas". Dr. Ty Phommasack, the Director of the National Agriculture and Extension Service said,

Sayaboury Province [in northern Laos] has been more successful than other provinces in the reduction of shifting cultivation. The province

The report goes on to mention that, to compensate for fallow reduction, most families have been given paddy land that could not be cultivated due to poor soils or lack of water. In addition, there was not a single instance cited of technical assistance to support either paddy or permanent upland cropping. The report states,

The result has been impoverishment of swidden families through decreased rice yields, and increased deterioration and degeneration of wildlife and forest resources by families attempting to compensate for rice shortages, including in some cases total elimination of some species in the area. In many areas villagers in the assessment blame Land Allocation for ecological changes, and epidemics of pests.”¹³

The authors of the Poverty study finally state that, “...the implementation of land allocation has been problematic and thus it appears in the analysis as one of the factors contributing to poverty”.¹⁴ To illustrate the problems that are occurring, the study revealed that an ethnic Khmou member of the National Assembly in Phongsaly Province had asserted that one third of the entire ethnic Khmou population in the province (over 13,000 people) had fled the province to avoid land allocation, since they believed that the programme would result in food shortages.¹⁵

New village consolidation policy not appreciated by indigenous communities

Although the Lao Government’s policy in relation to the eradication of shifting cultivation has apparently been the main problem facing indigenous peoples in Laos throughout 2001, a new policy to consolidate villages has also emerged as an important problem for many ethnic minority peoples. In the late 1970s, the Lao Government initiated the “*Hom Ban*” or village consolidation policy. The idea was that there should be no less than 20 households per village, and communities smaller than that should be moved into other larger villages. This occurred in many parts of Laos in the late 1970s and 1980s, resulting in large numbers of villages now having multi-ethnic populations, since different ethnic groups were often compelled to populate the same village. Now, the government appears to have expanded this programme by specifying that the minimum number of families per village should be 50, although implementation of this policy largely seems to be in the northern provinces of Laos. The government

argues that in order to provide basic infrastructure, including roads, schools and health dispensaries, it is necessary for villages to be larger, so that the expense per capita of development initiatives can be reduced. However, the village consolidation programme has received a cold reception from many indigenous peoples, since many do not want to move into large villages, and villages with more than one ethnic group. Furthermore, many indigenous peoples have pointed out that when villages are large, land and forest resources often come under intense pressure due to high human population densities, resulting in resource degradation and, ultimately, hardship for villagers who are highly dependent on non-timber forest products and other natural resources for subsistence and income generation.¹⁶

New list of ethnic groups adopted

While the livelihood systems and the cultures of indigenous people continue to remain under intense pressure, there was at least some good news for indigenous peoples in 2001. In August 2000, the Lao Front for National Construction, the political organisation of the Party that is responsible for ethnic and religious issues in the country, adopted a new list of names for all the ethnic groups in Laos.¹⁷ This new list is a considerable improvement over previous lists as it attempts to apply local names preferred by indigenous peoples to the various ethnic groups and sub-groups in the country. For example, the Ieu Mien of the Hmong-Ieu Mien language family are widely known in Laos as the Yao but since they do not like being referred to as the Yao, the Lao Front has now officially sanctioned the name Ieu Mien for them. The same has been true for many other groups, such as the Brao, who are commonly called the Lave, and the J'rou who are known to the Lao as the Laven. The new list recognises 49 ethnic groups for Laos, including well over 100 sub-groups. Importantly, the new list, for the first time in the history of the Lao PDR, classifies all the ethnic groups in Laos into four major linguistic families, the Tai-Lao, the Mon-Khmer, the Tibeto-Burman and the Hmong-Ieu Mien.

While officials from the Front admit that the list is not yet completely correct and that additional work will need to be done to revise it,¹⁸ the new system represents a good start to improving the classification of ethnic peoples in Laos. One of the important aspects of adoption of the new list is that the Lao Government is now planning to abolish the broad ethnic classification terms used in the past. These include the *Lao Loum* for "lowland" Lao (mainly Tai-Lao language

speakers), *Lao Theung* or *Lao Kang* for “midland” peoples (mainly Mon-Khmer language speakers) and *Lao Soung* for “highland” peoples (mainly Hmong-Ieu Mien language and Tibeto-Burman language speakers). As of late 2001, the Central Politburo Bureau of the Party had already agreed to adopt the new list, and it was expected that the National Assembly would approve the list in either late 2001 or 2002.¹⁹

H.E. Tong Yeu Tho, an ethnic Hmong from Houaphan Province who is the Vice President of the Lao Front and responsible for ethnic issues throughout the country, said that it was necessary for the Lao Government to abolish use of the three previously used terms for classifying ethnic groups in Laos. He said that the terms were too general for the purposes of gathering government statistics. He explained that, in the past, it had been very difficult for the Lao Government to know which ethnic groups were well represented in government and which groups were the most impoverished, because the three general ethnic classification terms used in government statistics made it impossible to determine what groups the statistics were actually referring to. For example, both the Akha and the Hmong have been referred to as *Lao Soung* but the groups are culturally very different and speak languages belonging to different linguistic families (Tibeto-Burman and Hmong-Ieu Mien respectively). Although there are more Hmong officials than Akha officials, it is impossible to know what the breakdown actually is between these two groups.²⁰

Mining and hydropower development

In 2001, a number of agreements were signed with foreign investors for new mining concessions, the largest being a massive gold and copper mine slated for Sepon District, Savannakhet Province, an area with a large indigenous population. The project, which is being implemented by the Lang Xang Mineral Company and the Australian Oxiana Resources Company, was scheduled to begin at the end of 2001, despite the fact that there is considerable concern regarding the potential environmental impacts of the project.²¹

2001 was a quiet year on the hydropower development front, with no new large dams being initiated in Laos. Controversial projects, such as the Nam Theun 2 dam on the Nakai Plateau in Khammouane Province, in central Laos (an area mainly populated by indigenous peoples), remained on the books of the Lao Government. However, due to delays in signing the power purchase agreement for selling electricity from the project to Thailand, and the lack of a firm decision by the World Bank

regarding whether they will provide a partial guarantee for the foreign investors in the project, the largest being Electricité de France International, the construction of the dam has still not begun.²²

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BURMA

Burma, where indigenous ethnic nationalities are in the majority, as been ruled - or rather misruled - by successive military regimes : since 1962. The current regime, known as the State Peace and Development Council (SPDC), has been devoting the bulk of the nation's : : : : : :

resources to the army in order to engage in a long-running armed conflict, ostensibly to prevent the “disintegration” of the Union.

Burma gained independence in 1948 after diverse ethnic nationalities signed the 1947 Panglong Agreement to form the Union of Burma. Tensions and conflict between these indigenous ethnic groups and the military stem from the erosion of commitments stated in the Panglong Agreement. In this article, “ethnic nationalities” and “ethnic groups” refer to the non-Burman¹ indigenous ethnic groups who have been subjected to war atrocities and diverse human rights violations as a result of military aggression.

Secret talks, invisible outcomes

Burma was watched with cautious optimism in 2001 when the UN announced that the SPDC was engaged in secret talks with Daw Aung San Suu Kyi, General Secretary of the National League for Democracy (NLD). However, in the first quarter of 2002, optimism turned to frustration – Aung San Suu Kyi remains under house arrest and Burma’s human rights situation has *not* improved significantly, particularly for the non-Burman ethnic nationalities. Equally important is that the talks have not been transformed into an open dialogue that includes the ethnic nationality leaders.

Sustainable peace can only be achieved in Burma as a result of a genuine tripartite dialogue. All ethnic groups and political parties must be represented in the national reconciliation process so that political change can be agreed upon by all stakeholders. The NLD and all ethnic nationality groups have emphatically recognized this imperative. Unsurprisingly, the SPDC has refused to accept such an idea.

In Burma’s last elections (1990), the NLD won 392 parliamentary seats, ethnic parties won 83, and the military-backed National Unity Party won only 10. Despite a number of highly publicized cease-fires signed between resistance armies and the regime, human rights violations still continue, and the regime has avoided talk of (long-term) peace agreements.

Ethnic groups have been meeting outside of Burma for a long time, in order to explore their common ground and prepare for tripartite talks. One of the important bodies in this context (there are numerous strong alliances) is the National Reconciliation Program, formed in May 1999 to encourage and empower all ethnic nationalities to engage in a dialogue with each other regarding their political future.

The Ethnic Nationalities Solidarity and Co-operation Committee (ENSCC) was formed in August 2001 as a direct response to the talks



between Aung San Suu Kyi and the regime. Composed of representatives from seven ethnic nationalities, the committee was established to develop a framework for different ethnic groups to work together for national reconciliation along the lines of the Panglong Agreement under the heading “self-determination, equality and democracy”. The ENSCC is dealing with crucial areas concerning the redrafting of the constitution and formation of a federation of eight states.

In order for ethnic groups to work effectively together for the future peace and democracy of Burma, representatives of ethnic groups must have the freedom to meet in Burma. So far, this basic right has been suppressed.

The SPDC claims that the frictions between different ethnic groups run too deep for them to be able to work together peacefully at the present time. This is obviously mere propaganda asserted in an attempt to justify their continuing grip on power. Harn Yawngwe from the Euro-Burma office made the vital point that the regime purposely causes divisions among “national races”, “implying that it is impossible to cater to everyone and, therefore, it is necessary to have a strong military to hold the country together.”² Harn Yawngwe continues by asserting that these “races” are constructs of the regime’s oppressive rule, which has actually manipulated different dialects as being different racial types. Ethnic groups have much more in common than the regime would have anyone think.

Political detentions and harassment

In addition to targeting the multi-ethnic NLD, the regime has also continued to oppress political groups and activists of the indigenous ethnic nationalities. The most recent documented arrest was that of academic Dr. Salai Tun Than, 74, in November 2001 for peacefully distributing leaflets calling for democratic reform and elections on the steps of City Hall in Rangoon. He was sentenced to seven years imprisonment at Insein prison. Pastor Gracy, a Chin Baptist clergywoman, was arrested for her alleged connections with a rebel group in July 2001 and sentenced to two years hard labour. She was later released; however, the SPDC subsequently arrested other Chin clergy. A prominent ethnic leader who had worked closely with Aung San Suu Kyi, Mr. Gin Kam Lian, Secretary General of the Zomi National Congress, was arrested on 19 March 2001 for unknown reasons.

Attacks on political personnel and most political parties continue. For example, Sai Panlu, secretary of a township branch of the Shan Nationalities League for Democracy (SNLD) was reportedly forced to resign in September 2001 after pressure from the military.³

Military offensives and militarization

Military offensives do not appear to have ceased, neither have such abuses as forced relocation, forced labour and looting. Armed conflict and human casualties continue in Rohingya populated areas (Aran state), Karen State, Shan State, Chin State, Mon State (where there is a “cease-fire”), Karenni State and in Naga areas (Kachin State/Sagaing division). It is clear that the military is waging a war not only against “armed insurgents” but against people of non-Burman nationalities in general, continuing its pattern of abuse, torture⁴ and inciting fear.

On the other hand, the lack of education and jobs has created a situation where men reportedly join either SPDC or ethnic nationality armies or militias as a source of livelihood. Whatever the merits of the cause they may be fighting for, the reality remains that life in any army in Burma is not fun. It is hard and full of danger and risk, exploitation is common and choices are minimal.

Farmers in conflict areas who are lucky enough to have been spared the forced relocations find themselves caught between the demand to supply SPDC and ethnic nationalities’ armies, and the needs of daily existence.

SPDC forces and at least 11 ethnic armed groups continue to lay antipersonnel mines with loggers and narcotics dealers now doing the same, significantly increasing the number of indistinguishable minefields in areas populated by ethnic nationality communities.

Forced labour and labour camps

Despite an order banning forced labour issued by the regime in October 2000, the violations continue unabated, in some areas with “modifications”. The ILO High Level Team (HLT), which visited Burma from September 17 to October 17 found that forced labour was practiced in areas beyond central Burma, with high levels in militarized and remote areas, particularly southern Shan State & eastern Karen State.⁵ The situation is also particularly severe in northern Arakan State, disproportionately targeting Muslims.

A dangerous trend that is emerging is the increasing number of labour camps. In recent years, the number of camps has grown from six to over 40. Labour from these camps is used for profit-making activities for the army as well as infrastructure developments. Civilians, significantly those from ethnic nationality areas, are arrested and given long sentences for the most minor infringements. They are then transferred to labour camps to work on infrastructure developments or plantations owned by the military. In its own weird logic, the regime sees this as a strategy to “reduce” civilian forced labour.

Education

While the education crisis in Burma affects all people, the traditionally disadvantaged border areas have been particularly hard hit. The regime has channelled national resources into propping up the army at the expense of the already impoverished education and health systems. In addition, many ethnic nationality groups are persecuted if they conduct classes to teach their own language.

The independent National Health and Education Committee (NHEC) seminar on “Children’s Opportunity to Learn in the Ethnic Nationality Areas in Burma”, held in April 2001 in Thailand, addressed the lack of education among many non-Burman ethnic nationality children.

Internally displaced people, refugees and migrants

People continue to be forcibly displaced, resulting in tens of thousands of internally displaced persons (IDPs) in 2001 alone. In addition, at least 800,000⁶ people have fled Burma as refugees and undocumented migrants. A disproportionate number of these persons are of non-Burman nationality, traditionally targeted by the military. For example, over 3,000 Nagas are reported to have fled Burma in May 2001 after suffering gross human rights abuses by the military. While some took refuge in Nagaland, India, many more remained in Burma as IDPs, hiding in the mountainous jungle area near Lahe, Sagaing division.⁷ Resettlement of the Wa, part of the SPDC's mass migration policy, continues to have adverse affects on people in eastern Shan State. Human rights abuses perpetrated by the Wa and military officials, such as arbitrary detention, land grabbing, and looting have meant massive displacements of Shan communities (approx. 400,000 since 1996).

While much displacement throughout Burma is a direct result of military activities, racist prejudice and vilification are also a factor. The regime continues to perpetuate the previous colonial 'divide and rule policy' supported by its Burmanization policy, favoritism for pro-army groups, control of information and outright vilification.

United Nations High Commissioner for Human Rights, Mary Robinson, expressed concern in February 2001 at the living conditions of Burmese refugees in camps along the border in Thailand, both publicly and to the Thai Prime Minister Thaksin. Her comment follows last year's comments by Sadako Ogata (UNHCR) who condemned the camps as highly overcrowded and with poor sanitation.⁸ Although Thaksin apparently acknowledged that the state of the camps "was a problem" and assured priority for human rights, there was no further discussion of the matter.⁹

Meanwhile, the Thai government has stepped up its program of repatriating undocumented migrants from Burma, regardless of the fact that almost all will be vulnerable to various human rights violations. Many so-called "migrants" are *de facto* refugees who have fled military aggression in Burma. Also in this group are those who fled forced labour and starvation, the result of military policies and practices.

Religious intolerance

Massive discrimination is suffered by the Rohingya, mostly due to their Muslim faith. 2001 saw anti-Muslim rioting in parts of Arakan,

Shan and Karen states, causing deaths and the burning of mosques and homes. This contributed considerably to the increasing numbers of IDPs and refugees.

In April 2001, the military authorities of Maungdaw Township, Arakan State, ordered 70 mosques and religious schools be destroyed whereas Buddhist pagodas and monasteries are being constructed at an accelerated rate.

It has been alleged that the anti-Muslim attacks have been orchestrated by the military as a means of diverting resentment. There have been reports that some of the “monks” involved in the religious violence were civilians directed by military commanders.¹⁰ There are also reports that military intelligence has been publishing pamphlets to intensify anti-Muslim sentiment.¹¹ Post-September 11 anti-Muslim sentiment has been a gift to the regime, encouraging it to engage in further crackdowns against Rohingya activists. The regime was quick to link Rohingya groups to Al Qaeda.

Christians, mostly of Chin and Naga backgrounds, are also subjected to persecution and higher rates of human rights violations, such as forced labour. A US State Department report has highlighted the violent ban on Christian proselytising, restrictions on local publications of religious material, including the Bible and the extreme difficulties encountered in building new churches.¹²

Women

Violence against women continues to be perpetrated by the military, with women of the ethnic nationalities being their prime target. All non-Burman women live in constant fear of violence, and Rohingya women probably experience the worst abuses. Experience and fear of violence is a major push factor in female migration from Burma.

The military also has a policy of encouraging soldiers occupying ethnic areas to marry local women, especially those from influential families. This is considered a means of securing the ethnic nationalities’ “loyalty” to the army. Forced marriage continues to be a trend. This occurs in situations of rape or sexual assault, where the offending soldier “redeems” the situation through marriage. This is often considered a lesser evil, as rape survivors are often beaten or fined if they make complaints of rape. Forced marriage also occurs when a soldier “falls in love” with a local girl and will not take no for an answer.

With such insecurity, it is no surprise that a significant number of ethnic nationality women are vulnerable to being trafficked into the

construction, hospitality, domestic and sex industries in neighbouring countries.

Despite the obstacles, a number of ethnic women's groups have been formed in recent years. The Women's League of Burma, an umbrella group of ethnic and pro-democracy women's groups, has begun to address issues affecting Burmese women at local and international levels.

Notes

- 1 *Burman* refers to the ethnic group while *Burmese* refers to the citizens of Burma. (Editors note)
- 2 **Yawnghu, Harn. 2001.** "The Non-Burman Ethnic Peoples of Burma". Euro-Burma Office, 8 December 2001.
- 3 "One more Shan party official forced to resign". *Shan Herald Agency for News*, 18 September 2001.
- 4 See "Battle news from CNF". *CNF*, 18 May 2001.
- 5 This is contrary to statements made by the junta that improved roads and increased usage of mules have diminished forced labour.
- 6 "Official refugee population in Thailand tops 136,000". *BurmaNet*, 19 August. 2001.
- 7 The extremely arduous jungle life would be compounded at this time by the rains. ["Relief Team Reaches Nagas Burned out of Their Homes". *Burma Courier*, 7 June 2001.]
- 8 Thai officials defended the camps, saying conditions were analogous to those in nearby Thai villages.
- 9 *Reuters*, 28 February 2001.
- 10 "Inter-religious clashes spreading". *DVB*, 22 May 2001.
- 11 *ARNO*, 7 June 2001.
- 12 *Burma Courier*, 27 October 2001.

NAGALIM

The peace talks between the Government of India and the Nagas have been moving at a snail's pace. Their five-year long search for a peaceful solution to the protracted conflict has, on many occasions, encountered seemingly insurmountable problems. While such problems test the political strength and conviction of the parties, and the negoti-



ating skills of the direct participants, they also attract public attention to the issues. Apparently, both sides have gained invaluable experience and strengthened their commitment to the ongoing peace process.

The cease-fire

Midway through 2001, the National Socialist Council of Nagaland Isak-Miuvah (NSCN-IM) notified India that it would call off the cease-

fire unless India immediately came forward with a public undertaking to uphold the original understanding that the cease-fire should apply to all the areas in which their forces had been engaged. This was served with two weeks notice. The Nagas continued to be outraged by the frequent attacks on members of their resistance movement, as well as their civilian population, by Indian armed forces under the local state governments of Manipur and Assam. For an entire week, the Indian media focused on this subject as the Prime Minister and the Home Minister held closed-door consultations with the Chief Ministers of the north-eastern states including Manipur and Assam, and military commanders and civil officers.

Following these hectic consultations, the Government of India sent its representative to sign the Bangkok Agreement of June 14, 2001 with the leader of NSCN-IM. The agreement declared that the government of India and the NSCN-IM would observe a cease-fire “without territorial limits”, in other words, throughout the whole of the ancestral land of the Nagas still in their possession within India.

The signing of this agreement, it was believed, signified India’s firm commitment to finding a negotiated settlement. However, some of the neighbouring communities in the region, particularly the two dominant Hindu communities, the Meiteis in Manipur and the Asamese in Assam, were not happy with the agreement. They feared that the geographical extension of the cease-fire signified a first step

towards dividing the existing states in order to create a larger *Nagaland* within a new political/administrative entity. Some responded violently. Meitei agitators in Imphal, the capital of Manipur, took to rioting and arson, and some of the Assamese leaders threatened to take to the streets. With the media fanning the fire, the situation threatened to snow-ball and cracks began to appear within the central government of India. Sensing the difficulties faced by the central government in handling the situation, NSCN-IM agreed to India's request for a re-wording of the Bangkok agreement. This provided the much-needed political space for the Indian government to proceed with the peace process.

Cease-fire violation

The peace process suffered another shock on March 16, 2002 when eleven NSCN-IM members were killed near Pallel market, a Naga town in Manipur, by troops of the 12th Indian Reserved Battalion. Some of their companions escaped. In retaliation, the Deputy Commissioner of the district was taken hostage by the United Kuki Liberation Front (UKLF), a NSCN-IM ally. The Deputy Commissioner's security escorts were disarmed and sent away.

It was later learned that the NSCN-IM had notified the Indian government that the UKLF and its cadres had detained the officer in order to ensure the immediate return of all the belongings of its fallen comrades, including their guns and ammunitions, and a thorough investigation of the incident and punishment of those involved in the cold-blooded murder. The Indian government made no military preparations to rescue the officer and, after two weeks, met the above mentioned conditions, after which the officer was released. It is suspected that anti-Naga sentiment on the part of radical Meiteis within the army was behind the killings. Allegedly, the 12th Indian Reserve Battalion is primarily made up of surrendered Meitei militants, and its commander is also said to be a Meitei.

India to form a “group of ministers” for the peace talks

Meetings of the peace negotiation teams and the Prime Minister of India with the Naga leaders during the past year resulted in significant progress in confidence building and furthering mutual respect. The talks have slowly begun to touch upon the substantive issues.

India's announcement on 19 February 2002 that it was planning to form a "group of ministers" to study the issues brought to the negotiating table is seen as a step in the right direction. The Indian government representatives' inability to sufficiently prepare themselves has been one of the main obstacles to progress in the negotiations. This decision, if implemented, may help to overcome this.

Reconciliation within Naga society

One of the most important developments under the present cease-fire is the process of reconciliation that Naga civil society organizations have been undertaking since the cessation of active military operations on their land. The reconciliation campaign is not only aimed at overcoming past bitterness among the Nagas and healing the wounds of war, it is also aimed at empowering each other to play a meaningful role in social reconstruction.

On 20 December 2001, Naga civil society organized a large ceremony to mark the launch of the "Process of National Reconciliation". Led by the Naga *Hoho* (the all-Naga council), and the Tribal *Hohos* (tribal councils), over ten thousand Nagas from all over their ancestral land in Assam, Manipur, Arunachal Pradesh and Nagaland in India, and from Burma, gathered in Kohima, the capital of Nagaland state on 20 December 2001.

This was followed by a meeting of 65 Naga representatives in Bangkok for 10 days of extensive consultation and brainstorming regarding the ongoing negotiations with India. Almost all the top leaders of the NSCN-IM, led by Chairman Isak Chishi Swu and General Secretary Thuingaleng Muivah, participated actively in the consultation with Naga civil society representatives. The consultation meeting was facilitated by the Asia Indigenous Peoples Pact (AIPP) with support from the International Work Group for Indigenous Affairs (IWGIA).

The success of the national consultation and reconciliation among the Nagas has undoubtedly had an impact on their neighbours and the Indian government. As a rule, Indian leaders and, for that matter, the Indian intelligentsia know very little about Nagalim and its people. What they think or do concerning the Nagas has been largely based on presumption. However, the recent mass movements for reconciliation and nation-building throughout Nagalim have begun to draw their attention.

Those among the Meiteis of Manipur and the Assamese communities who are opposed to the unification of the Nagas are watching

with concern. The violent events of June 2001 in Imphal, Manipur have to be understood in this context. Fortunately, others do not share their feelings. The Kukis, for example, have reached friendly understandings with the Nagas. Many other representatives of indigenous peoples in the region, including the Mizos, Hmars, Beites, Khashis and Jaintias, the Boroks, Bodos, Daflas, Akas and others, have warmly commended Naga civil society for the maturity with which it has handled this difficult situation.



SOUTH ASIA

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BANGLADESH

Year 2001 saw no improvement of the situation of the indigenous peoples in Bangladesh. The new government is obviously neither willing to recognise the country's indigenous peoples and their rights, nor to address the ongoing human rights violations or to implement the Peace Accord forged by the previous government with the leaders of the indigenous resistance movement in the Chittagong Hill Tracts in 1997. This chapter presents a summary report on some of last year's most important development in the Chittagong Hill Tracts (CHT), and in the Khasi and Garo areas of Northern Bangladesh.

The Chittagong Hill Tracts

The peace process

In December 1997, after more than twenty years of violence, and intense and protracted negotiations, the Government of Bangladesh (GOB) and the *Parbattya Chattagram Jana Samhati Samiti* (PCJSS-United Peoples Party of the CHT), the driving force behind the armed indigenous struggle, agreed a Peace Accord. The 1997 Accord includes elements of indigenous self-rule within the institutional framework of a separate ministry, a regional council, district councils and the traditional indigenous authorities of the rajas.

However, the Regional Council, which is to be the main coordinating and advisory body for the CHT, has not been provided with the sufficient authority or resources to function effectively and, of the 22 subjects to be transferred to the Hill District Councils, only three have so far been placed under their supervision: primary education, social welfare and health. Implementation of the Accord has been painfully slow to the point of tardiness and neglect and, nearly four and a half years on, the situation is once again tense with sporadic incidents of violence amidst the continuing presence of the army and the settlers, both of which remain firmly entrenched in the CHT.

Although the Peace Accord is accepted by most of the Jummas as being a necessary step forward, it has not been universally welcomed. A dissident faction of the students' movement formed the United Peoples Democratic Front (UPDF) in 1998 because they believe the Peace Accord falls short of the Jummas' demands for self-determination. Although both the JSS and the UPDF strongly uphold the right



*Demonstration against the Eco-Park on Garo and Khasi ancestral lands.
Photo: Sanjeeb Drong*

to self-determination for the indigenous Jummas (short terms vis-à-vis long term goals), their difference in approach has escalated into armed hostilities, with both sides targeting members of the other party for retaliatory attacks. In the deteriorating situation, on 16 February 2001, three members (one British and two Danish nationals) of a Danish-funded road project in the CHT were abducted and held to ransom. They were later released.¹ Despite various efforts taken by indigenous leaders and elders to resolve the internecine conflict, it has emerged as a critical issue in the peace process.

Political developments

The JSS-UPDF dispute provides an opportunity for outside interests to be involved in CHT affairs, a legacy of the British colonial practice of “divide and rule”. It has been encouraged, if not supported, by mainstream political parties who wish to undermine the peace process on the grounds that it favours the indigenous peoples. However, this has to be seen within the context of the long-running rivalry between the two main political parties in Bangladesh, the Awami League and the Bangladesh National Party.

In October 2001, in the general elections held in Bangladesh, an alliance led by the Bangladesh Nationalist Party (BNP) came to power with an absolute majority. The present government is led by Begum Khaleda Zia (she was previously Prime Minister from 1991-96). The 1997 Peace Accord is the outcome of negotiations initiated during her term in office, and concluded by her successor, Sheikh Hasina Wajed. The elections in the CHT were a contentious affair and boycotted by the JSS. Their main objection was to the elections being held on the basis of a new voter list prepared in May-June 2000. This voter list included settlers, businessmen, the armed and para-military forces and other non-indigenous persons who are not “permanently resident” in the CHT, while excluding the internally displaced and repatriated refugees among the Jummas:

The Accord also provided that only “permanent residents” of the Chittagong Hill Tracts would be allowed to vote. According to Shantu Larma [JSS leader Jyotirindra Bodhipriyo Larma], approximately 700,000 indigenous people and 100,000 Bengalis are “permanent residents”. He claims that approximately 500,000 persons, whose names are on the voter list, are non-permanent residents, including 100,000 government employees and security personnel, and that these persons should not be permitted to vote in the region.²

Despite JSS' demands to annul the 2000 voter list and prepare a fresh one, the elections went ahead in the CHT. There were a number of candidates for the three seats in the CHT, including from the UPDF, the BNP and Awami League. The candidates elected from the three CHT districts were as follows: two indigenous members - Moni Swapan Dewan from Rangamati (BNP-Alliance) and Bir Bahadur from Bandarban (Awami League); and one non-indigenous – Abdul Owadud Bhuiya (BNP-Alliance). However, neither of the indigenous members of parliament was appointed to head the CHT Affairs Ministry created under the Accord and the Prime Minister retains the CHT portfolio under her direct supervision; an indication of the continuing importance and sensitivity of the region.

During the peace negotiations, the BNP was outspoken in its criticism of the then-Awami League government's agreeing the Accord. During the run-up to the elections, it declared it would restore peace to the CHT by ensuring peaceful coexistence between the indigenous and non-indigenous people.³ Post-election, in December 2001, at a meeting with the JSS to discuss the implementation of the Accord, the Minister for Law, Justice and Parliamentary Affairs informed them of the government's decision to review the Peace Accord. This would be done to ensure that the Accord was in accordance with Bangladeshi sovereignty and the national constitution. Within the context of earlier declarations by the BNP that the Accord favours the indigenous peoples and does not adequately protect the rights of the plains settlers in the CHT, this is a cause for great concern for the indigenous peoples despite assurances from the government that it will "uphold the culture, tradition and life-style of the [indigenous] people."⁴ The situation remains uncertain.

Land and forests

The central issue in the CHT relates to land and resource rights. In this context, the following developments are relevant:

One of the first tools used by successive governments to take over the lands of the Jummas was to devise a *forest* policy to create protected and reserve forests i.e. government forests from the existing natural forests in the CHT. This ensures the indigenous peoples are constrained (protected) and prohibited from (reserve) the use, management and access to the forest, its lands or resources and to do so is to contravene the forest law and face imprisonment and/or fine. Begun by the British in 1860, the pattern of land and forest management has essentially remained state-centric and "colonialist" with

one main difference: during the British period, in-migration to the CHT was strictly controlled and non-residents were not allowed to acquire land in the CHT.⁵

This policy continues and recently, in 1992, the Ministry of Environment and Forests (MOEF) issued a series of gazetted notifications to create more reserved forests in the CHT - for re-forestation and environmental protection. The total area was 220,000 acres; between 1996-98 approximately half this area had been declared as reserve forest and the impact on the indigenous peoples is severe as this includes small farmers' registered holdings, homesteads, farmlands in the process of registration, and forest and grazing commons held in accordance with customary law.⁶ The indigenous peoples' Committee for the Protection of Forest and Land Rights in the CHT has been lobbying the government and has met with the new Minister of Environment and Forests in 2001 to request revocation of the notifications and redress but, despite assurances to do so, nothing substantial has been achieved so far. A recent amendment to the forest laws – the Forest (Amendment) Act of 2000 – indicates the government will continue its regulatory and policing approach towards forest management.

A major issue in the CHT is that of the *land allocated/occupied by the settlers*:

A few thousand acres of reserve forest containing both mixed and hilly lands were released for settlement, but these lands hardly amounted to one-tenth of what was required for the settlement (May 1984). The rest were settled by evicting the Paharis [indigenous peoples] from their traditional lands by grossly violating their traditional rights and affecting their lifestyles. The Government's claim that Bengalis have been settled on Government land (Khas land) is subject to differential interpretations. What the Government regards as Khas land is essentially the traditional jhum-land and forestland used by the Paharis [indigenous peoples] for agriculture.⁷

This issue has not been resolved, and is the cause of tension and conflict in the CHT. As a result of the settlement programme and militarization, with the army occupying lands for military purposes, many indigenous peoples are *internally displaced*. Some of them have been displaced twice as many are among those displaced by the Kaptai dam, and they face much economic hardship since, being mainly agriculturalists, they are dependent on their land for their survival.

An additional element is the plight of Jummas who returned to the CHT from refugee camps in India on the basis of two rehabilitation-

repatriation agreements with the government (1992 and 1997). However, many of their lands are currently occupied by settler families who refuse to return it to the legal owners. The returnee *refugees* are not provided with any food rations or other benefits, in contrast to the settler families, and this difference in treatment and approach has exacerbated already existing tensions. A Task Force was created to supervise and manage the rehabilitation of the internally displaced and the refugees. However, the previous head of the Task Force took the controversial decision to include the settlers among the internally displaced, overriding the objections of other members of the Task Force. The new BNP-led government has yet to appoint the leader of the Task Force and it remains to be seen whether and how the new head of the task force will resolve this contentious issue.

The Hill District Councils are to have main responsibility for land administration under the Accord. However, land and resource rights have not been transferred to the HDCs and continue under the authority of the civil administration. The deputy commissioners, who are the principal civil administration officers in the CHT, continue to allocate and transfer lands to non-indigenous persons in direct contravention of the Accord.

The Accord also provides for the establishment of a *Land Commission* to adjudicate land claims in the CHT in accordance with “local laws, usages and practices”. It is to be headed by a retired judge of the High Court and its members are to include the three traditional rulers/rajās, the chairperson of the regional council and the hill district councils. A new commissioner was appointed in November 2001 – Justice (Rtd.) AM Mahmudur Rahman and a head office was established in Khagrachari (regional offices are to be established in Bandarban and Rangamati).

However, there are divergences between the Accord and the enabling legislation – the CHT Land Dispute Settlement Act of 2001. The Regional Council has rejected the Act on the basis of 19 reservations including: (i) the arbitrary powers of the chairperson: his decision is to be final in the event of lack of consensus among the other members; (ii) the exclusion of Jumma refugees who returned to the CHT under the 1992 repatriation agreement from the ambit of the Land Commission’s work; (iii) the exclusion of the internally displaced Jummas from the scope of the Act; and (iv) that the other members of the Land commission have not yet been formally designated. The Act (as adopted) is perceived as facilitating legalisation of the settlers’ occupation of indigenous peoples’ lands. However, the Commission is, as yet, in its early stages and it remains to be seen how it will resolve the land question in the CHT in a just and objective manner.

Military

The armed forces remain in the CHT and are intensifying their presence. The government contends that the army presence is necessary to maintain law and order in the CHT, although this is in direct contravention of the Peace Accord, which stipulates the removal of all temporary and para-military camps from the CHT with the exception of the six permanent military cantonments and the border security force (Article 17 (d)). As of March 2002, out of a total of 520 camps in the CHT, an estimated 31 have been dismantled. In addition, the armed forces continue to exert control in civil matters e.g. indigenous students require a no-objection-certificate from the army for admission to universities and other institutions of higher education. During the conflict, from the mid-1970s to 1997, there were persistent reports of human rights violations committed by the armed forces against the indigenous peoples, often in collusion with the settlers. These included mass killings, arson, looting and rape. In its 2001 annual report, Amnesty International refers to the human rights violations that occurred in the CHT, and points out that the government has not brought those responsible to justice.

Reports of violent incidents involving the armed forces, in collusion with the settlers, continue to be made. This has included an attack on Jumma refugee villages in Dighinala on 18 May 2001 when houses were set on fire and looted; the military operation of 22 May 2001 in Barachandra village in Matiranga to search for “terrorists”, which resulted in the harassment of and attacks on the villagers, including the brutal rape of three women who had to be hospitalised as a result; and the arson attack on Jumma villages in Ramgarh on 25 June 2001 when a number of indigenous peoples were killed and many fled to India for shelter. The UN Committee on the Elimination of Racial Discrimination, when examining the report of the Government of Bangladesh, expressed its concern at the reports of human rights violations by the security forces present in the CHT, including reports of arbitrary arrests, detention and ill-treatment. It recommended that the government implement effective measures to guarantee that all Bangladeshis, without distinction as to race, colour, descent or national or ethnic origin, should be protected against violence and bodily harm (CERD/C/304/Add.118).

As an indication of their future presence in the CHT, the military authorities have acquired some 65,793 acres of land in the Bandarban and Rangamati districts for artillery and air force training centres, camps and cantonments. They remain firmly entrenched in the CHT.

Religious discrimination

The issue of religious discrimination and its influence on the (slow) implementation of the Peace Accord was raised by the UN special rapporteur on the elimination of all forms of religious intolerance in his August 2000 report, following a visit to the CHT.

The BNP is currently in power with support from a coalition of political parties, including the Jamat-e-Islami and the Islami Oikya Jote, both of which are fundamentalist Islamist parties. These two parties, and others, are taking an increasingly active interest in the CHT and are engaged in building mosques, madrassahs (religious Islamist schools) and providing assistance to the settlers to more firmly consolidate their presence in the CHT. By one count, there are more than 300 mosques and madrassahs in Khagrachari District alone, funded by national and international Islamist NGOs such as the Bangladesh Islamic Foundation and the Al Rabeta organization.⁸ Needless to say, this is a cause for great concern among the indigenous peoples who view this development as yet another element in their colonisation and domination by the majority population. This has to be analysed within the context of the 1974-97 conflict period, when many temples were burned down, monks beaten and killed, and many Jummas, in particular women and girls, forced to convert to Islam – in the latter case often following rape and other acts of violence. In addition, Jumma place names are being replaced by Bengali-Muslim-oriented names. The activities of the Islamist parties continue unhampered.

The indigenous movement

There are a number of indigenous organizations working in the CHT. However, their efforts are hampered by the requirement for registration from the NGO bureau. This has functioned as an obstacle to indigenous organizations seeking foreign assistance in carrying out their activities, as NGO bureau certification is a pre-requisite to accessing foreign funding. In direct contrast, despite objections from the indigenous peoples and demands for greater supervision, national NGOs such as the Bangladesh Rural Advancement Committee (BRAC), non-religious and Islamist organizations operate. The indigenous organizations believe this is a discriminatory practice aimed at curtailing their activities.

Indigenous organizations in the CHT have formed the Hill Tracts NGO Forum, which operates as a coordinating organization. At national level, the Jummas have established links with other indigenous peoples in Bangladesh. On 31 March 2001, in solidarity with the other indigenous peoples in Bangladesh, the Indigenous Peoples' Rights

Forum (Bangladesh Adivasi Forum) was established at the initiative of the JSS leader and Regional Council Chairman, Mr. Shantu Larma. Each year, the indigenous peoples of Bangladesh celebrate 9 August as International Day of the World's Indigenous Peoples and this has come to be recognized as an annual event. It has also helped to draw public attention to the situation of the indigenous peoples in Bangladesh and the government, under Prime Minister Hasina, has recognized the indigenous peoples as such. The indigenous Jummas are also active at regional and international level, including within the UN and at related events, and have forged links with indigenous peoples in other parts of the world.

Killing of Garo woman in Modhupur forest

The Garo indigenous communities of Modhupur forest now have to fear for their life. For a long time, they have been facing severe threats from the majority Bengali people who want to evict them from their ancestral homeland in order to get hold of their land. In their latest attack, on March 20, 2001, Gidita Rema, a young Garo mother, was stabbed to death by the Bengali settlers, Habibur Rahman, Mofij Uddin and Juran Ali. Villagers said Gidita lost her life because she had always protested against cruel acts by Bengalis in their village. It seems the killing is related to the rescue of Nomreta Rema, a 15-year-old Garo girl who had been abducted, raped, forced to convert to Islam and marry local Bengali settler, Mofij Uddin. The girl had been rescued by Gidita's family. On 18 March, local union parishad chairman,⁹ Zakir Hossain, called for a meeting to deal with the case. In the meeting, the chairman himself forced Gidita to return Nomreta to Mofij. When Gidita refused to do so, the chairman told her angrily that her house would be burnt and that she would be killed if she did not obey his order. Two days later, Gidita Rema was murdered.

The police have not arrested the murderers. Local Garo leader, Anthony Mangsang, has protested in front of the police station and Gidita's father said that the police had obviously even helped the killer, Habibur, to escape.

Eco-Park project inaugurated in spite of protests

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: In July 2000, the Bangladesh Government announced plans to estab-
: lish an Eco-Park in Moulvibazar district, which will develop more

than 1,500 acres of the Khasi and Garo people's ancestral land for tourism. The plan was developed without any participation from, nor the consent of, the communities affected. Seven villages, comprising over 1,000 Khasi and Garo families, face forced eviction from their homelands. The indigenous peoples of Bangladesh started a democratic movement against this Eco-Park. Many intellectuals, university professors, writers, journalists, politicians, cultural activists and other members of civil society have supported them and have participated in their programmes. They have organised protest rallies, public gatherings and press conferences, they have published leaflets and held a hunger strike against the government's plan, and they have received excellent press and media coverage. Despite these protests, the Environment and Forest Minister inaugurated the Eco-Park on 15 April 2001. At the same time, thousands of indigenous people showed the Minister the "black flag" as a symbol of their protest. The day was Easter Sunday, a key religious day for the Khasi and Garo people. However, they spent that day on a protest rally in the forest. On 5 May 2001, indigenous people again organised a mass public gathering in Dhaka to halt the plan to establish an Eco-Park. Thousands of people attended. Many intellectuals, writers, poet, artists, professors and journalists attended the meeting and made speeches in favour of the indigenous communities' demand.

Notes and references

- 1 It is unclear who, or which party, was responsible for this act, although there are allegations that the UPDF was responsible.
- 2 US Department of State. March 2002. *Country Reports on Human Rights Practices-2001: Bangladesh*.
- 3 *Daily Star*, 13 August 2001. "BNP to Restore Peace in CHT if Elected, says Khaleda". Internet news.
- 4 *The New Nation*, 12 December 2001.
- 5 **Raja Devasish Roy. 2002.** "Land and Forest Rights in the Chittagong Hill Tracts, Bangladesh." Paper presented at ICIMOD, Nepal, February 2002.
- 6 *Ibid.*: 14.
- 7 **Mohd. Rafi and A. Mushtaque R. Chowdhury (eds.). 2001.** *Counting the Hills: Assessing Development in Chittagong Hill Tracts*, Dhaka.
- 8 International Jumma Community: *An Appeal to the Honourable Representatives of Donor Countries' and Funding Agencies' Meeting in the Bangladesh Aid Consortium, 13-15 March, 2002, Paris.* p. 9.
- 9 Council of the Union, a government administrative unit.

NEPAL

More than 4,000 people including insurgents, security forces, police and ordinary civilians have been killed during the fighting between the security forces and the Maoist guerrilla since the Nepal Communist Party (Maoist) launched its “people’s war” to establish a New Republican Democratic State in mid-February 1996. The most affected areas and peoples in the armed conflicts are the indigenous peoples and their territories.

State of emergency and worsening human rights situation

The indigenous peoples are increasingly facing threats to their life and property in their territories. Human rights violations such as rape, indiscriminate killing, kidnapping, torture and disappearances are common. Indigenous activists have been killed, and an estimated 600,000 of the country’s youth have fled the country over the last few months. Unofficial estimates say the toll on infrastructure since November 2001 alone may total more than 2 billion Rupees (about 27 million US Dollars). Almost every sector of national life has been adversely affected.

The Movement for the Protection of Democratic Rights, Nepal, with the help of human rights organisations and civil society, has mediated peace talks between the government and the Maoists. The Maoists had presented three demands: a “republican state”, an “interim government” and the “election of a constituent assembly”. However, none of their demands gained a positive response from the government or the political parties in parliament, even after the demand for a “republican state” was dropped. The peace talks failed after the third round and, in November, the Maoists unilaterally pulled out of the four-month-long “peace talks” and resumed the violence. For the first time in the six years of their insurgency, they were targeting government installations and army barracks. The government declared a state of emergency and suspended all civil, political and human rights in late November, branding the Maoists terrorists and mobilising the Royal Nepalese Army to contain and destroy the rebellion.

For the last four months, the Royal Nepalese Army and Maoist guerrillas have come face to face in the Nepalese hills and southern plains. While the army has been stepping up pressure against the insurgents through its “cordon-and-search-and-destroy” operations,



the rebels have managed to inflict heavy damage on the security forces.

The loss of human life, property and infrastructure in the course of the Maoist “people’s war” has been enormous. Not a single day passes without reports of brutal killings, ordinary citizens, including children, falling victim. What surprised many was the ferocity of the rebel attacks, despite the three-month-old state of emergency and security operations. In the aftermath of the heaviest attack so far, in the far-western district of Achham on February 16 2002, in which over 150 members of the forces were killed, parliament - with far more than the mandatory two-thirds majority - decided to extend the state of emergency by another three months (until June 2002) to allow the army a free hand in fighting the insurgency.

Officials maintain that there are no immediate chances of a resumption in talks with the rebels. The government would consider holding talks with the Maoists only if they denounced terrorism, handed over all the arms and ammunition looted from the security forces, complied with the Constitution of the Kingdom of Nepal and joined the national mainstream. The Maoists declare that they are ready for peace talks if the government announces the election of a Constituent Assembly to draft a new constitution. Recently, the Government of Nepal publicly offered a reward of 5 million Nepalese Rupees for capture of the leaders of the Nepal Communist Party (Maoist) dead or alive, although the death penalty has been illegal and unconstitutional in Nepal since 1991.

Bill on the establishment of a “National Foundation” passed

At its 20th Session, in 2001, the Parliament of Nepal passed a bill on the establishment of a “National Foundation for the Development of Indigenous Nationalities”. The bill was supposed to have been passed at its 1999 session. This act is very important since it is the first Nepalese act that recognizes 59 ethnic groups as indigenous nationalities. Previously, the Cabinet’s decision was the only legal recognition of indigenous peoples in Nepal. The act has the following features:

1. It recognises 59 ethnic groups of Nepal as indigenous nationalities.
2. The Foundation is an autonomous body.
3. The main objective of the Foundation is the overall development of indigenous nationalities through plans and programmes related to the economic, social, educational, cultural (language, script, history, arts, literature, knowledge) and technological development of indigenous nationalities.
4. The Foundation will have a Governing Council under the chairmanship of the Prime Minister. It is the supreme policy-making body, and consists of the representatives of all indigenous nationalities as ex-officio members. The Minister of Local Development will co-chair it and it will consist of a further six indigenous parliamentary members from the House of Representatives, three indigenous parliamentary members from the National Assembly of the Parliament, and a member of the National Planning Commission. Secretaries of the Ministries of Local Development, Finance, Culture, Education and Tourism will be ex-officio members.
5. The Foundation will have an Executive Committee consisting of the Vice Chairman, two members, one ex-officio member from the Ministry of Local Development and a Member/Secretary. It is the implementing body for the decisions taken by the Governing Council of the Foundation. The Executive Committee will be formed on the recommendation of a three-member committee, including two representatives of indigenous nationalities. The Ministry of Local Development will be the focal ministry for the Foundation.
6. Every indigenous nationality has the right to be represented at the Governing Council.¹

Language Bill registered in Parliament

Nepal is a multilingual country. There are almost 70 communities with 125 different languages. The constitution of Nepal recognises the languages spoken by the different communities of Nepal as national languages. However, on June 1 1999, the Supreme Court issued a certiorari against the decision to use local languages as additional official languages by Kathmandu Metropolitan City, Dhanusha District Development Committee and Rajbiraj Municipality. This decision of the Supreme Court posed a challenge to, and questioned the status of, the constitutional recognition of national languages. In March 2000, the First National Conference on Linguistic Rights therefore declared that “no language is either small or great, all are equal, and all the language communities have equal rights”. The conference also refused to accept the decision of the Supreme Court and demanded amendments to the Constitution of the Kingdom of Nepal related to language discrimination (see *The Indigenous World 1999-2000* and *2000-2001*).

In this context, two indigenous organizations, Nepal Tamang Ghedung (NTG) and Newa Rastriya Andolan (NRA) began to prepare a draft “Language Bill” with the help of a “Language Bill Drafting Committee” made up of senior lawyers. On 16 October 2001, the “Language Bill” was introduced into the House of Representatives by several Members of Parliament - Mr. Narayan Man Bijucche of the Nepal Labour and Peasant Party, Mr. Lila Mani Pokharel of the Joint People’s Front of Nepal, Mr. Pari Thapa of the National People’s Front, Mr. Buddhi Man Tamang of the Rastriya Prajantantra Party and Mr. Bir Bahadur Lama of the Nepal Communist Party (United Marxist and Leninist). With the support of IWGIA, NTG and NRA also organised consultation meetings of lawyers, language activists, human rights activists and indigenous activists in order to finalise the draft bill, and a separate consultation for Members of Parliament on the bill presented to the House of Representatives during the 21st session of Parliament. This bill will execute the fundamental rights guaranteed by Article 18(1) of the Constitution of the Kingdom of Nepal in accordance with the spirit of Article 26(2) of the state directive on principles and policies of part 4 of the same.

The Language Communities observed a “Black Day” all over the country on 1 June 2001 to show their disagreement with the decision of the Supreme Court on language issues, given two years earlier. The Black Day was organised by various language communities and a nationwide mass demonstration, posters and pamphlets, processions and mass meetings were organized. The language communities de-

cided to continue the Black Day until the government changed the rules and regulations of the country.

Indigenous peoples propose constitutional amendments

The Nepalese people and the political parties are now in favour of constitutional changes or amendments. In this regard, indigenous people's organisations submitted a proposal for amendments, changes and additional provisions to the present constitution to the Prime Minister and the parliamentary political parties. According to the constitution of Nepal, a two-thirds majority of Parliament has to vote to amend the constitution. The indigenous proposals are as follows:

Recommendations for amendments to the present constitution

1. Preamble: The preamble should reflect the fact that all ethnic groups, languages, arts and cultures shall have equal rights.
2. Article 2: The "nation" should be replaced by "multinational state".
3. Article 4 (1): The state should be declared secular.
4. Article 6 (1 and 2): All the languages of Nepal should be declared "national languages".
5. Article 46: The name of the present Upper House of Parliament, should be changed from "National Assembly" to "Assembly of Nationalities", in which all the nations (peoples) that make up Nepal should be represented. This is in order to secure the full participation of all communities, large or small, in the law-making processes. This could be a strong instrument with which to strengthen the national unity of the country.
6. Article 9 (1 and 5): "Mother" should be added to "father" in article 9 (1). In article 9 (5), a foreigner who marries a Nepali woman has the right to Nepali citizenship.
7. Article 9 (4a): A foreigner can acquire citizenship of Nepal if s/he can speak and write any national language of Nepal.
8. Article 11 (3): "The state shall not discriminate against citizens on the grounds of language" should be added in the article.
9. Article 12 (2): The restrictive statement sub-clauses 1, 3 and 4, which states "castes, tribes or communities" should be omitted.
10. Article 18 (2): The State should provide education in the mother tongue up to higher education level.
11. Article 19: All religions that have long been practised must be recognized or none of them should be.

12. Article 26 (10): Laws should be formulated within the spirit of the guiding principle of the constitution.
13. Article 112 and 113: There should be a provision that ethnic or community groups can form political parties. (Or the prohibition or imposition of restrictions on political organizations or parties on the basis of religion, community, caste, tribe or region should be deleted from the articles).
14. Article 114: Women's representation in political parties for the elections to the House of Representatives should increase to 15 percent from 5 percent of the total candidates, 50 percent of which should be reserved for indigenous women.

Recommendations for additional provisions

15. Quotas to be guaranteed for nationalities/indigenous peoples and Dalit (lower caste and untouchables) communities at the level of decision-making in government, employment, education and health sectors.
16. Fifty percent of the seats should be reserved for women of nationalities from the quota that has been reserved for women at the level of decision-making in government, employment, education and health sectors.
17. The state should guarantee the direct participation of nationalities in the preservation and promotion of indigenous knowledge and intellectual and cultural heritage, in order to respect their intellectual property right over such heritage.
18. Existing practices of separating electoral areas for elections to the House of Representatives according to population distribution should be abolished and new areas fixed according to the socio-cultural set-up, historical background, geographical location, ethnic groups, concentration-residential arrangements and population distribution.

Reference

- 1 *Nepal Gazette* Part 51 Additional Issue 67 on 7 Feb. 2002.

INDIA

The year 2001 was marked by two major developments at national level that could have serious consequences for India's indigenous peoples and their organizations in the future: the attempts by politicians and private business to nullify the landmark Supreme Court judgment on the Samata case by demanding a review, or by lobbying for an amendment to the 5th Schedule of the Constitution; and the promulgation of the controversial Prevention of Terrorism Ordinance (POTO), which was eventually passed as the Prevention of Terrorism Act (POTA) on March 26, 2002.

While some encouraging developments have been reported from the regions – like the successful struggle of the Adivasi¹ in Kerala for the restoration of alienated land (which, due to its significance, will be reported in detail below) – others do not offer much reason for enthusiasm. The implementation of the Panchayat Raj Extension Act, which is supposed to guarantee a far-reaching degree of self-rule for indigenous communities in the 5th Schedule areas, has so far been a disappointment and the North-east, in spite of some progress in the peace talks between the Nagas and the Indian government, remains one of the most heavily militarized areas in the world.

The aftermath of the Samata case: ongoing attempts to amend the Fifth Schedule

Samata is an NGO working with the Adivasis of Andhra Pradesh. Samata filed a case against the state government of Andhra Pradesh for leasing out tribal lands to private mining companies in the Scheduled Areas (officially recognized and registered tribal areas under the so-called 5th Schedule of the Constitution). In July 1997, the Supreme Court of India issued an historic judgement in which it declared that the Government was also a “person” and that all lands leased to private mining companies in the scheduled areas were null and void. The judgment, among others, further provides for:

- The possibility of “minerals to be exploited by tribals themselves either individually or through cooperative societies with financial assistance of the State”.
- That at least 20% of net profits from mining operations in tribal areas “be set aside as permanent fund for development needs apart from reforestation and maintenance of ecology”.



- That the “transfer of land in Scheduled Area by way of lease to non-tribals, corporation aggregates, etc. stands prohibited”.
- That the “renewal of lease is fresh grant of lease and, therefore, any transfer stands prohibited”.
- That a “Conference of all Chief Ministers, Ministers holding the Ministry concerned and Prime Minister, and Central Ministers concerned, should take a policy decision for a consistent scheme throughout the country in respect of tribal lands”.

Since the issuing of the Supreme Court judgment, both the State Government of Andhra Pradesh and the Central Government have attempted to reverse it. A joint petition of the Andhra Pradesh State and the Central Government for modification of the Samata order was, however, dismissed by the Supreme Court on March 6, 2000. In July

of the same year, the Ministry of Mines drafted and circulated a Secret Note to the committee of Secretaries proposing an amendment to the Fifth Schedule in order to overcome the Samata Judgement so as to make the leasing of land to outsiders in tribal areas possible. This led to massive popular protests in Andhra Pradesh and extensive critical coverage in the national and regional media. Ultimately, the Chief Minister of Andhra Pradesh reacted by issuing a statement in which he indicated the withdrawal of the proposed amendment and, on March 15, the Prime Minister replied to a question from Arjun Singh in the Upper House of the Parliament that the Government had no intention of amending the Fifth Schedule to overcome the Samata Judgement. The battle, however, is not yet over. In a Draft Approach Paper to the Tenth Five Year Plan (2002 - 2007) issued by the National Planning Commission on May 1 last year, the Samata Judgement was referred to as a hurdle to private coal mining. Paragraph 3.58 of chapter 3 on Sectoral Policy Issues states:

It will also be necessary to make other amendments to overcome the hurdle placed in the way of private mining in notified tribal areas by the Samatha [sic] Judgement. The procedures for environmental clearance also need to be greatly simplified so that potential private investors face clear and transparent rules.

And ten days later, Mr. Arun Shourie, Minister for Disinvestment, made a statement in the Hindu Business Line, Delhi Office, to the effect that they wanted to review the Samata Judgement. Obviously, many forces in central government still refuse to accept the Supreme Court Judgment.

Passing of new anti-terrorism act watched with concern

In spite of massive national and international criticism, the controversial Prevention of Terrorism Act (POTA) was passed on March 26 this year. Drawn up soon after the September 11 incident in New York, the bill was hotly debated in public for months. Human rights groups and activists in India have pointed at the severe consequences this law has for political, indigenous, religious or human rights activists. As the international human rights organization, Human Rights Watch, had already warned in October last year, the new anti-terrorism legislation would give the Indian police sweeping powers of arrest and detention.²

The POTA is a modified version of the Terrorist and Disruptive Activities (Prevention) Act (TADA), repealed in 1995 due to public protest and known for having facilitated tens of thousands of politically motivated detentions, torture and other human rights violations against political opponents, indigenous and minority rights activists in the late 1980s and early 1990s. The new anti-terrorism law is said to go even further by providing a much broader definition of what is considered to be a “terrorist act”. It allows for up to 180 days of preventive detention without charge, and it “subverts the cardinal principle of the criminal justice system - the presumption of innocence - by putting the burden of proof on the accused, withholding the identity of witnesses, making confessions made to police officers admissible as evidence, and giving the public prosecutor the power to deny bail. Moreover, little discretion is given to judges regarding the severity of sentences”.³ Opponents of the new law share the fears that “POTA is more likely to be used for preventive detention of peaceful dissenters than for tackling terrorism”⁴ and are of the same opinion as India’s National Human Rights Commission, which is convinced that already existing laws were sufficient to fight the threat of terrorism.

Jharkhand: petitions submitted against the recently passed Panchayat Raj Extension Act

In 1996, the 73rd Constitutional Amendment Act, which is directed primarily at promoting village level democracy through the *Panchayat Raj* institutions, was extended to the Fifth Schedule Areas through the Provision of the Panchayats (Extension to Scheduled Areas) Act. The extension of this Act has been carried out with suitable changes in order to transform a system established for the general areas of the country into one that is appropriate for the specific socio-economic and politico-administrative systems among the Adivasis in the Scheduled Areas. It should ensure self-governance through a three-tier structure. The first tier is the *Gram Sabha*. This is an institution of self-governance at the village level. All the adult members of the village are automatically members of the Gram Sabha. In the areas not officially recognized as tribal areas (or so-called Scheduled Areas), the lowest level of the local self-rule system is the *Gram Panchayat*. This differs from tribal areas in that it is constituted by members elected by villagers. The other two structures are the same for tribal and non-tribal areas: the second higher body is called the *Panchayat Samiti*, which is constituted in the area demarcated as the Development Blocks and

consists of members elected by its lower tier, i.e., Gram Sabhas or the Gram Panchyats respectively. The *Zila Parishad* (District Council) is the highest body at the district level, which is constituted by the members elected by the lower tiers. Through the Extension Act for tribal areas, the Gram Sabha has been vested control over land, rights over minor forest products and minor minerals, control of markets, money lending, sale and consumption of intoxicants etc. It also provides for central government development funds to be sent via the Zila Parishad directly to the Gram Sabha.

The states with areas falling under the Fifth Schedule were required to make appropriate amendments to their laws in line with the provisions of the central act. Nine states are covered by the Fifth Schedule and therefore mandated to amend their laws accordingly: Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa, Chattisgarh and Rajasthan. However, only five of them – Andhra Pradesh, Himachal Pradesh, Madhya Pradesh, Orissa and Jharkhand - have so far carried out the necessary amendments. The Adivasi and their supporters are, however, not at all satisfied with the way this was done. The case of Jharkhand, where the respective act was passed only last year, illustrates how, in the process, the spirit of the Central Act was corrupted to such an extent that it became a tool in the hands of the state government to strengthen its control of the Adivasi communities instead of providing for their empowerment through local self-rule.

Neither the original 73rd Amendment of the Panchyati Raj nor the Panchyats Extension Act of 1996 have handed over the basic right of full control over land, forest, mineral and water resources to the communities. Nor has control over police, administrative and judicial functioning been vested in the Panchayats. The government of Jharkhand has even gone a step further in weakening local self-governance by curtailing whatever little was there in the Central Act. The objective of the Jharkhand Panchyat Act 2001 appears to be the formation of powerless institutions at the village level in the name of “Panchyats”, to secure cooperation with the government in the implementation of its projects and programmes.

There is no provision for the obligation to seek consent, not even consultation, with the Gram Sabha or Gram Panchayat in cases where the state or the central government requires land in the Scheduled Areas. Similarly, while the Central Act of 1996 provides the power to the Gram Sabha and Gram Panchyat to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe, the Jharkhand State

Act remains silent about this. It is suspected that this has been done to safeguard the vested interests of industrial entrepreneurs and agrobusiness.

In the case of ownership rights over minor forest products, too, the government's policy of protecting the vested interests of the forest contractors is quite apparent. The Jharkhand Act does not pass responsibility for the protection and management of forests to the Gram Sabha, as the Adivasi had hoped, but deprives it even of the ownership right to minor forest products as opposed to the provisions of the Central Act. Nor does the Jharkhand Act endow the Gram Sabha with the power to enforce prohibition or regulate or restrict the sale and consumption of any intoxicant, or the power to exercise control over money lending.

The most vicious step the Jharkhand Act has taken to defeat the very promise of giving autonomy to the tribal people is in the area of the functioning of the core institutions of tribal self-rule, the Gram Sabha, Panchyat Samity and Zila Parishad. First of all, the Jharkhand Panchyat Raj Act mixes up the two institutions of the Gram Sabha and the Gram Panchyat in the Scheduled Areas. Undermining the importance of the former, it constitutes the latter (an institution that should be in place only in non-Scheduled Areas) through elections where places will be reserved not only for the Scheduled Tribes but also for Scheduled Castes and Other Backward Castes, on the basis of the size of their population in the village. Furthermore, to weaken the structures of these institutions, the Jharkhand Act gives the state the right to nominate distinguished persons at all levels of the three-tier structure without mentioning the criteria for selecting such persons. A provision has been made to make the local Member of Parliament, Member of Legislative Assembly and the Member of *Rajya Sabha* (Upper House of Parliament) ex-officio members of these supposedly democratically elected bodies. Moreover, in their absence their nominees can represent them in these bodies. These are not only undemocratic, but violate the Constitution of India.

Consequently, four petitions were filed to, and admitted by, the Jharkhand High Court challenging the validity of holding Panchyat elections in the Scheduled Areas. In February 2002, a petition was filed by Mr. Devendra Nath Champia on behalf of Jharkhandi's Organization for Human Rights (*Chaibasa*) and *Munda Manki Samiti* of Kolhan challenging the validity and constitutionality of the Jharkhand State Panchayati Raj Act. This petition has also been admitted by the Jharkhand High Court. However, the government was ill prepared to argue the case and it could not even produce an English translation of the Act in court. The High Court has given it three

weeks, ending in June 2002, to come prepared to the next hearing. In the meantime, some prominent members of the Uraon (Kurux) community are going to intervene on behalf of the community in the case.⁵

Jharkhand government's new industrial policy foresees encroachment on Adivasi land

The new industrial policy presented by the Jharkhand government in 2001 revealed the intention to create economic zones. One such zone would be along the 125 km long national highway 33 between Ranchi and Jamshedpur. It is proposed that 5 km on either side of the highway be earmarked for industrial purposes. That would amount to a 1,250 sq km area intended for industrialization. And no regard is given to whether it is agricultural land or forestland or not. Furthermore, no consultation has been undertaken with the numerous Adivasi families that occupy much land on both sides of the road. Indigenous peoples' consent is obviously not a criteria.

On October 20, the Director of Industries, Mr. A. K. Singh, made a more sweeping statement. Addressing the members of the Bokaro Chambers of Commerce and Industries, he said that the Jharkhand government had decided to reserve eight kilometres of land on both sides of national and state highways for industrial purposes. This has sweeping consequences because of the considerable length of state and national highways in the state. The forest department, it seems, is either keeping quiet or not being consulted. Again, the hundreds of thousands of families that will be affected have definitely not been consulted. Welfare Minister of Jharkhand, Mr. Arjun Munda, disclosed on December 26 that the government of Jharkhand is considering legislation to make owners of land on which any industry is set up capital partners in the company. Currently, the practise is such that landowners are given financial compensation and, in some cases, jobs after which they have little role to play. He said that if the landowners were made capital partners then they would be entitled to a share of the profits and would get back the land, once the company moved out.

Madhya Pradesh: killings in an attempt to undermine Adivasi movement?

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: A fact-finding mission conducted to investigate the killing of three
: Adivasi and a non-Adivasi on April 2, 2001, in Dewas district, Ma-

dhya Pradesh (see *The Indigenous World 2000-2001*), came to the conclusion that the act was part of a systematic effort to undermine the local Adivasi organizations, the *Adivasi Morcha Sangathan* and *Adivasi Shakti Sangathan*. The fact-finding team, which entered the area shortly after the event, found that since March 28 the police and administration in Dewas had unleashed a reign of terror causing thousands of Adivasis to flee their villages for the forests, while the police administration ransacked their villages, destroyed houses and arrested some of them.

During the mission, the team was told by the affected people that the true reasons for the reign of terror was the intention to destroy the tribal organizations (*sangathan*) by branding them as Naxalites.⁶ In 1996, the tribals in this region had formed the two above mentioned local organizations in order to resist exploitation by the forest department, corrupt government machinery and usurious moneylenders. These organizations had attracted hundreds of Adivasis and were gaining political influence such that, in the recently held local government elections, Sangathan members were very successful. This created a great deal of political tension and the traditional parties were unhappy with the Sangathans. Both the District Collector and the Superintendent of Police, who were new to the area, had publicly announced on February 13 that they were going to totally destroy the Sangathans and leave no trace of them.

Furthermore, the Forest Department had traditionally, and illegally, made enormous profits by imposing levies on house building, collection of timber, grazing of animals etc. Over the past three years, the Sangathans had protested against these illegal practices and told the tribals not to pay these bribes. The officials of the Forest Department and the other District officials were furious as they found themselves being deprived of a lucrative source of income. In response, the government formed an organization named Van Raksha Samiti as an alternative to the Sangathan and was forcing tribals to join, but without much success. Curiously, all the houses that were destroyed by the security forces belonged to leaders of the Sangathan while no member of the Van Raksha Samiti was affected.⁷

Kerala: the struggle of Adivasis enters a critical phase and goes beyond land rights

The death of 38 Adivasi men, women and children in the districts of Wayanad, Palakkad and Kannur in July-August 2001 precipitated an

intense struggle. This time, the struggle was led by the *Adivasi-Dalit Samara Samithy*, an informal platform. What is also significant was that the Dalit⁸ activists have joined the Adivasi activists, led by their popular leader Ms. C. K. Janu.

Kerala state, with a Physical Quality of Living Index (PQLI) that is comparable only to Taiwan, South Korea and Japan in the Asian region, last year found itself faced with a situation whereby thousands of Adivasis were facing hunger, starvation and imminent death. The government blamed a mysterious illness, alcohol and polluted water. Deaths from hunger were nothing new. But the scale of deaths during the period indicated the looming disaster. On 14 August, a vehicle of the government civil supplies carrying grain was waylaid in Noolpuzha Panchayat in Wayanad District and the food grain distributed amongst the hungry. Four Adivasi women, including two under-age girls, were arrested. The Adivasi-Dalit Samara Samithy decided to launch a struggle, describing the emerging situation as one that had made Adivasis refugees in their own homeland. Land, the fundamental source of survival, has been systematically denied them despite specific legislation such as the Kerala (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975, which was not implemented despite a High Court order of 1993 (see *The Indigenous World 1995-96* and following issues). There was an effort to repeal and replace the 1975 Act in 1999, which however was struck down by the High Court as unconstitutional in 2000. The new bill also talks of providing land of up to one acre each for 11,000 landless families. The case currently rests with the Supreme Court (see *The Indigenous World 2000-2001*). All this is fundamentally to avoid restoration of alienated lands and instead provide some alternative lands, in violation of the provisions of Article 244 (1).

Protest camps and negotiations

On August 30, Adivasi refugee camps were set up in front of the residence of the Chief Minister A.K Antony and the Secretariat at Thiruvananthapuram, the state capital. Hundreds of Adivasis, mostly women and children from different parts of the state poured in, set up huts and began to reside there stating that there was no question of returning without a final solution to the fundamental issue of their survival. The state ignored the struggle, initially assuming that it would not last long. However, the struggle gathered momentum and support from the general public, with various sections coming out in support, making it into an issue of democracy itself. The Dalits, mostly

the slum dwellers and the poor, actively began participating in the struggle. The cabinet discussed the issue and declared their intention to talk to the Adivasi-Dalit Samara Samithy on September 6. On September 5, the state-sponsored grand gala celebrations and rally to celebrate *Onam*, an important festival and now a huge tourism event, was seen as improper and vulgar when hundreds were dying of hunger in the state. The Samara Samithy declared that they would oppose it, which led to skirmishes and attempts to arrest C. K. Janu. This struck a popular chord amongst the public. The next day, having agreed that a crisis existed, the Chief Minister held talks and came up with a proposal that was, however, rejected by the Samara Samithy. The talks thus failed, with the Samara Samithy declaring they would intensify the struggle.

After a meeting with the District Collectors on September 11, the Chief Minister announced that as much as 15,000 acres would now be identified from various categories of land viz. Plantation Corporation, tribal development projects, *poramboke* (government lands) etc. within one month, and within the next two months they would be distributed to the landless. The Samara Samithy rejected this offer as well. The struggle began to spread throughout the state. A statewide "Journey for the Assertion of Rights" took place from September 12-17 with public receptions, meetings and rallies all along the route. Support and pressure from more sections were added in the form of rallies and other actions by human rights groups, Dalits, women's organizations, fish workers' organizations, eco-groups, intellectuals, writers, academics, students, administrators, media etc. The number of Adivasis in the refugee camps increased to over 500 as more and more huts were set up.

Unsuccessful attempt to break the struggle

The government then decided to break the struggle by adopting a multi-pronged strategy of threats, inducements and inside subversion and by dividing the Adivasis with the aid of mainstream political parties and the state machinery. These measures were effectively countered and, instead, only consolidated the unity of Adivasis. The Samara Samithy called for the first meeting of *Adivasi Gothra Mahasabha* (Grand Council of Adivasis) on October 3 – taking the first tentative step towards a people's assembly. The Mahasabha approved the actions of the Samara Samithy and called for an intensification and spread of the struggle to all the Adivasi areas. The day also saw a rally of over 10,000 people in the city. The attempts from some civil society organi-

zations to file cases to dismantle the refugee camps failed. The plan to forcibly remove the refugee camps failed, too, as the general public in the city and the media began a vigil, besides forming a protective chain around the refugee camps. The condemnation of a government that would crush the democratic right to peaceful assembly and democratic protest was forthright. The Chief Minister announced that 42,000 acres of land would be identified and distributed to those possessing less than an acre. The Adivasis also rejected this offer. Gowriamma, the Minister for Agriculture, began informally mediating between the Samithy and the government. A situation had emerged in which the government and the mainstream political parties were forced to accept that a crisis existed. Refugee camps spread to other districts such as Pathanamthitta, Idukki, Palakkad and Kannur. Massive police force was deployed and arrests began. Agitation spread throughout the Adivasi belt creating the mobilization for a general uprising, the first such experience in the state. C. K. Janu announced a hunger strike to the death from October 17 after the second assembly of the Adivasi Gothra Mahasabha approved further plans for the struggle.

The final agreement

Faced with a crisis, the government decided to concede to all the demands of the Samara Samithy on October 16. In turn, the Samithy offered to dismantle the refugee camps while continuing the process of struggle. The agreement reached at the final round of discussion held between the sub-committee especially constituted by the government to resolve the uprising, headed by Chief Minister A. K. Antony, some of his colleagues and the top bureaucracy on October 16, and the Adivasi-Dalit Samara Samithy represented by C. K. Janu, Geethanandan, Sunny, Prasad, M. K. Narayanan and C. R. Bijoy includes the following provisions:

1. Five acres of land to all Adivasi families with less than 1 acre. To begin with, 42,000 acres of land of plots between 1-5 acres would be distributed while the rest would be distributed as and when lands were located and made available. This work would begin from January 1 to December 31, 2002 giving 5 acres where possible as and when suitable lands are found.
2. A master plan would be drawn up before December 2001, to be included in the 10th five-year plan beginning in 2002 in which the focus would be to support the above beneficiaries for a maximum of 5 years until they reach self-sufficiency.

3. A cabinet decision would include Adivasi areas in the Fifth Schedule and a proposal would be made that would be sent to the centre for further notification by the President. Meanwhile, suitable legislation would be issued to protect the land allotted under this agreement.
4. The Kerala government would abide by the Supreme Court judgment in relation to the case pending. In this case, the Kerala government had challenged the High Court judgment, which struck down the Kerala government's earlier repeal of the Kerala Scheduled Tribes Act 1975 and declared contempt of court for not having implemented the High Court judgment of 1993 to implement the 1975 Act.
5. Participation of the Samara Samithy in all decision-making and implementation processes on all matters related to this agreement.
6. A Tribal Mission would be constituted to carry out all the above, headed by a senior officer of the Indian Administrative Service.

The third meeting of the Adivasi Gothra Mahasabha was held at the Adivasi hamlet Pazhayarikandam in Idukki District on November 17-18. The basic structure of the Mahasabha as a non-centralised system based on the fundamental principles of the Adivasi politico-administrative system was worked out and affirmed as the peoples' system of governance not only to fulfill the agreement reached with the government but also to govern the people. This extra-parliamentary system was seen as essential in a context in which the mainstream political parties and the state are not willing or able to fulfill even the mandatory constitutional obligations. To begin with, it was resolved that the task of identification of beneficiaries and lands approved at the fundamental unit – the village – was to be carried out statewide. The government symbolically distributed over 1000 acres of land to about 383 Adivasi families in Idukki District, commencing the distribution of lands. The process of identification of beneficiaries and lands has faced stiff opposition from mainstream political parties, the bureaucracy and particularly the forest department. The Samara Samithy and Gothra Mahasabha, realizing that the struggle will be a long drawn out one, are launching a statewide process of political awakening and reform focusing on all marginalized sectors. Their position is that it is the people who should not only implement the agreement but also set in motion a political agenda and a movement for change.

Tamilnadu: the struggle against Coimbatore Zoological Park continues

In 2001, a new attempt was made to fence in the 400-acre proposed site of the Coimbatore Zoological Park (CZP) on Adivasi land in Anaikatti Hills in Coimbatore by an NGO bearing the same name. CZP hopes to take over the ancestral territory of the Irulas, who are classified by the government as “primitive tribals”, affecting the lives and livelihoods of over 1,000 of them, by engineering conflict between Adivasis and the government as well as with the local non-Adivasis petty traders and contractors.

CZP is a registered society set up by leading industrialists and business men of Coimbatore City in 1986, headed by G. Rangaswamy (Managing Director, Chandra Textiles), and which proposes to establish the reportedly 2.5 billion Rupee (US\$ 53 million) “Coimbatore Zoological Park and Conservation Centre” at Thuvaipathy Village about 30 km from Coimbatore city.

In 1991, the CZP began their operation to grab land using strong-arm tactics and employing gangs to terrorize the people. A number of houses were illegally demolished. Organized protest by Irulas began in 1994 itself. With the granting of a lease over 180.78 acres of land in 1998 and the actual handing over in 2001, the current conflict arose. On March 30, the Adivasis were attacked. Six Adivasis and three CZP henchmen were injured. Twenty people, including six women, were arrested the next day while they were attempting to admit the injured to hospital.

Massive police force was brought in and, under their protection, the fencing commenced on April 9. An Anti-CZP Joint Action Committee was formed with 14 organizations including Adivasi organizations, environmental groups, trade unions etc. who commenced a hunger strike. A fact-finding mission was carried out by the All India Coordinating Forum of the Adivasi/Indigenous Peoples (AICFAIP) from April 30 to May 1. Protests were organized in various parts of the state which, for the first time, saw the issue of land coming to the forefront. A boycott of the assembly elections was called for. The arrested Adivasis were released after over a month in prison but threats by CZP continued. Meanwhile, a joint front of Adivasi activists, including the Adivasi-Dalit Samara Samithy of Kerala under the leadership of C. K. Janu, was formed to intensify the struggle. In the last week of May, the demolition of the fence now stretching over a vast area once again commenced. The Irula re-entered the lands and commenced cultivation. On June 12, another 16 Adivasis including

six women were arrested for this. Subsequent to the change of government and changes in the bureaucracy, the officials promised action. The CZP was asked to cease all provocation, as the land itself was disputed land. With the rains, the people slowly returned to the lands and commenced cultivation. For the time being, the status quo rules once more. The struggle itself has brought to the fore the lack of any protective legislation for Adivasis in Tamilnadu. The Central Zoo Authority of the Ministry of Environment and Forests meanwhile confirmed in November that CZP had not been granted permission to set up the zoological park on the said land.

The North-East region

The 250,000 sq km North-East region of the Indian Union, which is tenuously linked to the rest of the country by a corridor less than 22 km wide, is an area of extreme cultural diversity. More than 300 communities in the region are officially recognized as “Scheduled Tribes” in the Indian records of peoples. They are scattered across the seven states of the region, namely Arunachal Pradesh, Assam, Manipur, Mizoram, Nagaland and Tripura. Each tribe has its constellation of sub tribes or clans speaking various dialects, which may run into the hundreds. There are tribes emerging within tribes in the process of discovering themselves as an independent entity in various parts of the region causing upheaval in the north-eastern political set-up. One important characteristic of the region is the existence of ethnic groups that spread across state and international borders into Bangladesh, Burma or China. The region is also home to a large population of non-tribals who have migrated here from other parts of India and from across the porous international border with Bangladesh, which has led to anti-foreigner movements erupting every now and then. The criss-cross of inter- and intra-group relationships, along with the government and other structures at the state, centre and global levels define the parameters of the situation in the region.

Militarization, homelands politics and ethnic armies

The North-East region is one of the most heavily militarized regions in the world. There is the presence of the Indian army and paramilitary forces, along with the various state police organizations. Their task is to defend the territorial integrity of the Indian nation against external forces, and against those forces considered to be insurgents.

Any assessment of the regional situation has to take into consideration India's security concerns, particularly in the backdrop of past events such as the Chinese invasion of India in 1962, and the lurking fear that this could happen again given that it has not withdrawn its claims to large parts of the Indian state of Arunachal Pradesh. In April 2001, the sudden "invasion" of Pyrdiwah town in Meghalaya, right on the Bangladesh border, by the Bangladesh Rifles brought to the fore the vulnerability of micro-communities to macro political happenings between nation states.

Of as much concern in the present historical context is the growing militarization of north-eastern societies and communities as the struggle for "homelands" has spawned a large number of well-organized armed wings of ethnic organizations created to carry forward the "cause of the tribe". The causes range from carving out independent countries, like that of the two factions of the National Socialist Council of Nagalim (NSCN), the United Liberation Front of Asom (ULFA) in Assam, the National Democratic Front of Bodoland (NDFB), the Peoples Liberation Army (PLA) and the United National Liberation Front (UNLF) in Manipur, etc. to demands for a state (e.g. Bodoland Liberation Tigers) to a district council (the Bru National Liberation Front), or the fight against demographic marginalisation in Tripura, such as by the National Liberation Front of Tripura (NLFT) or the Tripura Tribal Force etc.

It is believed that many of these ethnic "armies" have come about in a kind of domino effect, as a self-defense response in an atmosphere of increasingly militant inter-tribal politics. Such a domino effect has resulted in armed organizations mushrooming across the region. Local newspapers report daily on clashes between these various groups and the government security forces, or among the armed organizations themselves.

There are more than three dozen such armed groups, which jealously guard their own turf, the stronger and better organized ones imposing taxes within their areas of influence in order to enforce their authority. The imposition of tax is one of the most frequent causes of inter-tribal feuds. For example, in 2001 the imposition of house taxes on Khasi and Jaintia⁹ households in the border areas of Assam by the United Peoples Democratic Solidarity (UPDS) and Karbi National Volunteers, and the Achik National Volunteers Council in the West Khasi hills areas caused such a reaction that a local pressure group, the Federation of Khasi Jaintia and Garo People (FKJGP) called for the creation of a volunteer force to fight against these forces. Another example of such taxation causing strife surfaced during March 2002

between the Nyshis and the Bodos in villages on the Assam-Arunachal Pradesh border.

According to the annual Union of India Home Ministry Report, there was a total of 1,338 incidents during the year 2001 in the north-east, in which 574 activists of various armed organizations, 176 Indian security personnel and 600 civilians lost their lives. The number of injured and maimed, and the voids left in families due to these, go unaccounted. Battles between armed groups, factional feuds within armed groups of the same community, assassinations and unexplained and secret killings left the region awash in a spiral of bloodshed and violence. According to international bodies studying displacement, there are between 170,000 to 250,000 displaced persons in the region fleeing various ethnic cleansing processes, fears of communal reprisals, persecution and harassment by the army and armed groups etc.

Inter-ethnic conflicts

The year 2001 was a watershed in the turbulent history of post-1947 north-east India. The region came face to face with the grim possibility of multiple large-scale clashes breaking out over the territorial claims of the various communities.

The most significant was the face off between the Nagas and the Meiteis in Manipur over the issue of the territorial extension of the ceasefire between the government of India and the National Socialist Council of Nagalim (Isak-Muivah faction; NSCN-IM). The agreement reached between the government of India and the NSCN-IM in June 2001 extended the ceasefire to all the other states where Nagas live. It coincided with the publication of a map depicting the geographical area of the NSCN-IM's claim for Nagalim, comprising all the territories that they thought "belonged" to the Nagas. This created uproar in neighboring states, fearing that this would eventually undermine their territorial integrity. The government of India had to withdraw the territorial extension of the ceasefire making it applicable only within the state of Nagaland (see also chapter on Nagalim in this volume). During the tense weeks before the withdrawal, it was only the sagacity of the communities' leaders that averted bloody clashes. But the issue remains unresolved, as hostilities are only suspended for the moment.

In Assam, the decision of the government of India and the Assam government to create a Bodoland Territorial Council (BTC) for the Bodos divided the communities living within the areas to be declared under the BTC into those who felt that the BTC would end up sup-

pressing their rights and those who aligned themselves with the Bodos. The Bodos, who have been campaigning for a “Bodoland”, are also divided over the issue with the major armed groups, the Bodo Liberation Tigers (BLT) in favour, and the National Democratic Front of Bodoland (NDFB) against it, since the latter claim to fight for total independence. In the atmosphere of mistrust, people fear that violent clashes may break out.

It has become clearer than ever that the future of the small communities of the region depends on whether these multiple ethnic claims can be addressed and resolved to the satisfaction of all sides. Quite a tough task indeed!

Another important lesson for the people of the north-east that emerged from these experiences is that any resolution of an ethnically-linked issue does not lie with the government of India but with the neighbouring tribes and communities. The prolonged politics of competing homelands based on ethnicity and a notion of self-determination that has fuelled a cycle of conflicting claims backed by military means - which seems to be the favoured method for attaining these objectives - has reached saturation point. A stage has been reached when it has started feeding on itself. The situation has squeezed into oblivion any democratic space for dialogue or expression on the part of the very people in whose name these organizations carry guns. In such circumstances today, there is very little room for free and frank expression of opinion.

Reconciliation among the Nagas

The Naga peace process is crucial for the people of the north-east region as a whole and the process entered a crucial phase this year (see also chapter on Nagalim in this volume). Its importance for the region lies in the belief that most of the other armed organizations in the various states of the region draw their sustenance in the form of training, arms and logistical support from the Naga armed organizations, particularly the National Socialist Council of Nagalim, which successfully sought to, and did, create a broad coalition of ethnic communities in an anti-Indian “colonial” sentiment.

In 2001, due to the cease-fire, Naga civil society seemed for the first time in the 50 year struggle to have gained some control over the violent factionalism among the Nagas and managed to get an all-round agreement that violent methods were to be renounced. In unprecedented acts, the Naga elders - through the *Hoho* and various organizations - issued stern warnings to warring Naga fac-

tions when fratricidal killings during the year threatened to derail the painfully built up reconciliation among the Nagas. But killings and violent attacks are continuing despite their appeals.

In a major breakthrough for the process of building up inter-community understanding, after the June 2001 ceasefire imbroglio, Naga civil society has also started dialogue and interaction with the neighboring tribes and people in recognition of their legitimate interests and apprehensions. However, although this process is continuing in other parts of the region, there are no attempts on either side to bridge the deep rift between the Nagas and the Meiteis. This is crucial for the future of the region.

Growing religious divide

Over the last year, the politicization of religion became a major factor in the ethnic-community equation in the north-east, bringing a totally new dimension to the already vitiated atmosphere. "Indigenous culture of the state is under threat and people are being forcibly converted," said the Chief Minister of Arunachal Pradesh at one cultural meeting calling for resistance against the Christian and Hindu religions. In Tripura, a body called the Uttar Purva Bharat Janjati Dharma Samskirti Suraksha Manch was formed to protect the indigenous religion against Christianisation. Indigenous belief systems, which had been discouraged by the Christian missions, have become a handy tool for the peddlers of militant Hindu nationalism such as the Rashtrya Swayamsevak Sangh (RSS) and the Vishwa Hindu Parishad (VHP) in their campaign, just as Christianity has become a subtle instrument for some of the armed ethnic organizations to spread their influence across the region.

National Commission for Review of the Working of the Constitution

The government of India set up the National Commission for Review of the Working of the Constitution (NCRWC), the recommendations of which were submitted by former Supreme Court Chief Justice MN Venkatachaliah on April 2, 2002. With regard to the north-east, it made several recommendations to widen the self-governing systems of the Sixth Schedule of the Constitution. However, it has failed to satisfy the aspirations of several of the communities' representatives who had sought radical changes in the structure. The documents have been made public to start the process of debate and dialogue.

Notes and references

- 1 The indigenous peoples of mainland India are usually called Adivasi, meaning “original people”. The indigenous peoples of India’s north-eastern region are not called, nor do they refer to themselves as, Adivasi. They prefer the term indigenous or tribal people.
- 2 *Human Rights Watch World Report*,
<http://www.hrw.org/wr2k2/asia6.html>
- 3 *Human Rights Features Quarterly*, January-February 2002: POTO: Govt decides to play judge and jury.
http://www.hrhc.net/sahrdc/hrfquarterly/Jan_march_2002/poto.htm
- 4 Ibid.
- 5 The section on the passing of the Panchayat Extension Act in Jharkhand is partially based on the article by Samar Bosu Mullick “Nationalist Ideology and Tribal Self-rule in Jharkhand”. Mimeo n.d. The author has further provided an update on the most recent developments.
- 6 Maoist guerrilla, named after the Naxalbari region in the North of West-Bengal where the Maoist guerrilla movement started in the 1960s.
- 7 *India Together*: <http://www.indiatogether.org/stories/dewas.htm>
- 8 Oppressed castes, often referred to as “untouchables”. They are not considered indigenous peoples.
- 9 The Khasi and Jaintia are two indigenous ethnic groups that are fairly large and dominant in Meghalaya state but minorities in the adjacent districts across the state border in Assam.



NORTH AND WEST AFRICA

THE SITUATION OF THE AMAZIGH PEOPLES

In North Africa, and particularly in Morocco and Algeria, the year 2001 was characterized by an escalation of repression against the Amazigh Movement in general, stamping down peaceful demonstrations in Algeria and banning meetings in Morocco, and it was characterized by a new decline in the governments' policy towards freedoms and basic rights.

The governments of Libya, Egypt, Tunisia and Mauritania continued to deny the Amazigh people their cultural identity, and continued an extensive Arabization policy, while the Amazigh Movement continued its claim for the right of self-determination in the Canary Islands.

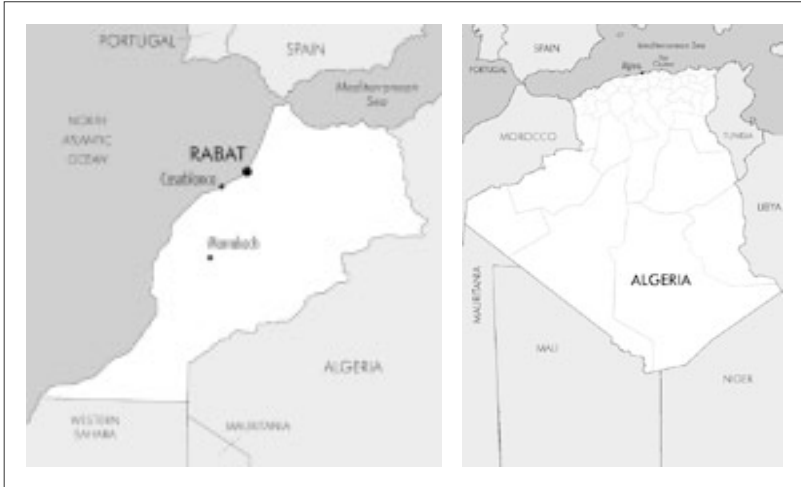
However, positive events also occurred during the year. In Algeria, a constitutional amendment has recognized the Amazigh language as a national language. Similarly, the king of Morocco recognized the Amazigh dimension to Moroccan identity and enacted a Royal Decree to found the Royal Institute for the Amazigh Culture.

Policies in North Africa and the struggle of the Amazigh Movement

The governments of North Africa, particularly in Algeria and Morocco, are continuing the privatization policy in accordance with the recommendations of the World Bank. They are also drawing up reform bills or plans, especially in the fields of investment, justice and public freedoms, and most of these governments have initiated development programs for rural areas.

Although some governments, generally speaking, admit that the majority of people are Amazigh, they take cover behind the "integration" that has resulted from "Islam and Arabic" in order to hinder any change or progress. In the name of "national unity" and "nationalism", they curb freedoms and violate basic human rights and continue to promote integration, assimilation and an extensive policy of Arabization.

However, the Amazigh Cultural and Political Movement has escalated its struggle, particularly in Algeria and Morocco, in order to convince the governments of the futility of the current political integration policies.



Algeria

The uprising of the Amazigh people in Algeria in June 2001

The Amazigh people, under the yoke of oppression and exclusion in Algeria, has been obliged to reorganize itself by reviving its traditional organizations. Accordingly, peaceful demonstrations were organized in the Tizi Ouzou area and in some other neighbouring regions but the authority stamped out these demonstrations with violence, using arms against the peaceful Amazigh people and leading to the deaths of more than one hundred people and thousands of wounded.

These peaceful demonstrations took place unremittingly during the year 2001 and the beginning of the year 2002, which led the Algerian government to attempt to put an end to this movement by creating a so-called group of dialogue. The constitutional amendment that recognizes the Amazigh language as a national language should also be seen as a result of the massacres in the region of Kabylia. However, the Amazigh Movement rejected these manoeuvres and demanded the establishment of a federal system that would assist the Amazigh people in Kabylia to exercise a wider degree of self-determination. The Amazigh people continued to protest and to refuse to support the regime's policy, declaring a full boycott of the regime, its bodies and representatives, and of the elections.

Morocco

The Moroccan government, which underwent a cabinet reshuffle but has not actually changed in three years, with the exception of some ministers, the Minister of the Interior in particular, declared that it had drawn up a number of bills for submission to Parliament during the year 2001, among others, bills concerning the right to strike, political parties, the electoral code, medical cover, the Economic and Social Council, a children's code, the audio-visual mass media, the work code, and a reform of the Social Pact, all of which are to be reviewed during the year 2002.

The publication of the Agreement on the Abolition of Discrimination against Women

After the failure of the Moroccan government, during the year 2000, to implement its plan for integrating women on the basis of recommendations from the World Conference on Women in Beijing, it was decided to publish the Agreement on the Abolition of all Forms of Discrimination against Women on March 08, 2001. This followed the King's reception for a number of prominent figures belonging to the women's movement on 5 March and the creation of a committee to review the Civil Status Code. However, the Amazigh Women's Movement was excluded from participating in this committee.

Despite the importance of this event, the implementation of this agreement in Morocco is not possible. As the Moroccan government stated during ratification of this agreement, there have been some reservations concerning the very idea of equality between men and women, on the pretext that some of its articles are in contradiction with "Islam and the Koran".

The banning of the assembly of the Amazigh Political Movement

The year 2001 was the most active year at the level of national and international initiatives for the Amazigh Cultural Movement. This ultimately led to the banning of many of the Amazigh cultural associations' activities and to the unexpected banning of the right of the Amazigh Political Movement to assemble in Morocco after they had obtained an official and written authorization.

: The Amazigh Statement Committee, which was created in 2000,
: decided to organize its largest meeting in June 2001 in order to discuss
: the political strategy of the Amazigh Cultural Movement. All meas-

ures were taken and the organizers obtained written authorizations for the meeting. However, armed police forces blocked all roads leading to the Bouznika Complex where the meeting was supposed to take place, preventing participants from meeting. The explanation given was that this meeting might cause a breach of the peace. As a consequence, the meeting had to be held in the house of one of the participants. It was decided to create regional committees that would take autonomous initiatives and organize meetings in order to broaden the capacity of the movement to put more pressure on the government.

Recognition of the Amazigh cultural identity

After the armed interdiction of the assembly of the Amazigh Political Movement in June 2001, King Mohammed VI declared, in the Throne Address on July 31, 2001, that he recognized the Amazigh cultural identity. After 45 years of independence, this was the first declaration of the multi-dimensional aspect of Moroccan identity and of the fact that the Amazigh dimension is one of its facets, alongside the Arabic, Islamic, African and Andalusian dimensions. In October 2001, the King declared the creation of the Royal Institute for the Amazigh Culture.

It is noteworthy that the Amazigh Cultural Movement focussed, on the rehabilitation of the Amazigh dimension of Moroccan identity, and the creation of an institute for Amazigh studies, in addition to other basic demands such as constitutional recognition of the Amazigh identity and adoption of the Amazigh language as an official language. Despite this recognition and the Royal decision, Amazigh children are still prevented from taking Amazigh names.

The deteriorating conditions of human rights activists

Human rights activists from the Moroccan Association of Human Rights were tried and prosecuted in May 2001 due to the peaceful demonstration organized on December 10, 2000. They were sentenced to three months imprisonment but an appeal acquitted them at the end of 2001.

Moreover, the newspaper *Demain* was unjustifiably banned from publication for several months and its editor, Mr. Ali Lmarabet, was prosecuted simply because he published information stating that one of the Royal palaces may be sold. He was sentenced to three months imprisonment but refused to submit his case to the Court of Appeals and declared that he was ready to go to prison.

The Amazigh Movement's international activities

The Amazigh Cultural and Political Movement has also endeavoured to put pressure on the North African governments through the United Nations Charter and through international and national conferences. The following are some of these major events.

The International Federation for Human Rights: symbolic support to the Amazigh Language

The World Conference of the International Federation for Human Rights, held in Casablanca during the second week of January 2001, was an opportunity for the Amazigh Cultural Movement, represented by the *Mrik* Association, to raise the Amazigh cause. The conference supported a call for respect of the right to cultural diversity and to rehabilitation of the Amazigh language in North Africa and the world. Despite the opposition of the president of the Moroccan Association for Human Rights, the aforesaid World Conference adopted a major decision of symbolic support for the Amazigh Cultural Movement in terms of increased condemnation of the official and unofficial attitudes that refuse to recognize the right of cultural diversity in Morocco.

The African Commission on Human and Peoples' Rights

The 29th ordinary Session of the African Commission on Human and Peoples' Rights, held in Libya in April-May 2001, was an opportunity to raise the Amazigh cause for the first time within this African body. This was done in cooperation with a number of representatives of African indigenous peoples and in cooperation with IWGIA. During this meeting, participants condemned the massacres perpetrated by the Algerian government against the peaceful demonstrations of the Amazigh people, calling for its rights and for the respect of its linguistic and cultural identity. It was an opportunity to highlight the cause of indigenous peoples in Africa in general and in North Africa in particular, and to call for the establishment of democratic regimes and policies allowing full participation in the cultural and political arena and recognizing the cultural identity of indigenous peoples.

: The World Conference Against Racism

: The Amazigh Cultural Movement participated, through the International Amazigh Congress, the Tigmi Association, the Solidaridad Canaria

Association and the Tamaynout Association together with the international movement of indigenous peoples, in the World Conference against Racism and Racial Discrimination held in Durban, South Africa in August/September 2001. This was a very important event because it adopted, despite all obstacles, the Durban Declaration, which declares the international community's recognition of indigenous peoples and their cultural identity and it also adopted an action plan in order to abolish all forms of discrimination in all political and cultural fields.

Concluding remarks

It clearly appears that things are moving very slowly and sometimes even regressing. Despite this difficult situation, the Amazigh peoples believe in the possibility of progress and victory over all forms of discrimination and violation against human rights and the rights of peoples.

THE SITUATION OF THE TUAREG PEOPLES IN NORTH AND WEST AFRICA

The Tuareg¹ are part of the indigenous Amazigh peoples (generally known as "Berbers") of North Africa.² Their traditional lands range over some 1.5 million sq. kms. of the Central Sahara and Sahel (see map) – an area roughly three times the size of France, their former colonising power. They now find themselves occupying large tracts³ of southern Algeria, northern Mali and Niger, with smaller pockets in Libya, Burkina Faso and Mauritania. Their precise numbers are not known: national censuses either ignore ethnic categories (as in Algeria) or are of dubious accuracy (as in Niger and Mali). Published figures range from 300,000 to 3 million. The southern Tuareg of Niger and Mali probably number around one million and 675,000 respectively.⁴ The northern Tuareg, who inhabit the regions of Ahaggar and Tassili-n-Ajjer in Algeria number some 25,000 (20,000 in Ahaggar; 5,000 in Ajjer).⁵

Although the Tuareg never comprised a single state or political entity, the national boundaries, drawn arbitrarily on a map in Paris, divide what was a single cultural and socio-economic entity. While

generally described as nomadic pastoralists, the traditional Tuareg economies of these regions were both complex and fragile, depending in varying degrees on controlling caravan trade, raiding, animal husbandry (camels, goats, sheep and, in the south, cattle) and forms of “slavery”. Nearly all Tuareg groups maintained close socio-economic relations with the agricultural communities around their margins, notably with the peoples along the Niger River, the millet-producing regions of southern Niger and the oases of Touat and Tidikelt to the north of Ahaggar. Indeed, the traditional economy of many of the Tuareg of the Malian districts of Timbuktu, Gao and even Kidal, can best be described as agro-pastoralism.

The recent histories of these Tuareg populations have been heavily influenced by their respective colonial experiences and, over the last forty or so years, their very different post-colonial histories.

In **Algeria**, at the time of Independence (1962), the Tuareg (Kel Ahaggar and Kel Ajjer)⁶ comprised some 50% of the population of Ahaggar and Ajjer. Today they comprise only 15%. This is partly because of the migration into the region of Algerians escaping the unrest and killing that swept much of the north of the country during the 1990s. Since independence, most Kel Ahaggar and Kel Ajjer have settled in the many small villages and cultivation centres of Ahaggar and Ajjer, as well as in the main town of Tamanrasset (pop. c.100,000). Current surveys indicate that only about 3,000 Algerian Tuareg have managed to retain their nomadic lifestyle. Although Algeria’s Tuareg comprise only 0.1% of the country’s population, their traditional lands cover about 20% of national territory. Notwithstanding a few ‘ups and downs’, Algeria’s Tuareg, compared to those of Mali and Niger, have, however, been fairly well accommodated and integrated into the post-colonial State.⁷ Notwithstanding the prejudice expressed by the state towards nomadism in its formative years, Algeria’s Tuareg have had full access to and benefit from the services and institutions of the state, especially in the fields of education, health care and labour markets.

In contrast to Algeria, the recent history of the Tuareg in both **Niger** and **Mali** has been dominated by their rebellion against their respective governments. The underlying causes of the rebellions in both countries stem from a combination of deep-seated economic and political marginalisation, the roots of which are to be found in the colonial era. Both countries experienced a disastrous cycle of drought from 1965 to 1990, with peak crises around 1973-74 and again in 1984-85. In Mali, food aid destined for the drought-devastated north was embezzled by senior army officers, to be sold off abroad with the proceeds being used to build and furnish luxurious villas, known as



“castles of drought” in Bamako. Similar misappropriations occurred in Niger. The result of the drought and the embezzlement of food relief was such that many Tuareg were forced to abandon their traditional pastoral base and to migrate within their countries, or across the frontiers. In both countries, the Tuareg were effectively excluded from any form of political incorporation into the post-colonial state.

Amongst the Tuareg of Mali, grievances against the government were fuelled by their memories of their earlier rebellion in 1962-64, which President Modibo Keita crushed brutally with the help of fighter-bombers, before imposing a harsh military rule.

Earlier issues of *The Indigenous World*⁸ have given summary accounts of the rebellions that began in 1990. To remind readers of those events:

Brief outline of the Tuareg rebellions

Tuareg rebellions broke out almost simultaneously in both **Mali** and **Niger** in May-June 1990, with attacks by the *Mouvement Populaire de l’Azaouad* (MPA)⁹ against government outposts. The uprisings, which began in Kidal and Menaka in Mali and at Tchén Tabaraden in Niger, were spearheaded by Tuareg combatants known as *ishumar*. This word is the berberisation of the French word *chômeur* meaning “un-

employed". These were the young men who, disillusioned by the repression of their own governments and forced by the droughts of the 1970s and 1980s to search further afield for means to support their families, sought work elsewhere in North Africa. Some went to Algeria but most finished up in Libya where they received military training and came under the influence of Islamic radicals and Colonel Ghadafi's ideas of equality and revolution. Some were incorporated into Libya's regular forces; more entered the Libyan-sponsored "Islamic Legion" and were despatched as Islamic militants to Lebanon, Palestine and Afghanistan. The collapse of the oil price in 1985 led to hundreds of Tuareg being dismissed from the oil fields and returning home unemployed and resentful. They were joined in the following year by those released from Libya's armed forces after Ghadafi's humiliating failure to annex Chad. Finally, the dissolution of the Islamic legion and the Soviet evacuation of Afghanistan led to a further wave of unemployed and restless young men with considerable military experience returning to their home areas. Their Ghadafi-inspired ideas of equality and justice merely added to the further dislocation of traditional society.

After almost two years of rebellion, a *Pacte National* was signed by the government of Mali and the MFUA (*Mouvement et Fronts Unifiés de l'Azouad*)¹⁰ – the various Tuareg and Arab groups who had taken up arms. The agreement provided for a cessation of hostilities, the return of displaced persons, the integration of ex-combatants into the army, better political representation and a ten-year development plan for the northern regions. Despite the signing of the pact, hostilities continued and it was not until 1995 that security conditions improved. The official end of the armed conflict in Mali was marked by a ceremony at Timbuktu in April 1996 at which 3,000 weapons, surrendered by the warring militias, were publicly burnt in a ceremony known as *La Flamme de la Paix*.

The numbers of people killed in the Mali rebellion is not known. Atrocities, perpetrated mostly by the army or local militia, occurred in both countries. Several sources put the number of Tuareg killed in each country at over a thousand.

Although the scale of the rebellion in Niger was smaller than in Mali, it has taken longer to establish the basis for peace. An agreement between the government and the rebel coalition of the *Organisation de la Résistance Armée* (ORA) was signed at Ouagadougou in April 1995. This was followed by a Round Table Conference at Tahoua, similar to the Round Table Conference that preceded the 'Flame of Peace' ceremony at Timbuktu. The aim of the conference, attended by the government, the ORA, traditional chiefs and the donor community,

was to mobilise resources for the rehabilitation of the pastoral zones in the north of the country and to develop a strategy for further development, without which a durable reconciliation of the warring parties could not be envisaged. Although the momentum of the peace agreement was kept going through 1996, it was not until the end of 1997 that the 'cantonment' of the ORA's combatants was completed. Having rejected the Ouagadougou Accord, peace was not negotiated with the *Union des Forces de la Résistance Armée* (UFRA) and its three component movements until 1998, with the last ex-rebel groups not turning in their arms until June 2000 when a peace ceremony, based on the principle of "The Flame of Peace", was held at Agades.

As in Mali, it is impossible to say how many people were killed during the course of the Tuareg rebellion in Niger. Not surprisingly, accounts of events differ wildly. It is still unclear what happened on the night of 7th May 1990 when Tuareg attacked Tchin Tabaraden. Tuareg versions say that a small group of unarmed *ishumar* occupied the gendarmerie as a protest against the arrest of some of their fellows, and that a guard was killed by his own weapon in the ensuing squabble. Official accounts claim that three Tuareg groups attacked the prison, the *sous-préfecture*, gendarmerie and post office, resulting in six deaths. What happened in the army's follow-up operations is still open to grave dispute. According to Tuareg accounts, the Nigerian army, after pulverising Tchin Tabaraden, went on the rampage through the Azaouagh region wiping out every nomadic camp they could find. Occupants were buried or burnt alive, or hacked to pieces. At Tasara 24 people were hanged; at Tillia adolescents were publicly executed; a dozen Tuareg were killed at Maradi and hundreds more wiped out at Tahoua. While the government admitted to 70 deaths, international organisations placed the figure at around 600. The Tuareg claim that at least 1,700 of their number were butchered.

The Toubou revolt and massacre

Niger's rebellion was not limited to the Tuareg. In 1994 the Toubou of eastern Niger allied themselves to their traditional enemies, the Tuareg, and also rebelled against the government. During 1997-98 the army crushed the revolt, causing many Toubou to flee to Nigeria for safety. The signing of a peace agreement between the rebel group, the *Front Démocratique Révolutionnaire* (FDR), and the Niger government at N'Djamena (Chad) in August 1998 might have paved the way for their safe return. However, fearful of returning home, they remained in

Nigeria, only to be rounded up in mid-October by a joint military operation involving Chad, Niger and Nigerian forces. Some 950 refugees were captured and escorted to the border where they were handed over to Niger troops. The women and children were separated from their husbands, who were not seen again. In January 1999, a mass grave containing 150 bodies was discovered on the island of Boul-toungoure, on Lake Chad in the Diffa region. The Niger government denied that there had been any killings in the region but, in April 1999, the High Commissioner for the Restoration of Peace confirmed the existence of the grave and the bodies of the 150 men whose names were published by the press.

The repatriation of refugees

While the number of people actually killed in the rebellions in each country may have numbered no more than one or two thousand, the effect of the rebellions and the way in which they were crushed has been devastating. The number of people who fled or were uprooted in the course of the rebellions will never be known precisely. The number who fled from Mali to Algeria, Burkina Faso, Mauritania and Niger is estimated at 150,000, while an estimated 15-20,000 fled from Niger to Algeria and Burkina Faso. The repatriation of these refugees has been a major undertaking. It began with spontaneous returns in 1995 and ended in June 1999 with movements that were almost entirely UNHCR assisted. The official UNHCR returnee statistics for the period April 1995 to November 1998 are as follows:

	Organised	Facilitated	Spontaneous	Total
Mauritania	18,656	21,041	4,015	43,712
Burkina Faso	4,710	16,375	2,877	23,962
Algeria	7,691	265	42,748	50,704
Niger	1,091	2,928	8,704	12,723
Senegal	679	0	0	679
Total	32,827	40,609		131,780

The total level of forced displacements in both countries is likely to have been much higher. The number of formerly uprooted persons residing in the returnee sites assisted by the UNHCR programme in Mali was estimated at 305,000. This amounts to 25% of the total

estimated population of northern Mali. If persons uprooted by the Niger conflict are included, then we are probably dealing with a figure approaching half a million: that is approximately a quarter of the entire estimated Tuareg population. It should also be remembered that large numbers of Tuareg had already moved into other areas of their own countries or across frontiers, especially from both Mali and Niger into Algeria, in their attempt to escape the devastation caused by the vicious cycle of drought. Many of these Tuareg have not, and probably will never, return to their original homes. Many Malian and Nigerian Tuareg who crossed into Algeria either to escape the devastation of drought or the conflict are still to be found there, many of them having intermarried with the local population.

The establishment of resettlement sites

Major steps towards the reconstruction of civilian life in northern Mali have been achieved through the UNHCR-funded returnee assistance programme, which was implemented in collaboration with the World Food Programme (WFP) and eleven NGO implementing partners. The programme, which ran from 1995 to June 1999, provided assistance to 638 returnee sites throughout northern Mali. 287 wells were dug or rehabilitated, 123 boreholes drilled and numerous solar or diesel water pumps installed. Food distributions and food-for-work programmes were organised and loans and grants made available to large numbers of individuals and local associations.

Evaluations of the programme have highlighted a number of successes and failures. The programme's overall success has stemmed from two principle factors: the decision to allow the selection of rehabilitation to be made by the returnees themselves and the integrated community focus adopted by the programme. The programme's shortcomings have been the slow and inadequate funding response from donors; its decision not to support measures to help in the rehabilitation of livestock for the pastoral communities, thus favouring sedentarisation at the expense of pastoralism, despite the fact that pastoralism has been the traditional occupation of many beneficiaries; and its short-term nature. Aware of these shortcomings, UNHCR secured the cooperation of partners willing to continue the work. One such partner, namely Programme Mali-Nord (PMN), funded by the German Agency *Gesellschaft für technische Zusammenarbeit* (GTZ), which operates in the Timbuktu region in a zone between the Niger river and the Mauritanian border, has been immensely successful. By contrast,

the areas of Kidal and Gourma-Rharous have seen far less input from both the government and development agencies. The Kidal Zone has fallen under an IFAD-funded programme known as PSARK (*Projet de Sécurité Alimentaire et des Revenus de la Zone de Kidal*) since as long ago as 1989. Regrettably the project has achieved little, being bogged down in labyrinthine bureaucratic procedures that have rendered it as part of the problem rather than part of the solution.

UNHCR in Mali would have been wise to have followed the example of Niger and appoint a consultant to formulate proposals for multi-year development projects covering the longer-term needs of vulnerable communities, especially in regard to the rehabilitation of livestock. However, the development and implementation of such projects in **Niger** has been hampered by the overthrow of democratic rule and the continued widespread violation of human rights. In 1996, Ibrahim Baré Mainassara overthrew the elected President Mahamane Ousmane. Three years later, in April 1999, Mainassara was himself gunned down by his own presidential bodyguard in what Major Daouda Malam Wanké, who took over the reins of power, described as an “unfortunate accident”. Although Wanké allowed elections to be held in November 1999, leading to the return of democratic rule in the personage of Mamadou Tandja, human rights violations have continued. Most serious is the incorporation in the new Constitution, and affirmed by a new law in Parliament in January 2000, of an amnesty to the perpetrators of the human rights violations that occurred in the coups of 1996 and 1999. The enshrinement of impunity in the new Constitution means that no inquiry has been held into the killing of President Mainassara, nor for that matter into either the Toubou massacre on Bouloungoure island or the Tchín Tabaraden massacre of Tuareg in 1990. The result of the overthrow of democratic rule and the violation of human rights was that many international donors, including the French government, suspended international aid to Niger – a measure that further exacerbated the plight of Tuareg returnees who, at that time, were being resettled in the regions of Tahoua and Agades. Their situation deteriorated further as a result of Mainassara’s rule coinciding with three consecutive years of drought. If that was not enough, Niger’s return to democracy at the end of 1999 coincided with an even more severe year of drought, reducing the 2000 harvest to almost complete failure. This meant that some 3.5 to 4 million people, more than a third of the country’s population, were facing severe famine by mid-2001. The situation, made worse by delayed and inadequate international aid, saw entire populations being displaced in the futile search for food. Much of the country

has undergone massive environmental degradation as hapless peasants have chopped down trees to sell them as firewood and earn money. The year's drought was reckoned to be as devastating as that of 1984. Appeals for food aid led to a mere 26,000 tons of food being donated, mostly from Nigeria. The year has also seen thousands of people contracting and several hundred dying from a severe epidemic of cerebro-spinal meningitis. However, good rains began in June (2001) with above average and well distributed rainfall continuing through the crucial summer months until September. This means that 2001-2002 will produce enough grain to leave only 16% of the population (according to the Famine Early Warning System) facing food insecurity in 2002. The rains also brought extensive outbreaks of typhoid fever, with hundreds of cases being reported to the north of Agades.

The good rains of 2001-2002, said to be the heaviest in forty years in **Mali**, brought heavy flooding in Bamako and elsewhere along the Niger. On the positive side, however, Mali expects to produce surplus food this year and is unlikely to require any food aid between February 2002 and the next harvest in September-October. The rains have also been a rare blessing for pastoralists.

Mali's good harvest comes with a new President. The charismatic ex-General Amadou Toumani Touré, the man who once said "only an idiot" would want to be Mali's head of state, was confirmed as President on 23 May 2002 after two rounds of voting.¹¹ He succeeds Alpha Oumar Konaré who served two five-year terms (1992-2002) after Touré, then head of the paratroop battalion, had arrested the corrupt dictator, General Moussa Traoré (1976-1991) and set up an interim government to hold free elections. Konaré and Touré have both played major roles in the country's transition to democracy and in the successful peace-making with the predominantly Tuareg rebel movements. Touré's espousal of economic reform, political openness and human rights forebodes well for Mali's immediate future.

The roles of Algeria and Libya

Notwithstanding her own political crisis of the last decade, **Algeria** has played a major and ongoing role in trying to resolve what has generally been referred to in both Mali and Niger as the "Tuareg problem" and so bring peace and stability to the region. This role has, of course, been one of enlightened self-interest but it stands in marked contrast to that of **Libya's** Colonel Ghadafi who has been the single most destabilising force throughout the Sahel and much of the Central Sahara for some time.

A new era of banditry

There is a danger in seeing the withdrawal of UNHCR support in 1999, the return to democratic rule in Niger in 1999 and the 2002 elections in Mali, along with the abundant rains of 2001, as marking some sort of “closure” to the story of the Tuareg rebellion. The future stability and security of what are regarded as traditional “Tuareg areas” – **northern Mali, northern Niger and southern Algeria** – have most certainly not been achieved. On the contrary, the last three or four years, from about 1998, perhaps a little earlier, have seen much of this zone, especially the immense Azaouagh valley region that extends south-westwards from Tamesna into the Kidal and Menaka regions of Mali, becoming the focus of a new form of banditry and the fulcrum for the future political stability and security of this large corner of Africa. Banditry in the region has not only increased in the last decade or so as a result of the return of the *ishumar*, the opportunities for smuggling and the circulation of small arms throughout the region but it has taken on a new form and scale since the late 1990s with the arrival in the region of one of Algeria’s more colourful outlaws, a certain Mokhtar Ben Mokhtar. A Metlilli Chaamba (not a Tuareg), Mokhtar initially outlawed himself from the Algerian state when, after a spell in Afghanistan (where he reputedly lost an eye), he sought to revenge the death of his brother who had been shot by police when caught in a smuggling heist. By 1998 his “war against the Algerian state” (not its peoples, he was careful to point out) resulted in many of the roads in southern Algeria, especially the main highway from In Salah to Tamanrasset, being unsafe for travel unless protected by military convoy. In the second half of 1998, his small but well-armed band is reputed to have hijacked 365 4WD vehicles, mostly from the Algerian gendarmerie, oil companies and other state organisations. He is also said to have shot down a military aircraft. By 1999, Algeria’s security forces had gone on the offensive and effectively forced him to hole up in the vast and little known Azaouagh valley, where his presence (described as “terrorist threats from dissident Tuaregs and GIA fundamentalists”) led to the cancellation in January 2000 of the Niger leg of the Paris-Dakar-Cairo rally. With the strengthening of Algerian security, including hot pursuit operations by helicopter gunships across Algeria’s southern border, Mokhtar’s activities have moved increasingly from his professed war against the Algerian state, to the management of large-scale smuggling of cigarettes, armaments, and the training and provisioning of the GIA.¹² More dangerous to the stability and security of the region than Mokh-

tar's own activities are the unknown number of "copycats" and associated networks that he has spawned, and the attraction that his activities and reputedly fundamentalist ideology offer to the many, mostly unemployed young men of the region.

The reason why this sort of banditry has been able to establish itself in this region is simply because the "space was left open for them" by the failure of the above-mentioned development agencies to establish themselves in these areas. This failure stems from both the UN's and other donor agencies' refusal to fund the required level of security that neither Mali or Niger have been able to provide.

The further development of this form of banditry, on such a scale and over such an extensive geographical area, is not only a major impediment to the future social, political and economic development of much of northern Mali and northern Niger, and therefore the well-being of the Tuareg themselves, but it threatens the stability and security of much of the Sahel and Central Sahara.

Renewed political confidence and consciousness

In conclusion, it should be noted that the events outlined in this article, most notably the Tuareg rebellions in Niger and Mali and the subsequent movement and displacement of individual Tuareg families and groups over the traditional Tuareg regions of Algeria, Mali, Niger and beyond, are having profound social and political implications, not the least of which has been to activate long dormant social (kinship, tribal, etc.) ties between regions that have been transferred from the "Tuareg domain" to "national domains" by arbitrary lines on a map. Heads have been turned to what has been going on in each other's countries. Access to new technologies, notably the phone and Internet, along with an increased knowledge and awareness of international conventions on human and indigenous rights, is giving the peoples of these regions renewed political confidence and consciousness. In the summer of 2001, Algeria's President Abdelaziz Bouteflika visited the south to be greeted in Illizi and Djanet with a signed "petition" demanding the removal from office of the *wali*,¹³ and on the streets by a mixture of respect and ribald chanting, the message of which was quite clear: "If he (the North) didn't want the South to be part of Algeria, he was just to let them know!" He noted the mood and, on his return to Algiers, the *wali* was duly dismissed. The northern Tuareg are once again looking south, and the southern Tuareg are looking towards the north.

Notes and references

- 1 The word “Tuareg” is an Arabic designation and rarely used by the Tuareg, except in conversation with outsiders who they know will probably not understand their complex terms of self-designation, which tend to refer to their own social categories, embracing such things as descent group membership, social class, language and residency.
- 2 See *The Indigenous World* 2000-2001, p. 226. More or less at the time of the publication of this issue (April 2001), unwarranted shootings of detainees by gendarmes in Kabylia triggered off widespread Berber unrest with demonstrations and violence spreading into many other regions, including the capital Algiers. After a year of almost continuous protest and unrest by Amazigh peoples in the north of the country, the government finally announced in April 2002 that Amazigh (Berber) would henceforth be recognised as a national language.
- 3 Approx. half a million square kilometres in each of Algeria, Mali and Niger.
- 4 Based on national, but probably very inaccurate, data.
- 5 There are a few thousand Tuareg in Libya in the regions of Ghat, Ghadames and the Murzuq.
- 6 Kel means “people of”.
- 7 A collection of eight contemporary research papers, detailing the situation of Algeria’s Tuareg, is being prepared as a “Special Issue”, (entitled: *The Tuareg of Algeria: Social Change and indigenous Rights*) of the Journal of North African Studies. Publication is expected in 2003, vol. 8 number 2.
- 8 See previous issues of *The Indigenous World* during the 1990s, up to and including the Yearbook for 1997-98.
- 9 *Azaoua* (*Azawa*) is the word for an eating bowl as well as the name of a depression north of Timbuktu. The term has come to signify all Mali’s northern regions of Timbuktu, Gao and Kidal.
- 10 The MFUA comprised: the *Armée révolutionnaire de libération de l’Azaouad* (ARLA); the *Front islamique arabe de l’Azaouad* (FIAA); the *Front populaire de libération de l’Azaouad* (FPLA); the *Mouvement populaire de l’Azaouad* (MPA). In 1994, fighting broke out between the MPA and ARLA for control of Kidal, after which the ARLA split, with the majority accepting the dominance of the MPA and a minority making an alliance with the FPLA.
- 11 Touré received 65% of the vote, but from less than 20% of the registered electors.
- 12 His death has been reported in the media on about six occasions.
- 13 The head of the regional civil administration, appointed by the President.



EAST AFRICA

ETHIOPIA

Political crisis

A series of events that shook the fundamental political ideology of the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) took place in the year under review. Students at the Addis Ababa University demonstrated against the deplorable situation on campus. These general protests led to the death of over 41 students and other demonstrators, arrests of civilian population, political opposition parties' members and other prominent human rights activists. Furthermore, the killing of Kifle Gebremedin, senior Tigray Peoples Liberation Front (TPLF) cadre and head of security operations in the government was a serious setback to the political process in the country. His death, added to power struggles and divisions within the ruling TPLF/EPRDF political party, gave room for serious doubts regarding the process of democracy building.

The crisis within the ruling political party has now temporarily come to an end. Yet the long-term general effects on the indigenous population of the country deserve special attention. It is important to consider whether the political crisis has brought any meaningful change to the current constitution or administrative structure that recognizes various indigenous peoples' territories in the country. In all its colorful provisions, including a hypothetical clause on the right to self-determination, the current Federal constitution should not be denied its potential significance to the indigenous population. The constitution embodies major international instruments that Ethiopia, through its UN membership, has ratified, signed, adopted and has obligations to respect and honor. However, many indigenous peoples' states (states such as Gambela, Somali, Afar and Benishungule-Gumuze) face numerous difficulties in implementing their constitutional rights due to manipulation of political and economic processes by the federal authorities.

The spill over of the TPLF political crisis has manifested itself in the Gambela state, where serious divisions within the Nuer ethnic group have occurred as part of a political power struggle. The effects have been devastating for the ambitions and the aspirations of the indigenous people in the region. In response to the conflict, central government restricted the activities of the umbrella organization, the Gambela Peoples Democratic Front (GPDF) and the Nuer-based political party the Gambela Peoples Democratic Unity Party (GPDUP).



The restriction on these EPRDF allied political parties has exposed the failure of its cadres to sustain durable peace between different ethnic groups and within ethnic groups. The GPDF was a creation of the EPRDF leadership aimed at eliminating the remnants of the grass-roots liberation organization, the Gambela Peoples Liberation Movement. Three people were killed, 18 were injured and more than 100 innocent Nuer people were arrested during the conflict.

Oil exploration

The threat to the indigenous Anuak people caused by the first phase of oil exploration in their areas came to an end when the Canadian oil company involved pulled out at the last minute. Yet, the matter is far from over. Recently, a high level Ethiopian delegation led by Prime Minister Meles Zenawi visited Russia, where it was reported to have undertaken an exploration deal in the Gambela area. As in the case of the first negotiations with the Canadian oil company, consultations have not been conducted with the affected indigenous peoples. In the negotiations with the Russians, the same trend has availed itself again, as the consent of the indigenous people is not being taken into account and they are being entirely isolated in the negotiation process.

Ethiopia's oil exploration strategies pose a serious potential threat to the indigenous peoples in Ethiopia. Whether these strategies may entirely eliminate the indigenous peoples and dispossess them of their land remains to be seen.

Under the pretext of international border peace-keeping, three military camps are in the process of being designated and will soon be in operation. According to a report from the region, these sites will include two areas under scrutiny for oil exploration: Adhura and Jor. The third site is located in the airport under military control a few miles from Gambela town. These additional military sites will undoubtedly increase the military personnel in the region, which would make life more difficult than ever. Despite the security concern of the government, the establishment of the military sites is believed to be an advance preparation for oil exploration in the nation.

For exploration purposes and other reasons, the army division that was previously located at Jimma to command the military activities of the western part of the country has been moved to Gambela, threatening the free movement of the indigenous population in the area. Many innocent indigenous people have fallen victim to their operations.

Ethnic conflict

War does not erupt overnight. No matter how disparate or complex a society may be, communal violence does not erupt unprovoked. Inevitably, it is the manifestation of accumulated hostility and aggression between opposing sides...

Conflict often breaks out when one side has the capacity to incite violence, while the other neither has the means of defending itself, nor the means to counter-attack.¹

Neither the Anuak nor the Majanger people, who were involved in a bloody conflict in early 2001, had the capacity or the motive to incite the violence. The ethnic conflict that took place in Godere and which devastated the neighbouring districts both economically and socially cannot be attributed to the two affected groups as such. Historically, the Anuak and Majanger ethnic groups have lived side by side without any sign of conflict or hostilities. Accumulated hostilities and aggression of any sort have hardly been noticed in their relationship. It seems that the conflict erupted after a group of Anuak women and men were tortured, raped and killed by members of radical Majanger

people. Following this tragic incident, wide-ranging killings of innocent men and women from both sides took place, and destruction of property and displacement of innocent inhabitants from the neighbouring districts - Gog, Abwobo and Godare, were widely reported. The federal authorities have remained silent on such high-scale ethnic conflicts that claim the lives of children, women, and the elderly, who are incapable of defending themselves. No attempt has been made to investigate the cause of the ethnic conflict and bring those responsible to justice. Nor has there been any local or national media reports on the conflict. Unlike many other areas in the country, the Gambela area is unofficially restricted from international media coverage.

Education

In Ethiopia, which is a multiethnic society, the education system reflects the typical Abyssinian culture and language. Amharic remains the dominant language throughout the country and, until the overthrow of military rule in 1991, there was no serious interest in incorporating other languages.

The 1994 Education and Language Policy of the transitional government of Ethiopia, which accorded indigenous peoples' languages equal rights, was a cornerstone in the positive implementation of the international instruments that had been accorded lip service by successive governments in the country. This unique departure from assimilationist and culturally destructive policies was reaffirmed by the provisions of the 1994 Constitution, which recognizes that all Ethiopian languages enjoy equal state recognition. Furthermore, the Constitution remains a point of reference for its provision that the federation members have the right to determine their respective working languages (Ethiopian Constitution 1994:article 5). However, progress in achieving this social sector policy in the indigenous territories has, for various reasons, lagged behind.

In recent years, efforts to undermine indigenous languages have been underway, including setting up separate schools in the indigenous territories that provide education in the Amharic language. In the case of Gambela, the strategy to undermine the indigenous peoples' languages came into effect in 2000. A separate school that provides education in Amharic is now in operation, providing education to a small exclusive sector of the society.

There is no doubt that the existence of a separate education system accessible only to a few community members will, in the long run, act

as a power base within the nation. The majority of indigenous children who are to build up the nation will be discriminated since Amharic, which still serves as the official language at both federal and state level, is given special status over indigenous languages. Given the past political battle of 1995 within the state, which made the Amharic language and culture a dominant criterion in the competition for power, it is obvious that this trend is a recipe for discrimination. During the 1995 political power struggle between Gambela nationalists and Ahmaranized indigenous groups, the immigrant highland population in the towns entirely supported a cultural assimilation policy towards the indigenous people.

Hence, there is no doubt that in the long run such an education system will favor a few indigenous people; mainly children of those in power within the movement and those few who would be capable of sponsoring their children.

Local elections

Local elections in many parts of the country - Afar, Tigray, Amhara and Oromia - took place in February/March 2001 with the exception of the southern parts, where local elections were held toward the end of the year. It is not clear as to when democratic local elections in the Gambela, Somali and Benishangul-Gumuz states, whose peoples are being kept waiting to cast their ballots, will be held.

As the rainy season approaches, the local elections in these states of the country can hardly be anticipated to take place in this reporting period. There are obvious reasons for the Ethiopian government to delay local elections in these sensitive regions. Grassroots indigenous political parties opposed to the EPRDF and its regional allies enjoy the majority support in these areas. It is therefore an important technique of the Ethiopian government to delay elections in these regions where the opposition parties have a mass supporter base as compared to the EPRDF-controlled political parties in order to control the indigenous grassroots parties.

Imbalance in participation

- ∴ Ethiopia as a modern entity came into existence through conquest and
- ∴ mere claim of virtually autonomous nations in the west, south and
- ∴ east. During its history of expansion, its leaders have done little to

help the newly acquired territories participate in countrywide development and in economic and social policy and program formulation. While the economy of the country is built on resources from territories mainly in the southern, western and eastern part of the country, the people in those areas have been mere recipients of policies and programs, some which do not take into account their socio-economic background.

Little could be said about the involvement of the indigenous people in the countrywide decision-making process during the imperial and military regimes. Rendered second-class citizens, their potential and capacity were deemed invaluable. A new departure ought to take place during the current regime, which claims to promote democratic governance and a federal form of administrative arrangement. Yet, since it took power in 1991, the EPRDF government has closed the doors to indigenous participation in important policies and programs of the country. There has thus not been any cabinet minister or any vice ministerial position for any candidate from Gambela or Benishungul Gumuze states.

For unclear reasons, their participation has been limited to the Foreign Service where a couple of them have been appointed to the Ethiopian representative missions. Being far away from the decision-making process, their influence may, however, be limited.

Reference

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REGIONAL PROCESSES

The East African Legislative Assembly and the gender factor

The process of regional cooperation between the three East African states (Kenya, Tanzania and Uganda) has continued and, by the end of the year, it culminated in the creation of the East African Court of Justice and the East African Legislative Assembly. The President of the court is Kenya's High Court Judge, Moijo Ole Keiwua, whose

appointment was much celebrated by the Maasai who see in it the opportunity for them to forge closer ties between the communities that have been split by the political boundary. However, so far on paper the court has largely been mandated to handle legal affairs between states, despite the fact that there are many issues between communities that the people themselves see as needing resolution by the court. Nevertheless, bringing the court down from the affairs of states and closer to the issues of communities is going to be a challenge. The Kenyan media refers to such interests as “narrow” and “parochial”.

The highlight in the nominations for the East African Legislative Assembly is the gender factor. It came about in the allocation of seats, whereby women were to be granted a number of seats by each state. However, in Kenya, while opposition parties complied with the numbers of women nominees, the ruling party, KANU was not quite prepared. It could only afford one seat and even that one was allocated to the wife of one of the cabinet Ministers. Although the nominee was appointed in her own right, the move sent the message that the ruling party was seeking to control the affairs of the East African Parliament in its favour. The reluctance to grant women rights, however, led to the conclusion that, of the three East African countries, Kenya is the country in which gender relations are most strained. The other two countries have developed traditions of setting-aside one third of parliamentary and local authority seats for women, with Uganda going the furthest by having a woman Vice President.

Maa Cultural Festival in Nairobi

The annual Maa Cultural Festival in Nairobi was again hosted this year by the Reto Women’s Association. This is a Maasai women’s organization that includes women from five districts of Kenya Masailand and which also networks with Tanzanian counterparts. The Festival brought together all five sections of the Maa community (Masai, Samburu, Iltiamus, Arusha and Parakuyo) to celebrate and promote their culture. A total of around 800 attended of whom 100 were from Tanzania. The participation of the Tanzania group was made possible with support from IWGIA.

The occasion was also used to strategise together on ways to protect, promote and revive Maa culture and identity. Cultural festivals provide a perfect opportunity for the Maasai people to build cross-border collaboration and revive some cultural things that would otherwise be lost. The public at large was informed about the richness

of Maa culture and the occasion was used to prepare the groundwork for future Maa cultural promotion.

Strategically, it was decided that cultural festivals should be used in future:

- To enhance the unity of Maa people in different areas.
- To strengthen Maa people and organizations through enhancing managerial capacity.
- To act as a link between Maa people and organisations in Kenya and Tanzania.
- To advocate and lobby on issues of primary concern for Maa cultural heritage.
- To serve as a watchdog for misuse and abuse of Maa names and culture.
- To facilitate a process in which advocacy and lobbying issues are jointly identified, analyzed and addressed.
- To provide support to needy organizations in terms of fund-raising, information, links, skills, etc.
- To work for the promotion and enhancement of representation of Maa people in relevant government, political and social structures.

During the interaction and consultations between Kenya and Tanzania Maasai, various issues were discussed, such as the use of the word Maasai by different businesses. Examples were shared e.g Maasai Hotel, Maasai studio, Maasai Camp, Maasai tours, Maasai Giraffe, Maasai Park, Maasai Curio shop, etc, etc – the list was endless and yet the Maasai themselves did not and do not have anything to do with such premises. Often, the Maasai were neither the owners nor the beneficiaries of such businesses. Although there are many other ethnic groups in both Kenya and Tanzania, you hardly hear any business premises with the name Wanyaturu Camp, Wakwere Hotel, Kikuyu, Chagga etc

During the consultations held between the Maasai from Kenya and Tanzania, discussions were held on how to revive some indigenous symbols that were used by the Maasai to signify property rights and whether the same symbols could be adopted and used for copy-right purposes. The Maa people traditionally used “*Ormishire*” (branding) and “*Orponoto*” (ear notching) as symbols to mark livestock ownership. These symbols were used to establish the relationship between property (livestock) and owners (specific Maasai clans). It was proposed that such symbols should be revived and used to mark

and protect different things (cultural items such as artefacts) that belong to the Maasai people and culture. These symbols will again serve as a copyright for anything Maasai. “*Ormishire*” was put as an identity on one’s property meaning that, if you could identify your property, no one could claim or use it without your consent. Why is it that the Maasai cannot have the patent rights over their own traditional items such as dress and ornaments? Some concrete steps were proposed to be taken collectively in order to affirm Maasai rights to their resource base, identity, language and culture as a whole.

One such step that it was decided to take was an attempt to preserve and promote the Maasai language, which was seen by all as the soul of Maasai culture and identity but one that is slowly disappearing, especially among Maasai professionals who live and work outside of their indigenous communities.

Language is a repository of culture and, as such, it is the essence of one’s own identity. It serves as a unifying factor among different Maa groupings in both Kenya and Tanzania. Participants of the Festival felt that if the Maa language were lost, the Maasai as a community would also lose their unity, culture, identity and pride.

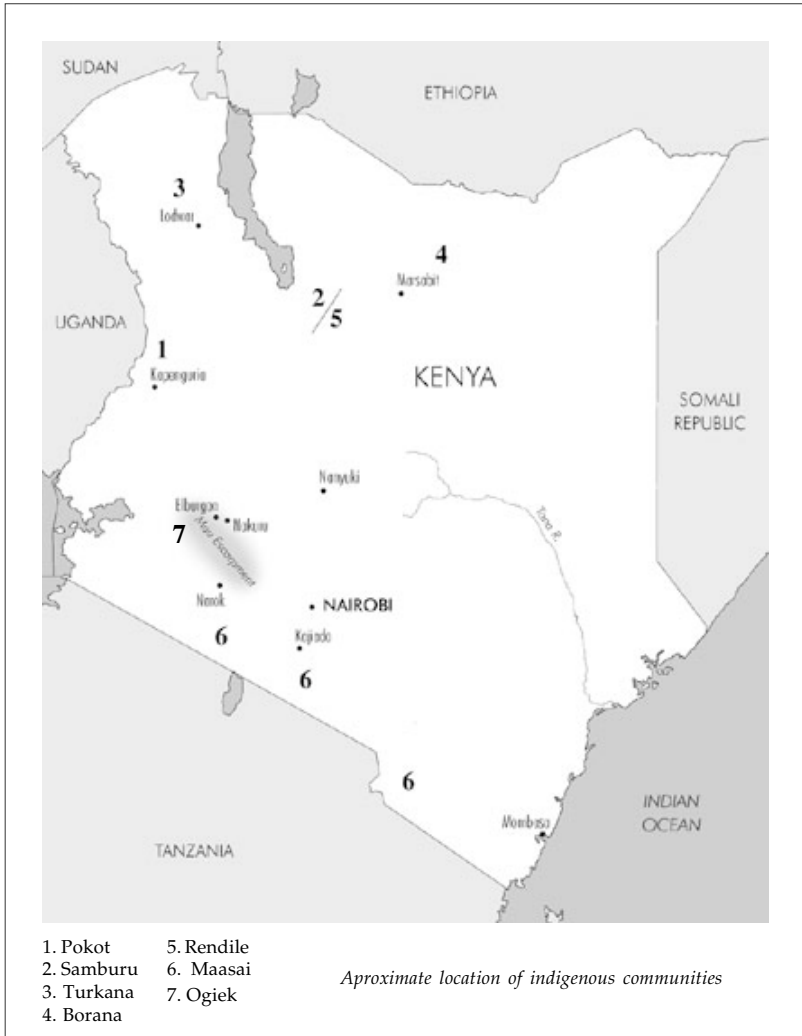
KENYA

The events that have a bearing on the lives of indigenous peoples in Kenya in the year 2001 include the following:

1. The constitutional review process
2. The Ogiek case
3. The Pokot claims for lost territory
4. The creation of the Maa Pastoralist Council
5. Clashes between farmers and pastoralists

The constitutional review process

: The constitutional review process that had stalled a year ago was
: back on track by the early part of 2001. The Ufungamano Initiative¹
: finally agreed in principle on a common process for the review of the



Kenya constitution. This breakthrough paved the way for the eventual merger of the two groups in the Kenya Constitution Review Commission (KCRC). The thirteen points to be agreed upon by the two rival bodies were endorsed and the chairman of the KCRC agreed to be sworn in along with commissioners from a cross-section of societies in the country. During the next several months, the KCRC conducted seminars to seek expert views on a wide range of topics including land, governance and cultural rights. These are the areas where indig-

enous issues are at variance with those of the mainstream societies. The appointment of district coordinators was riddled with controversy following claims by some districts that the persons appointed to act as coordinators in their districts were not originally from the district and that they should be replaced by an indigenous person from the same district. The commission accepted the views of the community and agreed to replace the coordinators. However, by the end of the year the replacements had not been effected and this undermined the review process in the districts since the communities were not prepared to present their views to the commission during their visit to the districts. Kajiado, a district occupied by the Maasai, was one of the districts affected by this problem.

Although the review process then proceeded as planned, the year ended and parliament adjourned for a three month Christmas recess without passing the Constitution of Kenya Review (Amendment) Act 2001, which would entrench the review process in the constitution. The passing of this Bill was deemed significant since it would safeguard the constitutional review process from political manipulation. Fear was expressed by the opposition parties that the President might use his powers to disband the commission should it be seen to be going against the political interests of the ruling party and its allies. The review process was still not compatible with section 47 of the constitution, which means that it could still be challenged in a court of law. Section 47 (2) states that, "A Bill or an Act of parliament to alter the constitution shall not be passed by the national Assembly unless it has been supported on the second and third readings by the votes of not less than 65% of all the members of the Assembly." This was not done in respect of the review Act.

As it is, the constituency forums, the national constitutional forum and the referendum provision are not provided for in the current constitution. This has made it difficult for the constitutional review team to capture the full attention of the public since there is fear that it would be disbanded in midstream, as has happened to other commissions. However, the commission is still in place and the fear still persists.

The Ogiek case

- : During the past year, the Ogiek case for rights to ancestral territory
- : has continued to occupy the headlines. The legal battle is against the
- : Kenya government over rights to the East Mau forest. The area had

been declared a protected forest area leading to the eviction of about 5,000 Ogiek who have since been made homeless and are without means of livelihood.

Some of the gazetted area is said to be protected for the customary territorial and foraging rights of the Ogiek, yet the Ogiek are kept away from the area. At the same time, no effort has gone into protecting the area against possible encroachment and logging. Instead, the government has allocated some of the forest to outsiders to be used for other purposes. The Ogiek took the matter to court and the High Court declared an injunction on any further land allocations until the dispute had been resolved. Despite this injunction, however, the Ogiek have suffered continued harassment and threats of eviction. By the end of the year, the case was dismissed on a technicality but the Ogiek have appealed.

The year also saw the Ogiek celebrate a cultural festival during the middle of the year which, among other advantages, served to cement relations between the dispersed Ogiek groups as well as create unity of purpose, particularly on the issue of territory.

The Pokot by-elections and claims for lost territory

When, in the year 2000, the Pokot representative tried to defend the rights of Pokot to their ancestral land, he was called a “national enemy”, a “tribalist”, an “inciter”, a creator of “unnecessary animosity” by the mainstream media. He was accused of dividing Kenyans along tribal lines, and reminded that Kenyans were free to own land anywhere in the country. One person even advised him to leave politics since his outbursts bordered on hatred, etc. (*People*, 3 February, 2000).

The passing away of Hon. Lotondo, the long-serving radical member of parliament who was much revered by the Pokot, has led, through a by-election, to his being replaced by an equally radical representative, Samuel Moroto. The campaign attracted much attention and the government came out strongly in support of a candidate who was not favoured by the majority of the Pokot. A highly placed government official was said to have visited the area to campaign for the preferred candidate. Like most indigenous marginalized people in Kenya, the Pokot have always supported the ruling party, KANU. However, like other people they also have very serious problems with the party. Since it has become increasingly difficult to rig elections in opposition-controlled areas, it is an open secret that the ruling party contin-

ues to rig elections in other parts of the country. The usual intention of the party is to select candidates who may be useful for the party, although not necessarily for the people. The process, which is quite widespread, results in the selection of unpopular leaders who can be easily manipulated by the party for any number of reasons.

According to the Pokot, the same thing was going to happen with them. When they sensed it, they quickly developed criteria that would have to be met by a suitable leader. Of these criteria, the most important one, and one that could be of value to other indigenous peoples in similar circumstances, was that the potential candidate would have to demonstrate total allegiance, first and foremost to the Pokot and secondly to the party. Not the other way around. The candidate who was favoured by the government had these criteria flipped upside down which, according to the Pokot, would make him a representative of the government, not of the Pokot. Since the new member of parliament met the criteria for a good leader, the Pokot felt that they triumphed in the end.

The Pokot have also continued to lobby and campaign during the year and recently the government has returned two farms (Mwisho Farm and Chepchoina Farm) that were taken from them during the colonial period. Despite the recent gains, however, the Pokot are still demanding the rest of their former ancestral lands from the Kenya government. The discussion presently centres on a 40 sq. km strip of land that was used to resettle outsiders. Some of the land is in Baringo, the President's constituency and has unilaterally been renamed "Pokot East" by the Pokot. The claims, as well as gains, so far made by the Pokot, set positive precedents for other indigenous peoples in similar circumstances.

Following an influx of illegal firearms into the northern zone, cattle raids have turned into serious armed conflicts, polarizing relations between the various groups and making the whole region insecure. The government has paid little attention to these conflicts besides attempting - with little success - to disarm the residents. Other pastoralist communities occupying the northern parts of the country who are equally affected by the conflict include the Samburu, Turkana, Borana, Rendille and others.

Clashes between farmers and pastoralists

- : Clashes between pastoralists and farming communities in Tana River
- : District of the coastal region have been quite severe during the past
- : year, to such an extent that they dominated the headlines. The pas-

toralist Orma and the farmer Pokomo have clashed over grazing areas that had been cultivated. The clashes resulted in human and livestock deaths, the burning of houses and destruction of property. The dead included a police officer. Following the clashes, the area became so insecure that schools had to be closed leading to calls for the re-arming of home-guards, an action that had not yet been implemented by the end of the year.

Pastoralists' lands in Northern Kenya designated as military training zones

For more than 20 years, the Kenya government has designated the Samburu and Maasai ancestral lands in northern Kenya as military training zones without the knowledge or consent of the residents. The British army, the Kenyan army and, lately, the US marines continue to undertake military manoeuvres using live ammunition, mortars, shells, grenades and ordnances.

Following the exercises, the armies do not undertake clean-up exercises. Consequently, these lands are strewn with unexploded ordnance that has, on many occasions exploded, killing more than 60 pastoralists, most of whom were children. Thousands have been injured, and most of them are permanently maimed. Huge numbers of livestock have also been killed.

On a number of occasions, the residents have requested that the government cease military training in the area and initiate a clean-up exercise in order to prevent human deaths. At the same time, all attempts to get the local media to highlight the plight of pastoralists in the area have not been successful.

In August 2000, OSILIGI, an indigenous organization, organized a national conference that brought together the victims, the government and army to discuss the matter and seek a solution. The government denied knowledge of people being injured or killed, and accused the community of fabricating lies. It further intimidated community members in order to prevent them from cooperating with those fabricating lies.

In the end, the community organization had to seek the attention of the foreign media to get the matter highlighted and to seek redress for the victims of this human rights violation. The matter was finally taken to court and, fearing further public embarrassment, the British army has recently opted for an out-of-court settlement. Other similar cases are still pending and the Kenya government is still colluding with foreign armies to continue violating the human rights of northern pastoralists.

The Maasai create a Council

For the Maasai, the early part of the year saw the initiation of the Maa Pastoralist Council (MPC). The first planning meeting took place one evening in Kenya during a workshop to give inputs to the Danish Strategy for support to indigenous peoples. Subsequent to this, the group has met approximately once every month to deliberate on various issues. After agreeing on the name of the organization, its constitution and articles of association, the body was registered as a society with interim office bearers for Kenya but with the intention of networking with the Tanzania Maasai. They drafted a memorandum on the land question to be delivered to the president and to the Constitutional Review Commission. The MPC, along with northern pastoralists and Ogiek hunter-gatherers, received some financial assistance from the ILO project on indigenous peoples to facilitate a process of undertaking civic education for the constitutional review process. This process is now underway.

Other activities of MPC have included inviting guest speakers on topical issues of mutual interest to the community; developing a position paper that summarizes the concerns of all Maasai sub-sections (*iloshon*); coordinating the beef trade in Maasai areas as a way of reducing exploitation by middlemen and developing a database for all educated Maasai. MPC is still deliberating on an appropriate structure that is informed by the still strong indigenous structure but also accommodates modern situations.

Maa Cultural Festival

As previously described, the annual Maa Cultural Festival took place in Nairobi, Kenya.

Besides sharing special aspects of their culture, the festival also helped to bring together dispersed sub-communities who are threatened with assimilation, such as Ilchamus of Baringo. It also helped to re-establish relations between various groups who were previously unknown to each other. Most important of all, the festival helped to initiate a process of conflict mitigation among different persons. While the Maasai attached great significance to the festival, the Kenyan media highlighted a side incident in which the daughter of one politician declined to greet her father's political rival.

Note

1. The Ufungamano Initiative is a civil society group led by the religious sector of Kenya that has appointed a set of commissioners to carry out a more broad base consultation process for the constitutional review. (Editors note)

TANZANIA

In 2001 and 2002, the indigenous peoples of Tanzania, i.e. the hunter-gatherer communities of Hadzabe and Ndorobo, as well as the pastoralist Barbaig and Maasai,¹ continued to experience various challenges facing them in their lives. This paper serves as an update of the situation of indigenous peoples in Tanzania for the years 2001 and the first half of the year 2002.

Hadzabe and Ndorobo hunter-gatherers

The indigenous hunter-gatherer communities of the Hadzabe and Ndorobo continued to experience further marginalisation, economically, politically, socially and culturally.

Economic liberalization brought about increased use of natural resources such as timber and other forest products, charcoal burning, increased levels of sport or commercial hunting and the expansion of areas under crop agriculture.

All these forms of resource utilization have a negative impact on the livelihoods of indigenous hunter-gatherer communities, i.e. the Hadzabe and Ndorobo. Such forms of land use have all resulted in a loss of the resources that formed the lifeline of the hunter-gatherer communities. In the fierce competition over resources, hunting communities have lost more of their traditional resources, which are critical for the survival of hunter-gatherer communities. This has negatively affected hunter-gatherer communities whose livelihoods are dependent on game resources, wild berries and honey.

The Hadzabe have continued to lose their ancestral lands in areas around Lakes Manyara and Eyasi to small-scale farmers and conser-

vation. Similarly, the Ndorobo peoples in Kiteto have been further squeezed towards smaller and remote areas in Amei, Loolera, Kili-moto, Palango, Iltirkishi, Enkusero, Namelok, Napilukunya, Isinya, Kitwai and Nkapapa villages.

The year 2001 and the first part of the year 2002 saw both Hadza and Ndorobo forced to acquire more grain to supplement their indigenous diets. Traditionally, hunting resources coupled with the gathering of wild berries, tubers, roots and honey constituted nearly 80% of the food supply for both groups. More and more grain is now used to supplement dietary needs. Grain is now said to constitute a greater percentage of food supply for the indigenous hunter-gatherer communities in Tanzania than ever before.

Food insecurity is now a recurrent problem and displacement of the livelihood sources of hunter-gatherer communities has forced the Hadza and Ndorobo to depend on emergency food aid from season to season.

Crop farming is slowly gaining acceptance among the Ndorobo in Kiteto and it is emerging as a form of adaptation. As a coping strategy, some of the hunters have also started to keep some livestock, such as chicken and goats. Both farming and livestock keeping are taken up by hunter-gatherers as a means of diversifying their sources of income and reducing vulnerability.

Conservation policies further constrained hunter-gatherer communities' access to their livelihood sources. Hunting and gathering of wild berries, which traditionally mediated their livelihood, have become more restricted, hence creating more uncertainty and perpetual food insecurity.

Subsistence hunting is still banned and outlawed in Tanzania. In the same territories, sport hunting is not only allowed but encouraged by the government as it is seen as a good source of revenue. The ban on subsistence hunting has displaced indigenous Hadzabe and Ndorobo, making them more vulnerable and unable to cope with environmental uncertainty.

Indigenous pastoral Barbaig and Maasai communities

The situation of the indigenous pastoralist cluster of the Datoga that comprises the Buradiga, Bisiyeda, Gisamjanga, Bajuta, Gidang'odiga, Biyeanjida, Darorajega and Barbaig has continued to deteriorate, with increased loss of land and livestock for most of the Barbaig communities, whether they live in Arusha or Singida. This triggered further migrations of the Barbaig into Dodoma, Morogoro, Shinyanga, Iringa, Rukwa, Mbeya and Ruvuma.



Similarly, the situation of the indigenous Maasai² pastoralists is critical. The percentage of Maasai in their four traditional districts of Monduli, Simanjiro, Kiteto and Ngorongoro continued to decrease due to the in-migration of farming communities, accelerated by economic and trade liberalisation. Over the last two years, more Maasai have been observed moving to Dodoma, Tanga, Morogoro Iringa and Mbeya.

National context

Indigenous peoples live in an environment that is influenced by national and regional development processes. The following are highlights of some important developments in the country that have had a

direct or indirect bearing on the livelihoods of indigenous peoples in Tanzania.

Over the last two years, Tanzania has continued to implement structural adjustment programmes (SAPs). The SAPs have influenced all social, political, economic and governmental sectors. The government has recently formulated new policies for all sectors in line with SAPs and public sector reform requirements.

While the rest of Tanzanian population has felt the impact of SAPs and other liberalisation policies, it is the vulnerable segments of the population that have borne the brunt of such policies. The indigenous communities are among the most affected groups. Further marginalisation and increased levels of poverty are among the most noticeable effects of SAPs.

Government policy on pastoralism

In late 2000, the government of Tanzania formed a new Ministry of Water and Livestock Development (MoWLD). In early 2001, the newly created ministry initiated discussions on how to develop the livestock sector.

Although it is still in its early stages, the direction that policy discussions are taking is that of developing and establishing a ranching system similar to that which has taken place in Botswana or the Botswana model. While it is not the brief of this paper to discuss wider policy issues, it is important to state that whatever policy is adopted it needs to respect the role of the indigenous pastoral communities in managing their resource property rights. The new policy direction focuses primarily on the livestock off-take and providing the urban dwellers with much needed livestock products. The subsistence requirements of herding communities, as well as the security of their land tenure regimes, do not feature as policy priority areas.

The concept of ranching is not a completely new one to indigenous pastoral communities in Tanzania, especially the Maasai. They do, however, have a particular understanding of ranching. Pastoralists see ranching as a tribe or clan owning common tracts of land so that they can look after their livestock and manage pastoral resources. Such a model had no exclusive use and ownership but it was a joint use of resources and common ownership.

The Maasai Range project³ was in part designed as a step towards the privatisation of land ownership; a system that was intended to stop massive encroachment of farmers onto pastoral areas. Such a programme failed, partly because it failed to adopt the communal model of land tenure, and land holdings and because it failed to guarantee security of land ownership for posterity.

While the newly promulgated type of ranching wants privatisation of land and other ranching resources, the indigenous pastoralists want commonage and this needs to be respected in whatever new policy is developed. There is a need to learn from previous experiences with ranching in Kiteto, Monduli and Ngorongoro Monduli districts as well as the experience in Kenya. Wisdom and caution are needed before deciding which type of ranching system to adopt.

Privatisation of the animal health services forced prices for livestock drugs to go to levels way beyond the reach of most pastoralists. Lack of infrastructure and marketing facilities have made it difficult for the livestock keepers to access livestock drugs. Simanjiro, Kiteto and Hanang districts experience livestock losses caused by different tick borne diseases.

Taxation policy

In Kiteto District, a discriminatory taxation system was introduced in 2002. Both farmers and pastoralists have been paying development and sale taxes. The district council, in an attempt to broaden its revenue base, introduced a production tax for the Maasai pastoralists who live in Kiteto District. This different standard of tax collection levied against pastoralists is discriminatory since farmers in the same district do not pay any production tax.

Demonstrations were organised by pastoralists, arguing that they already paid development tax (Tshs 2,500 per person), sale tax (Tshs 3,500 per animal sold with each seller paying Tshs 500 and buyer Tshs 3,000), and yet they did not gain any services in return.

The pastoralists in Kiteto sent an appeal to the district leadership, strongly recommending that the taxation policy in the district should be standardised throughout the district and that the same rules should apply to all areas as well as to all economic groupings in the district. The pastoralists further argued that there should be standardisation in relation to the principles used in collecting tax from farmers and pastoralists. If there were a head tax for pastoralists there should be a production tax for farmers or some other approach based on equity and in line with the constitutional right to equality.

Emerging issues, analysis and discussion

Shrinking resource base and conflicts

Indigenous communities in Tanzania continued to experience a reduction of their resource base as traditional territories continued to

come under forms of land use other than indigenous ones. The Hadza and Ndorobo are increasingly losing land to small-scale farm holdings, conservation and pastoralism. Similarly, the pastoralist Barbaig and Maasai have continuously lost key pastoral resources to other uses, creating serious land scarcity, and leading to perpetual resource-based conflicts. Conflicts between wildlife and human activities, pastoralism and farming, subsistence and sport hunting have increased in both frequency and intensity.

Inadequate representation

In the political arena, all four indigenous communities in Tanzania have experienced a loss of their indigenous territories and they have been pushed to other areas. They now live in more than 15 administrative districts, where they constitute a small percentage of the population in these districts.

In early 2002, Arusha region, the traditional region of indigenous peoples in Tanzania, was divided into two i.e. Arusha and Manyara regions.⁴ Consequently, the indigenous pastoralists and hunter-gatherer communities are now divided into two separate administrative regions. This will only serve to weaken them even further politically and they will be greater minorities in each region without adequate political representation in either region or in any of the ten districts. The problem of lack of representation of indigenous peoples is obvious for both hunter-gatherer and pastoral communities, and this inadequate representation, coupled with inadequate co-ordination of indigenous issues, denies indigenous communities a united voice. The Constitution of Tanzania, article number 21 (2) states that “every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation”. Lack of representation in political, legal and government circles is obvious at local, district, regional and national levels.

Cultural rights

Over the years, Tanzania has emphasized a policy of national unity, national language (Swahili), national identity and national consciousness. This overemphasis on national language and identity has suppressed cultural diversity; and distinct cultural values are becoming increasingly weak. This is true of all indigenous communities in Tanzania.

The change in patterns of resource utilisation has impacted on the lifestyles of indigenous peoples. Alienation of sacred sites such as

Endoinyo oo irmoruak (the hill of elders) among the Maasai of both Kenya and Tanzania represents a clear denial of basic cultural rights to indigenous peoples since religious performances and spiritual practices nourish the value system of any society.

The school system, which stipulates that Swahili and English are the only medium of instruction, is slowly but surely marginalising indigenous languages. Often, children from indigenous communities are discouraged from using their language. School curricula do not incorporate any pastoral or hunting and gathering experiences into what is taught in schools, making the education system one of the methods used to eliminate minority languages and cultural practices.

Notes

- 1 Discussion about other groups in Tanzania that may claim the identity of being indigenous peoples is beyond the scope of this section.
- 2 Although the Maasai are found in both Kenya and Tanzania, this section deals only with the Tanzanian side of the border.
- 3 The Maasai livestock and Range management project was a ten year US\$ 10 million project initiated in 1969, funded by USAID and managed by the Tanzania government (Ministry of Agriculture). The project was designed to increase livestock off-take and transform the pastoralist Maasai into participants in the national economy through increased commercialisation of their livestock.
- 4 Arusha region consists of Arusha, Aru-meru, Monduli, Karatu and Ngorongoro districts and Manyara region consists of Mbulu, Hanang, Babati, Simanjiro and Kiteto districts.



CENTRAL AFRICA

THE POLITICAL SITUATION IN THE GREAT LAKES REGION

During 2001, political instability and armed conflict in the Democratic Republic of Congo (DRC) continued to affect the neighbouring countries of Rwanda, Burundi and Uganda. The Kinshasa government, led by Joseph Kabila (the son of Laurent Kabila who was assassinated in January 2000) and backed by Angolan, Namibian and Zimbabwean troops, is fighting rebel movements that control large parts of the north and east of the country, the area where most of the DRC's indigenous "Pygmy" peoples live.

The rebel movements are backed by Rwanda and Uganda, in an attempt to overcome dissidents and insurgents operating out of the DRC – dissidents that the Kinshasa government is unable or unwilling to disarm, or may even be actively supporting. In the case of Rwanda, these dissidents comprise the Interahamwe and former Rwandan army (ex-FAR), perpetrators of the 1994 genocide and who continue to mount cross-border attacks. The most recent attack on Rwanda's north-west provinces occurred in May and June of 2001. Uganda is seeking to halt the activities of the Allied Democratic Front and the National Army for the Liberation of Uganda, which are based in the north-east of the DRC. In addition, the DRC provides a stronghold for two rebel movements operating against the Burundi government, the Force for Defence of Democracy (FDD) and the National Liberation Force (FNL). The continuing existence of these armed elements provides the rationale for neighbouring governments to conduct counter-insurgency measures and maintain the foreign occupation of the DRC. The effects of the conflicts on the local populations are devastating. The International Rescue Committee estimates that 1.6 million people have died in the DRC as a result of violence, disease and hunger. Two million people are displaced, malnutrition and infant mortality have rocketed and 16 million people are considered to be food insecure.

During 2001 there were, however, welcome signs of progress towards peace in the DRC as the inter-Congolese dialogue, facilitated by former Botswana President Ketumile Masire, began to take shape. The dialogue forms part of the peace accord signed in Lusaka in 1999 between all parties to the conflict and aims to bring together representatives from the government, the political opposition, armed opposition groups and civil society to map out a future for the DRC. During 2001, foreign troops withdrew from their front-line positions, Kinshasa said it was ready to hand over to Rwanda 6,000 Interahamwe



militia and ex-FAR and would no longer permit insurgents to launch attacks from the DRC, and meetings were held between heads of state of the countries involved in the conflict and leaders of the rebel groups. The five main groups due to participate in the inter-Congolese dialogue – the government, the opposition, the Ugandan and Rwandan-backed rebel movements and civil society – chose their representatives. However, wrangles about the participation of groups that had not signed the Lusaka agreement, such as splinter groups of the rebel movements, the Banyamulenge (a minority group of Congolese Tutsis) and the Mayi-Mayi (a loose association of armed groups opposed to foreign troops in the DRC), meant that the first Conference of the inter-Congolese dialogue had to be postponed until early 2002.

In Burundi, eight years of violent conflict between Hutu and Tutsi ethnic groups have devastated the country, causing the deaths of some 200,000 persons, massive population displacements and a severe deterioration in the health infrastructure, water and sanitation services. One million of Burundi's 6.7 million population (1999 figures) still depend on humanitarian aid, 432,000 people live in internal displacement sites with acute humanitarian needs and 200,000

internally displaced persons live under ad-hoc arrangements. At least another 380,000 people are refugees in Tanzania. An FAO report confirmed that Burundi's indigenous Twa people are the most impoverished group in Burundi. Most Twa lack access to farm land, and the families who do have land are caught in a vicious cycle, being forced - through hunger - to eat the seeds given to them by agencies such as the FAO, leaving few seed resources for planting. Subsisting on an average of US\$0.50 per day, most Twa families cannot afford education, health services or clothing for their children.

As in the DRC, there is some hope now that peace may come to Burundi. The peace process, facilitated by former South African President Nelson Mandela, finally resulted in the inauguration, on 1 November 2001, of a power-sharing transitional government of returned Hutu exiles and Tutsis. The first 18 months of the Presidency will be held by Pierre Buyoya, the previous (Tutsi) President, with a Hutu vice-President. After 18 months, this will be reversed, with a Hutu President and Tutsi vice-President. Tutsis hold 12 of the government portfolios and Hutus 14. However, there is still no cease-fire and the rebel FDD and FNL groups continue to launch armed attacks on Burundi from the DRC. Peace in the DRC may paradoxically worsen the situation in Burundi, since the disarming of Burundi rebels based in the DRC may force these anti-government forces to filter back into Burundi in order to avoid demobilisation.

RWANDA

During the 1994 genocide, up to 800,000 Tutsis and moderate Hutus, some 14% of the population, were killed by extremist Hutu groups, including the Interahamwe and ex-FAR (see above). Far less widely known is the fact that Rwanda's third ethnic group, the marginalised and impoverished indigenous Twa people, also suffered in the genocide. In an interview with the Rwandan Hironnelle News Agency, Kalimba Zéphyrin, Director of the Twa NGO CAURWA (*Communauté des Autochtones Rwandais*) stated that there were now some 20,000 Twa left in Rwanda out of an estimated 30,000 before the 1994 genocide:¹

We had 10,000 Batwa killed during the genocide. They were not killed by Batwa, but by both Hutus and Tutsis. [The Batwa] should be regarded as survivors of the genocide. To date, the government of Rwanda has taken no action to support the Batwa community.

The Rwandan government has never officially recognised the Twa's losses during the genocide and does not count them among the "survivors of genocide". "Survivors of genocide" are eligible for government funds established to assist specifically this category of people.

The fact that the Twa had no part in the politics of the genocide has led some commentators to suggest that they have a special role to play as independent witnesses in the traditional community justice system, based on so-called *gacaca* courts, set up by the government to process the 120,000 people held on genocide-related charges in Rwanda's overcrowded jails. The Twa, however, have serious concerns about the *gacaca* process fearing that, as a marginalised group, they will be vulnerable to scapegoating and false accusations. They also foresee a lack of reliable Twa witnesses to testify in trials of Twa people, because their community is so small. While the Twa say that, despite the risks to themselves, they will support *gacaca* by recounting what they have seen, they also express their fears that, should a Hutu regime ever come to replace the current Tutsi-led government, they will be acutely vulnerable to reprisals. In October 2001, some 300,000 *gacaca* judges (*inyangamugayo*) were elected by the local population at cell, sector, district and provincial level in 11,000 *gacaca* jurisdictions. A handful of Twa were amongst those elected at the lowest (cell) level. Although the numbers are very small, this is a welcome sign that the Twa are beginning to be included in Rwanda's civil society processes.

CAURWA has established high-level contacts with the ministries of Local Administration and Social Affairs, Finance, Gender and Promotion of Women, Justice, Agriculture, Land and Environment, Interior and Security, the Prime Minister's Office and the National Unity and Reconciliation Commission (URC). In August 2001, CAURWA organised a 4-day training seminar on human rights and minority rights, participatory justice (*gacaca*) and unity and reconciliation. The seminar brought together Twa community representatives from 2 provinces, staff of Rwandan Twa organisations and representatives of Rwanda's Human Rights Commission, the URC and the Supreme Court. These contacts, and the increasing coverage of Twa issues in the press, on TV and radio, are contributing to increased awareness among the public and decision-makers about Twa issues and the need for action. For example, in October 2001 Rwanda's

transitional assembly passed an anti-discrimination law against any person practising discrimination and segregation in the country. In a commentary on the new law, Vincent Biruta, Speaker of Parliament, stated that the law “provides a flexible framework that makes it possible and legal to enforce positive discrimination in favour of vulnerable groups like the Batwa, the disabled and the girl child.”

CAURWA’s contacts with the URC are promising. The URC is the only government body that has recognised the marginalised situation of the Twa in its official policies and programmes. It now has a special budget line for support to Twa communities. CAURWA has established a system of Twa contact persons or “*antennes*” in six of Rwanda’s 12 provinces to help Twa communities engage more effectively with local authorities. As part of their work, CAURWA’s *antennes* are sensitising the URC representatives in each province about Twa needs, with positive results in some areas.

The presence of the *antennes* and CAURWA’s ongoing advocacy work with local authorities in over 40 districts in 8 provinces has helped Twa communities obtain farm land and clay for pottery, reclaim land from neighbours who had appropriated it, and improve their housing. This work to build capacity at community level was reinforced during 2001 by leadership training organised by CAURWA for community representatives and staff of Twa organisations, and by CAURWA’s new programme of income-generating activities. The latter is providing training and inputs to 30 Twa communities (762 households) in 5 provinces to carry out farming, animal husbandry and off-farm activities such as tile-making, brick-making and sewing. Some of the communities have set up bank accounts and are using their new-found incomes to pay for the schooling of their children or to join local health insurance schemes. In December, CAURWA started a project to increase Twa potters’ incomes by improving production, developing business skills and creating a Twa pottery enterprise based on Fair Trade principles.

New laws passed during 2001 requiring the re-registration of all Rwanda’s NGOs prompted CAURWA to begin discussions with its member organisations about its future structure. In order to meet the registration requirements, they decided that CAURWA would become an independent NGO, and no longer a collective of Twa organisations. This process is expected to be completed in early 2002. CAURWA will maintain relationships with the other Twa organisations through partnership agreements and will continue to offer them training and other support.

The next few years will provide important advocacy opportunities for the Twa as the Rwandan government develops and implements its ambitious programme of reforms. These include the *gacaca* process and the URC, as well as the drafting of a new constitution, reform of land laws, decentralisation of government administration and implementation of a poverty reduction strategy (PRSP). The Twa organisations have started work on some of these issues. For example AIMPO (the African Indigenous and Minority Peoples Organisation) is documenting land issues in three to four Twa communities as part of its advocacy to improve Twa access to land, and is also supporting the development of Twa communities around the Volcano National Park. The ADBR (*Association pour le Développement Globale des Batwa du Rwanda*) is continuing a programme of legal support to Twa prisoners.

In September 2001, CAURWA, in collaboration with the Forest Peoples Project UK, IWGIA and the Swedish Society for Nature Conservation and funded by the UK Community Fund, hosted a regional conference to promote dialogue between African indigenous peoples and conservation bodies. The aim was to explore why the new conservation principles are not working and identify measures that will result in more just and sustainable conservation practices. The conference brought together representatives of indigenous communities affected by protected areas, African conservation managers and technical staff from a wide range of protected areas, along with support organisations working with indigenous peoples in Africa. Ten case studies were presented by indigenous representatives from 7 countries.

DEMOCRATIC REPUBLIC OF CONGO (DRC)

The ongoing conflict in the DRC has caused immense hardship for the Pygmies of the Kivu region of eastern DRC. Their villages have been torched, up to 150 people have been killed, hundreds have been displaced from their homes and many are forced to act as guides by armed groups trying to locate their opponents in the forests. Despite the insecurity and difficulties caused by the ongoing conflict in the DRC, Pygmy support organisations continued to maintain contact with Pygmy communities in the east and north of the country.

AAPDMAC (*Action d'Appui pour la Protection des Droits de Minorités en Afrique Centrale*), a Pygmy support NGO based in Bukavu, investi-

gated the situation of the Mbuti Pygmies in north Kivu and the southern fringes of the Ituri forest, particularly in connection with the activities of a Thai logging company, DAR-Forest, which had been denounced by local Pygmy communities. (The Mayi-Mayi later held 26 of the company's workers hostage; this event received international news coverage). The study also investigated education and literacy activities being carried out with Pygmy communities by different church-based groups, to see which approaches were most suited to Pygmy needs.

AAPDMAC organised a workshop for representatives of Twa communities living around the Kahuzi-Biega National Park in South Kivu, so that they could begin to develop a common platform to press the Park conservation authorities to address the Twas' critical lack of land and livelihood possibilities following their forced eviction from the park in the 1970s and 80s.²

Some 10 Pygmy support organisations now exist in Kivu. Many of these are concerned about the Twa communities affected by the Kahuzi-Biega Park, and it is possible that these organisations will develop a coordinated strategy to tackle this issue collaboratively.

During 2001, PIDP (*Programme pour l'Intégration et le Développement des Pygmées du Kivu*) began publication of a three-monthly bulletin, *Bambuti*, reporting on its activities in the region. PIDP has begun a project to train Pygmy communities in improved pottery production and continues to support Twa communities in north and south Kivu with agricultural inputs (tools, seeds etc) and training in farming methods. The project has been re-oriented to work with Twa women's groups, who are more receptive to training and carrying out farming activities. PIDP's literacy programme has been reactivated; 53 Pygmies can now read and write. Increasing literacy of Pygmy communities is important to reduce the number of fraudulent land transactions resulting from the Pygmies' inability to read the content of the documents. As part of its support for Pygmy education, PIDP financed a Twa student from Walikale to complete a diploma in rural development in Bukavu. PIDP held its annual 'Pygmy week' in August 2001, to increase awareness of Pygmy rights and culture through public lectures and debates on international human rights instruments, Pygmy dancing and craft exhibitions, football matches and discussion of PIDP's work. As part of its human rights work, PIDP is training animators to work with communities on legal issues and produces a half-hour radio programme every week.

The low social status of Pygmy communities in the eyes of their Bantu neighbours means that they are least able to secure rights over lands and resources through customary tenure systems, and rights obtained can be all too easily withdrawn. For example, in the Kivu region of the DRC, the

local chiefs or Mwamis have control over land allocation in return for payments to the Mwami conferring unlimited and perpetual use rights (*kalinzi*) or temporary use rights (*bwassa*). Several cases have been reported in which Twa communities, having paid *kalinzi* for the use of agricultural land, have subsequently been evicted from their lands by other more powerful individuals. In 2001, PIDP assisted Twa families to take such a case to the Bukavu appeal court in south Kivu. Following testimony from the Mwami that the land had been given to the Twa community by his forefathers, the court judged in the Twas' favour.

UGANDA

In 1991, the Twa Pygmies of SW Uganda were forcibly evicted from their forests following the establishment of the Bwindi and Mgahinga National Parks, funded by the World Bank Global Environment Facility (GEF). The closure of the forests caused many of the Twa to move from a fairly independent existence to being landless impoverished squatters, forced to survive by working for local farmers. In 1996, following a highly critical report on the Mgahinga and Bwindi Impenetrable Forests Conservation Trust ("the Trust") established to protect the two forest parks, the Trust developed a programme to acquire land for Twa families and support their education. However, little action was taken by the Trust Batwa programme due to the unwillingness of middle management to act in favour of the Twa. The situation improved in 2000, when UOBDU (United Organisation for Batwa Development in Uganda) was created to represent the local Twa community. UOBDU pressed the Trust to speed up the distribution of land to the Twa and replace its personnel, resulting in a much more positive attitude towards the Twa.

During 2001, with the help of their support worker, Penninah Zaninka, UOBDU continued to maintain a dialogue with the Trust and its Batwa support officer. The Trust management agreed to hold quarterly formal meetings with a committee of Twa representatives from communities living around the parks. The first of these meetings was planned to be held in March 2001 but eventually took place in October 2001 due to the Trust's initial unwillingness to fund these meetings. Local people's access to the Bwindi and Mgahinga Parks



Batwa community at Bazuanza, Uganda. (Photo: Penninah Zaninka)

and the Echuya Forest is controlled by the NGO CARE and the Uganda Wildlife Trust, through multiple-use committees with whom the forest access and use agreements are negotiated.

Currently, Twa have almost no representation on the multiple-use committees and so have little possibility of negotiating use rights for their communities. UOBDU plans to tackle these issues during 2002.

Local authorities in Kisoro attempted to dispossess a Twa leader of his lands, held under customary law for many years. This was in violation of the 1995 Ugandan constitution, which gives people who have held land under customary law for 10 years or more the right to legal title. Numerous meetings at different levels of local administration have not resolved this situation, so the matter may be taken to the courts.

In 2000, seven Mbuti Pygmies from the Semliki valley in the far west of Uganda were arrested and imprisoned without trial. They were accused of helping the rebel Allied Democratic Forces (ADF), who operate from bases in the Rwenzori Mountains and across the border in the Democratic Republic of Congo (DRC). There are only 72 Mbuti in Uganda (they are an offshoot of the much larger Mbuti population over the border in the DRC) so the loss of seven adult men, including the community leader, was a severe blow. Following protests by Survival International, the prisoners were freed and it is reported that they have set up their own association to fight for their rights.

CAMEROON

The 4,000 or so Bagyeli “Pygmy” people live in the south-west of Cameroon. Their traditional lands will be crossed by the controversial Chad-Cameroon oil pipeline project, bringing oil from the Doba fields in Chad to the Cameroon coast at Kribi. The project, devised by a consortium of oil companies, was approved by the World Bank in June 2000. A study carried out in 2000 by Bagyeli representatives with the support of a local NGO, Planet Survey, showed that consultations carried out by the pipeline project with Bagyeli communities during the preparation of the project were insufficient, failing to inform the Bagyeli adequately about the likely consequences of the pipeline.³ An Indigenous Peoples’ Plan intended to mitigate the effects of the pipeline on the Bagyeli did not comply with the World Bank’s Policy on Indigenous Peoples, and did not address the severe problems faced by the Bagyeli resulting from their marginal status within Cameroonian society.

In February and March 2001, Planet Survey carried out further investigations with the Bagyeli, in collaboration with the Forest Peoples Project,⁴ revealing:

- A lack of information access throughout the project’s institutional framework. Inadequate consultation, poor communication between stakeholders and a lack of informed participation by all parties, particularly the Bagyeli, had caused confusion at all levels about the construction of the pipeline and the compensation process.
- The pipeline’s compensation process was deepening the inequality and conflicts between the Bagyeli and their Bantu village neighbours. The criteria for compensation had enabled the Bantu communities to capture the process through better access to information and greater political power, claiming Bagyeli lands as their own and appropriating compensation that was due to the Bagyeli. No Bagyeli had so far been compensated by the pipeline, even though it crossed their lands and had damaged forest resources.
- The pipeline project was not promoting Bagyeli participation in consultation and decision-making, and provided no mechanisms for Bagyeli to contribute to policy reforms that would address the fundamental problems of discrimination against the Bagyeli and their exclusion from civil society.



Bagyeli representatives subsequently met with World Bank officials and representatives of the Cameroon Oil Transportation Company (COTCO – responsible for building the pipeline and for designing and implementing the compensation programme and indigenous peoples’ plan required under World Bank guidelines) to inform them as to how the oil pipeline was affecting their access to lands, and its actual and potential impacts on their livelihoods. They also highlighted wider issues of their marginalisation in society. The second semi-annual internal World Bank report concerning the implementation of the pipeline project, issued in September 2001, tacitly acknowledged that the pipeline would have an impact on Bagyeli Pygmies.

The route for the pipeline is now being cleared, and the community compensation programme is about to be set up by COTCO and FEDEC (the Foundation for Environment and Development). FEDEC’s objectives are to provide long-term financial support for the Mbam and Djerem National Park Environmental Enhancement

Project Component, the Campo Ma'an National Park Environmental Enhancement Project Component and the Indigenous Peoples' Development Component. All of these projects will affect the Bagyeli, who will continue to press for recognition of their rights, assisted by local and international support agencies.

Notes and references

- 1 See also **Lewis, J & J. Knight. 2000.** *The Twa of Rwanda. Assessment of the Situation of the Twa and Promotion of Twa Rights in Post-War Rwanda.* World Rainforest Movement and IWGIA.
- 2 See **Barume, K. 2000.** *Heading towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo.* Forest Peoples Programme and IWGIA.
- 3 Planet Survey and CODEBABIK. 2000. Rapport de l'Enquête sur le Degré d'Implication des Peuples Autochtones dans le cycle du projet Pipeline Tchad-Cameroun. In: **Griffiths, T. and M. Colchester 2000.** *Indigenous Peoples, Forests and The World Bank: Policies and Practice.* Workshop Report, Washington D.C., 9-10 May 2000. Moreton-in-Marsh: Forest Peoples Programme.
- 4 **Nelson, J., J. Kenrick and D. Jackson. 2001.** *Report on a Consultation with Bagyeli Pygmy communities impacted by the Chad-Cameroon oil-pipeline project.* Forest Peoples Project Report, May 2001.
- 5 **Lewis, J. 2000.** *The Batwa Pygmies of the Great Lakes Region.* Minority Rights Group International.
- 6 A summary of the Conference conclusions is available from the Forest Peoples Project info@fppwrn.gn.apc.org



SOUTHERN AFRICA

NAMIBIA

The Republic of Namibia in southern Africa has witnessed a significant expansion in conflicts that affect San and other minorities in the country. One of these conflicts is a spill-over from the ongoing war in Angola between the forces of Jonas Savimbi and his UNITA organization and the government of Angola. This conflict has led to a sizable increase in the numbers of refugees coming in to Namibia. The government of Namibia has attempted to accommodate these refugees through the provision of food, services and protection and through housing over 20,000 refugees at a refugee camp at Osire in central Namibia.

The situation in the Caprivi Strip

The Caprivi Strip is a narrow strip of Namibian territory stretching some 300 kilometers east into central Africa. The Khwe San, the oldest inhabitants of the Caprivi region, live on this tense border that includes Angola, Botswana, Namibia, Zambia and a corner of Zimbabwe. The Khwe have been caught in the crossfire between four opposing forces: Jonas Savimbi's UNITA insurgents in Angola, Caprivi separatists, the Namibian Defense Forces (NDF) and the Namibian Special Security Force (SSF).

There have been alleged incidents of the indiscriminate rounding up of individuals by the government of Namibia on suspicion of their being "illegal immigrants" and deporting them without holding hearings. After an attack on the town of Katima Mulilo in East Caprivi by dissidents in August 1999, over 1,000 Khwe fled into Botswana in order to escape harassment and potential oppression by the Namibian government forces. Today, some 750 Khwe are housed at Botswana's largest refugee facility, Dukwe Refugee Camp, in the area west of Francistown and east of Nata. At this stage, many of the Khwe were attempting to repatriate to Namibia, and the United Nations High Commissioner for Refugees was attempting to determine whether it was safe for them to do so.

In the series of harassments that forced the Khwe into exile, four particular incidents stand out: first, the disappearances in August 2000 of at least 15-18 Khwe, an incident that was not reported in the Namibian media until February 2001. The whereabouts of these Khwe is still unknown. The Legal Assistance Centre (LAC) has sought to



obtain evidence of the missing people, to no avail.

Second, the refusal of the government of Namibia to recognize Kipi George, the popularly elected chief of the Khwe as Traditional Authority for the area. Kipi George had been an articulate spokesperson for the Khwe and had served as Chair of the Working Group of Indigenous Minorities in Southern Africa (WIMSA). The dispute over his legitimacy became moot when George died of tuberculosis in 2000. There

are still questions about the legitimacy of the Khwe Traditional Authority, which the government of Namibia has as yet refused to recognize officially under the *Traditional Authorities Act* of Namibia.

Third, in June 2001, SFF and NDF members rounded up more than 80 civilians, most of them !Xun and some Hai//om, on the suspicion of being illegal aliens, at Kahenge Village, west of Rundu. Some of these people were detained, others were required to move to the Namibian government and UNHCR refugee camp at Osire, and still more were told to return to Angola even though they were not Angolan citizens.

Fourth, on July 10, 2001, a Khwe man, Hans Dikuwa, died in the custody of the Namibian Defense Forces. At first it was said by the government that he was shot while trying to escape. Subsequently, the government said that he drowned while attempting to cross the river into Angola. The circumstances of the case remain in doubt. Human rights workers have criticized the government of Namibia for not observing the Refugee Convention of the United Nations through failure to protect asylum seekers and refugees and failing to establish immigration tribunals and committees to oversee refugee and asylum seeker matters.

The refugee resettlement issue

In October 2000, the government of Namibia announced that it was planning to resettle the Osire refugees at a new location, specifically at M’Kata in what is now Tsumkwe District West, formerly West

Bushmanland, in north-eastern Namibia, an area dominated by San peoples. Several reasons were given for the proposed resettlement: (1) overcrowding of the Osire refugee camp, (2) the lack of sufficient land and natural resources in the present location at Osire to sustain the refugee population, (3) the desire to establish a refugee resettlement area with sufficient land to allow agricultural activities to take place and (4) the need for greater security for the refugees and the people living and working in and around the Osire refugee camp.

The majority of the refugees in the Osire camp come from Angola (over 90%). There are also refugees from over a dozen other African countries in the camp, including a fairly sizable number from central Africa (Congo, Rwanda, Burundi) and some from as far away as Somalia. The backgrounds of these refugees are diverse: they come from different settings, both rural and urban, and in the past they earned their living in a variety of ways, including agriculture, pastoralism (herding), foraging and wage labour. The Angolan refugees include people from a number of different ethnic groups such as Nganguela, Lunda, Ndembu and Ovambo (all Bantu-speaking agropastoral groups) and some San, mainly !Xun and Khwe, click-speaking former foraging peoples who lived in southern and south-east Angola prior to coming to Namibia.

The resettlement area

The potential resettlement area at M'Kata, in the center of Tsumkwe District West, is a remote area located some 165 km east north-east of the town of Grootfontein. Together with Tsumkwe District East, the area forms the Tsumkwe District region, whose residents numbered some 6,700 people in 2001, and reside in 60 settlements scattered across an area of 17,850 square kilometers.

The Tsumkwe District West population stands currently at around 4,500 individuals from 8 different ethnic groups. Some of the people in the district originally came from northern Namibia and southern Angola and were resettled in the area in the 1970s and 1980s during the time of the conflict between Namibian liberation forces and the South African Defense Force. The !Xun are the indigenous peoples of Tsumkwe District West. Today, the various San groups (!Xun, Vasekele, and Mpungu San) reside in 24 settlements, most of them relatively small. Some of them had individual arable agricultural plots allocated to them by the Ministry of Lands, Resettlement, and Rehabilitation on which they grow maize, beans, melons, and other crops, though crop yields are relatively low in this semiarid environment.

Most of the groups have experienced substantial social, economic and political changes over time. Some of the more important of these changes include the shift towards greater dependence on agriculture and herding, the enforcement of conservation laws that have affected their resource acquisition activities (especially hunting), the establishment of local traditional authorities (chiefs) that are recognized by the government of Namibia under the *Traditional Authorities Act*, and the setting up of locally-owned and managed community organizations that promote the interests of local people and allow for their participation in land use planning and land conservation and development efforts.

In Tsumkwe District East, there are some 2,200 people living in 35 communities scattered over an area of 9,303 sq km. The vast majority of these people are Ju|'hoansi San. In early 1998, the Ju|'hoansi established what in Namibia is known as a conservancy to oversee the wildlife resources of the region. A conservancy is a block of communal land in which people are able to gain the rights to utilize the wildlife resources and to make decisions about land use. Nyae Nyae was the first communal area conservancy in Namibia, and it has been relatively successful in terms of generating income for its members and assisting them to achieve some of their conservation and development goals.

The people of Tsumkwe District West are also engaged in the process of establishing a conservancy, the N=Jaqna Conservancy, which they hope to have in place in early 2002. The problem in Tsumkwe District West, however, is that the potential resettlement of the refugees could well preclude the efforts to establish the conservancy, which many of the people see as key to their well-being in the future.

In the Tsumkwe District there are two government-recognized San chiefs, one who represents Tsumkwe District West, John Arnold, the !Kung Traditional Authority, and the other who represents Tsumkwe District East, Tsamkxao =Oma, the Ju|'hoansi Traditional Authority. The two San traditional authorities are also members of the Council of Traditional Elders of Namibia.

There are also a number of community-based institutions in the region, including village-level development committees, parent-teacher associations, water committees, community conservancy committees and church groups. Many of these organizations have been outspoken in their concerns relating to the refugee resettlement issue in Namibia and about the importance of having local autonomy and the right of self-determination.

Local concerns and opposition

The residents of the Tsumkwe District generally have strong views on the issue of resettlement of refugees in their area. Many people feel that the region is well-known for its unique habitats, wildlife and bird species, and culturally distinct human populations. They worry that the presence of large numbers of refugees could potentially affect the natural and social environments of the area adversely. A commonly expressed opinion about the potential movement of refugees into the area was that it would place much greater pressure on natural resources, including water, firewood and wild plant foods. A number of people said that they were worried that the water table would decline, making it more difficult for them and their livestock to survive in the M'Kata area.

Much of the opposition to the resettlement process also relates to the social and cultural impacts of the resettlement on the host population, which is an indigenous minority. The San realize that the refugees moving into the region would vastly outnumber them. There are concerns that the presence of non-San in the area will affect the degree to which San are able to participate in decision-making about their area. There is also the sense that the presence of people who have chiefs with considerable authority will serve to undermine the authority of local traditional authorities.

Another fear of the local people is that the refugees would dominate the job market and affect the incomes of local people, the majority of whom are already living below the poverty line. There are also those, admittedly a tiny minority, who believe that the presence of a refugee camp will have positive spin-off effects, such as increased employment opportunities, expanded infrastructure and larger markets for goods and services.

The removal of refugees from one place to another has costs for those individuals, not only economic costs but also physiological, psychological and socio-cultural ones. These costs range from increased competition for resources to greater socio-economic stratification and disruption of existing social networks.

Local people feel that the decision by the government of Namibia to resettle large numbers of refugees in their area without consulting them is a violation of their civil and political rights. They also feel that the presence of the refugees will impinge on their social, economic and cultural rights, including the right to adequate subsistence. Yet another concern is that the people of Tsumkwe District will have to become more dependent on safety nets provided by the government of Namibia. It is for these reasons that local people, donor agencies

and non-government organizations, including ones working directly with the refugee population at Osire, have opposed the proposed resettlement. Non-government organizations, local authorities in both the Osire and M’Kata regions, and local people have argued that the government of Namibia should carry out detailed consultation efforts prior to any decisions being made about resettlement.

Even though no resettlement has taken place, the effects of the government’s announcement regarding the possible move of the Osire camp to M’Kata can already be seen. Some refugee households did not plant crops in 2001 in anticipation of the move, something that will affect their nutritional status and incomes. In M’Kata, people are experiencing feelings of anxiety about the future. Questions have been raised by local people about the effectiveness of their leaders in dealing with the government of Namibia, something that could well undermine the authority of the traditional authorities.

The Working Group of Indigenous Minorities in Southern Africa has sought to inform the people of the Tsumkwe District about some of the proposed plans. Local people in M’Kata are appreciative of these efforts. At the same time, they are hoping that WIMSA and the Legal Assistance Centre of Namibia will join the Tsumkwe District communities in an effort to head off the resettlement legally. One suggestion is that the Legal Assistance Center should take the government of Namibia to court in order to prevent the resettlement from occurring. Another suggestion is that local people mount passive resistance to the resettlement plans.

Rather than resettling people in M’Kata, refugees and local people in the M’Kata area note, it would be more beneficial in the long run if Namibia established a comprehensive development program in both the Osire and M’Kata areas. This development program, which should be aimed at promoting the self-sufficiency of local people and conservation of the environment, should be done in such a way that it has extensive local participation in planning and implementation. If social justice is to be achieved in Namibia, all people, both citizens and non-citizens, will need to be able to enjoy the fruits of development and protection of their human rights.

Meeting the challenges of new values

Beside the Traditional Authorities of Tsumkwe District West and East, there are few opportunities in Namibia where San can play important roles in government decision-making and management.

The efforts of the Working Group of Indigenous Minorities in Southern Africa and the Center for Applied Social Sciences (CASS) of the University of Namibia have been important when it comes to the recognition of San traditional authorities in Namibia. A major contribution of WIMSA and First Peoples Worldwide was the production in 2001 of a *Traditional Authorities Handbook* that explains to the San of Namibia some of the concepts and rules relating to the *Traditional Authorities Act*. Particular emphasis in the handbook is placed on customary law or traditional laws, those laws that govern such issues as marriage, divorce, inheritance, land allocation and the use of natural resources.

There have been some changes over time within San groups in leadership and authority roles and in the activities of community members. For instance, it was the Ju |'hoan *n!ore kxaosi*, the oldest men or women core-group siblings in whom stewardship of resource and habitation areas were vested, who formerly maintained coordinating relationships with other *n!ore kxaosi*. Some of their activities involved balancing the giving — and strategically withholding—of key environmental accesses in traditional territories (*n!oresi*). With independence in Namibia, both national and developmental expectations were that these leadership and resource management attitudes would vanish overnight and give way to smoothly functioning “democratic” structures and attitudes of commitment to the health of the region as a whole. Nowadays, it is the Traditional Authorities and members of the conservancy council who tend to make some of the decisions about land and natural resource management.

New Ju |'hoan leaders have been expected to transcend both the long-tenured social attitudes of their relatives toward non-self-aggrandizement and their own traditional altruism patterns as they forged new public selves and organizational functions. Individuals have suffered mightily in this process. As a result, Ju |'hoan communities' early faith in the new leaders was steadily eroded on seeing the widening gap between old and new social values. Inter-generational conflict and inter-community conflict is on the rise, and the challenge facing the Ju |'hoansi is how to manage these conflicts and at the same time retain their cherished customs, traditions and values.

Part of the problem of the Ju |'hoansi revolves around competition over resources. Some of the resources include wildlife and tourism opportunities that are now available through the leasing process related to the Nyae Nyae Conservancy. In 2001, the Nyae Nyae Conservancy advertised for joint ventures, and 11 different firms applied. The Nyae Nyae Conservancy was able to obtain N \$100,000 per

annum for the right to bring tourists in to engage in safari hunting in their area. Some of the funds were used to support the management and administrative costs of the conservancy, and household dividends were paid to the people of Nyae Nyae.

The Nyae Nyae Conservancy has also been involved in work with film companies that pay a royalty to the NNC for the privilege of working in the Nyae Nyae area. The challenge in early 2002 related to how the management of the Nyae Nyae Conservancy was going to distribute the royalties from these activities, that is, whether funds would be given only to those communities that were most involved in the tourism and film-making activities, or whether the entire membership of the conservancy would receive a share.

It is these kinds of complex issues that are facing many indigenous peoples around the world: how best to handle the need to ensure equity, transparency and accountability while at the same time providing sufficient resources to sustain the operations of institutions that represent the indigenous people.

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BOTSWANA

The Republic of Botswana, a country the size of France that lies in the centre of the Southern African region, supports the largest number of San, the "first peoples" of the Kalahari Desert and adjacent areas. The San, who are sometimes called Basarwa in Botswana and Bushmen in scientific and popular literature and films, have been

estimated to number 47,675 in Botswana. This is 54 per cent of the total population of San, who currently reside in 6 of the nation-states of Southern Africa.¹

Unlike South Africa, which officially recognizes the existence of indigenous peoples within its borders, Botswana continues to deny that the San should be considered to be more indigenous than any other groups in the country. The Botswana government sees the San and some of their neighbors as Remote Area Dwellers – a broad category of persons who reside in remote rural areas and who are therefore less advantaged than other groups in terms of access to services, development assistance and employment opportunities. From the perspective of the Botswana government, the San are but one of a number of minorities who, like the Herero, Bakgalagadi, Kalanga, Mbukushu and Yeei, have the same rights as other citizens under the Constitution.

The San, for their part, see themselves as indigenous peoples, *first peoples*, who lack the kinds of rights that others have in Botswana. Indeed, in 1978, the Litigation Consultant to the Attorney General's Chambers of Botswana ruled that the San have no rights of any kind except rights to hunting.² This is why the period from the late 1970s to the present in Botswana has been characterized by the efforts of San and their supporters, including non-government organizations and indigenous peoples' rights advocacy groups, (1) to gain legal (*de jure*) land rights, (2) to protect their rights to engage in subsistence hunting and gathering, (3) to have their languages recognized and taught in schools and (4) to have equitable opportunities for development assistance in places that they themselves choose to live and work.³

The Central Kalahari Game Reserve issue

Far and away the most important issue facing the San of Botswana in 2001-2002 was the decision by the Botswana government to stop all services in the Central Kalahari Game Reserve (CKGR) and to resettle the remaining residents outside of the reserve. This multifaceted human rights issue, which had been debated in Botswana since the mid-1980s, finally came to a head toward the end of 2001, when Botswana's Ministry of Local Government decreed that all services (water, health and food distribution) would be stopped as of 31 January, 2002.

: The CKGR was originally set aside for indigenous Kalahari inhab-
: itants (mainly San and Bakgalagadi), and people were supposed to
: be able to continue to utilize natural resources (game and wild plant



foods and medicines). In 1997, the Botswana government, ostensibly to promote conservation, high-end tourism and, according to some observers, the exploitation of diamonds and other minerals, decided to remove some 1,100 San and Bakgalagdi from the reserve and put them in dysfunctional camps on the fringes of their former ancestral area.

The remaining 100-150 families have since then struggled for their right to continue to live within the reserve. With the help of a Negotiating Team constituted in 1997, which consists of representatives of CKGR communities, San organizations such as First People of the Kalahari, (FPK), the Working Group on Indigenous Minorities in Southern Africa – Botswana (WIMSA), the Botswana Christian Council (BCC), DITSHWANELO (the Botswana Center for Human Rights)

and a legal advisor, these families have made sustained efforts to engage in negotiations with the Botswana government.

During the first half of 2001, several meetings were held between the Negotiating Team and the Department of Wildlife and National Parks (DWNP) and there were hopes that the government would endorse the third draft of the *Management Plan for the Central Kalahari Game Reserve* that had been drawn up by the DWNP. This plan incorporated the findings of community mapping carried out in the CKGR with the support of FPK and international indigenous peoples' rights advocacy organizations, notably the Global Ministries, The Netherlands, and the International Work Group for Indigenous Affairs (IWGIA).

In August, however, statements made by the Assistant Minister of Local Government during a visit to the CKGR to the effect that all services to CKGR residents would be stopped in early 2002 were a bad omen – even though they were later disavowed by the Minister herself.

In September, the international media announced that a substantial amount of land in the CKGR (71%) had been restored to the San by the Botswana government. Alas, the announcement was, in fact, premature and unfounded. In mid-October, Aron Johannes, a San man working for WIMSA, reported that water deliveries to people in the central Kalahari had been discontinued and that people were being forced out of the reserve due to lack of water. At the same time, the subsistence hunting licenses – the Special Game Licenses, SGLs – held by some of the CKGR residents expired and were not renewed.

A week later, the President of Botswana declared in his State of the Nation Address that a decision to cut off services (e.g. water provision food rations to registered destitute and orphans, and visits by health teams) by early 2002 had been taken.

The vast majority of the residents of the Central Kalahari Game Reserve, who reportedly numbered 589 in August, 2001 and who lived in half a dozen small communities scattered across an area of over 52,000 sq km, did not want to leave the Central Kalahari. Instead, they urged the Negotiating Team to attempt once more to come to an agreement with the Botswana government to allow them to retain and exercise their land and resource rights in the Central Kalahari Game Reserve.

Botswana government representatives, including the Minister of Local Government, Margaret Nasha, and the Vice President, Ian Khama, met with the Negotiating Team in November and December 2001. These discussions did not, however, lead to a change in the government's position regarding the Central Kalahari Game Reserve. The government maintained that the resettlement of the people of the Central Kalahari in areas outside of the reserve would facilitate the delivery of social services

and development assistance and would allow them to integrate more fully into mainstream Botswana society. The San and Bakgalagadi residents of the Central Kalahari, on the other hand, said that they wanted to continue to reside in their ancestral territories.

Minister Nasha said in a letter to the head of DITSHWANELO, the Botswana Centre for Human Rights, "We as Government simply believe that it is totally unfair to leave a portion of our citizens undeveloped under the pretext that we are allowing them to practice their culture."⁴ The San, on the other hand, said that they wanted to be able to, as they put it, protect their cultural traditions and at the same time earn their livelihoods in ways that they themselves chose.

The provision of water and other services were stopped at the end of January 2002. In February, trucks were sent in to the reserve and the people in the various communities were told to load their belongings onto them, so they could be moved to two settlements outside of the reserve, one at New !Xade in Ghanzi District to the west of the reserve and the other at Kaudwane in Kweneng District to the south-east of the reserve. By late February 2002, there were only 67 people left in the reserve, and even they were making preparations to leave.

On 10 April, 2002, the lawyers for the Negotiating Team filed a "founding affidavit" at Botswana's High Court.⁵ The affidavit called for the restoration of services terminated on 31 January, 2002, and for the restoration of land possession to the residents of the Central Kalahari.

The case was dismissed on Friday, April 26, 2002 by the judge of the High Court, who ruled that the first applicant, Roy Sesana, could not, in terms of the law, bring a case of this nature to court, as "he was not a resident of the Central Kalahari Game Reserve". The case was also dismissed on the basis of technicalities. The Judge of the High Court went further, saying that, "the contents of Roy Sesana's affidavit were too sophisticated and complex to have been within the knowledge of an illiterate person." As DITSHWANELO pointed out in a press release on 2 May, 2002, Mr. Sesana was, in fact, a resident of Molapo in the Central Kalahari Game Reserve, and that his lack of literacy should in no way be taken to mean a lack of knowledge. The Negotiating Team is planning an appeal against the High Court's decision.

It is clear from the ways in which the case was handled by the High Court that the Botswana government is bound and determined not to recognize the rights of the San and Bakgalagadi of the Central Kalahari Game Reserve. It is also clear that the government is upset with the efforts of the Negotiating Team and its lawyers and the various San and international indigenous peoples' rights groups for their roles in challenging Botswana's reputation as a model of democracy

and human rights, to the point that some of the people involved in the Central Kalahari case were being followed by the Botswana police and charges against them for operating “illegal communication devices” (i.e. a radio) were being considered in May 2002.

Subsistence hunting rights

The debates over the issue of treatment of alleged ‘poachers’ by Botswana government officials, including game scouts from the Department of Wildlife and National Parks and police officers, continued in 2001 (see *The Indigenous World 2000-2001*).

In March 2001, 5 hunters from Kaudwane were arrested and allegedly beaten by game scouts for hunting in the Central Kalahari Game Reserve. The case is reminiscent of many other cases in the past. The problem with these cases does not lie solely in the fact that people suspected of violating hunting laws are mistreated physically and mentally by officials of the state of Botswana but that people are arrested and detained in spite of the fact that they have been hunting legally. From the perspective of the people involved, the actions of government officials are not justified on legal grounds and are tantamount to harassment and intimidation of people for engaging in practices that they consider central to their culture. As one San put it in 2001, “Hunting is our heritage”. San advocacy groups hold that the failure to allow people to continue to obtain wild animal resources, in spite of legislation allowing them to do so, is a violation of the economic, social and cultural rights of the San.

The government of Botswana has not investigated these incidents thoroughly, nor have any of the officers involved in these events been charged with any crimes. The concern of San is that the violation of individual liberties and security of the person will continue unless some effort is made to investigate cases like this one and to bring individuals responsible for wrong-doing to justice. As one San put it, “No longer should Botswana Government officials be allowed to act with impunity in violating our rights.”

Community trusts under threat

- : The decision by the Ministry of Local Government and the Ministry
- : of Lands, Housing and Environment in January, 2000, regarding
- : community trusts in Botswana has yet to be rescinded formally. This

decision held that communities would no longer have the right to make their own decisions on natural resources or to retain their own funds, the benefits of the resources instead being “a national resource, like diamonds”.⁵ The decision affects the 50 or so community-based natural resource management projects in Botswana, some of which represent constituents who are San. Some community trusts, such as Cgae Cgae (/Xai/Xai) in Ngamiland, stood to make as much as 1 million Pula (a Pula is worth about US \$0.15) annually on safari hunting and tourism activities.

In spite of the constraints posed by the uncertainty surrounding the Botswana government’s decisions on community trusts, the number of local communities that are interested in becoming involved in natural resource management and utilization is on the up-swing. With the assistance of such San organizations as TOCADI, the Trust for Okavango Cultural and Development Initiatives, communities are engaged in organizing themselves as ‘representative and accountable management groups’ and are attempting to gain official registration with the government of Botswana as legal entities. The communities can do this under national legislation relating to community-based natural resource management activities in areas that are zoned as Community-Controlled Hunting Areas (CCHAs).

Some San groups are in the process of attempting to obtain land rights from Government. Regularization of land includes establishing areas that are recognized legally. Careful surveys must be done of areas that take into account both *de facto* (customary) and *de jure* (legal) claims to land. These surveys include (1) interviews with local people, (2) assessments of archive materials, including aerial photos and maps and (3) evaluations of records in Land Boards and the files of government land ministries (e.g. the Department of Surveys and Lands in the Ministry of Lands, Housing and Environment) and the Attorney General’s Chambers and in the local Land Board and the Sub-Land Board.

In some areas of rural Botswana, such as the Dobe area (Controlled Hunting Area NG 3, 5,760 sq km in size) and Ncwaagom (Controlled Hunting Areas NG 10 and 11, 800 sq km), community mapping efforts have been undertaken with the assistance of a consultant, Arthur Albertson. Albertson has worked with local San people in the mapping, which involves the use of Geographic Positioning Systems (GPS) instruments, aerial photographs and field surveys. The impacts of these efforts have been profound. In the case of the Dobe area of western Ngamiland, which has 8 *n/loresi* (territories) ranging in size from 40 sq km (!’Arin / /ao) to 244 sq km (G/hii’ahn), communities

have been able to obtain water rights from the North West District Council and Tawana Land Board and have drilled several successful wells. In the case of Ncgwaagom, Bugakwe, G//anikwe, Yeei and Mbukushu, communities have collaborated on the planning for a cultural trail and tourism program.

There are now community trusts in Ngamiland at Khwaai just north of Moremi Game Reserve (NG 18 and NG 19, 1,195 sq km), Mababe (NG 41, 2,045 sq km), /Xai/Xai (NG 4, 9,293 sq km) and at Groot Laage and Qabo in Ghanzi District (GH 1, 3908 sq km). The planning and implementation of the community trusts has not always been easy. Sometimes there are differences of opinion among community members as to who has what rights over specific areas in a region. There are also occasional inter-ethnic disagreements, as was the case, for example, at Dobe between the Ju'hoansi and some Herero. As the San organizations have learned, careful negotiations and conflict management techniques are crucial in such situations. Care must be taken to ensure that more powerful groups do not dominate those that are less powerful and influential.

Assessments of these trusts by San organizations and researchers show that, for them to be successful, they must form workable local institutions and they must obtain secure rights over their areas. Attention must be paid both to conservation and development issues, and the state of the resource base must be monitored carefully. Crucial to the success of these projects is full participation of local people in planning and decision-making. It has been found that the community trusts work better if there is openness and transparency and if there is a fair distribution of benefits. It is hoped that the Botswana government will learn some of the same valuable lessons as the San communities and organizations have learned about the importance of promoting not only civil and political rights but also social, economic, cultural and planetary (environmental) rights.

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SOUTH AFRICA

Over the last year, significant progress has been made in advancing the struggle of indigenous peoples' rights in South Africa. The Khoi-San peoples, through their own concerted efforts, were responsible for putting their case firmly on the national agenda. This happened despite other major issues that dominated the national agenda, *inter alia* the presidential elections in Zimbabwe, the continuing Aids pandemic controversy and the impact of the worsening situation of the South African currency. Allegations of illegal foreign exchange transactions prompted the government to appoint the Myburgh Commission of Inquiry to investigate the deteriorating economic situation.

Another major focus of the South African government's actions was the attention afforded to the New Partnership for Africa's Development (Nepad). Nepad, as a program, is intended to kick-start economic development in Africa in order to alleviate poverty and ensure sustainable development throughout the continent. This development has dovetailed into the United Nations World Summit for Sustainable Development (WSSD), to be held in Johannesburg in August and September 2002. Ironically, the Khoi-San peoples, as First Indigenous Peoples, had to struggle to gain recognition from among South Africa's civil society groups in order to be represented at the WSSD. This is in spite of the fact that the Khoi-San peoples are hosting a pre-summit conference for all indigenous peoples of the world in the run-up to the WSSD.

Policy situation

The policy situation for indigenous peoples in South Africa remained unchanged, as reported last year (see *The Indigenous World 2000-2001*): Different government departments appeared to be more or less helpful but with no coherent policy guidance or political commitment from the Cabinet or the Office of the Presidency. Meanwhile, the country's indigenous peoples, and the South African nation at large, are still awaiting the official release of the Human Rights Commission's research on Indigenous People's Rights. Likewise, a set of reports commissioned by the Department of Provincial and Local Government (DPLG), formerly the Department of Constitutional Development and Provincial Affairs, pertaining to the constitutional accommodation of Khoi-San communities in South Africa had yet to be released at the time of writing this report. The departure of key officials in certain government departments has also seemingly influenced progress.

The activities of the government-initiated National Khoi-San Council

Partly due to a prolonged process of reorganizing and reprioritizing the bureaucratic system of government after Mr Mbeki assumed the Presidency from Mr Mandela, progress on Constitutional Affairs affecting the First Indigenous Peoples of South Africa came to a virtual standstill in 2001. *The Indigenous World 2000-2001's* report correctly anticipated that the shift of the indigenous portfolio to the new DPLG instead of the Department of Justice would contribute to its "decreased importance and little hope that major policy advice would be forthcoming". This uncertainty, at best, has caused unease among the different Khoi-San leaders.

Implementation of basic language rights

Although the South African government is, in terms of the Constitution, in favour of the development of the Khoekhoe and San languages and the implementation of mother-tongue education projects, it has not yet made any significant state finances available in this regard. Despite this, there is a growing attempt by Khoi-San peoples to promote their language, especially through the spoken word in, particularly, the Northern Cape and Western Cape Provinces.

Land restitution

No significant change took place in the year under review. The restoration of land rights for Khoi-San peoples remains a highly emotive issue and much still needs to be done to undo the dispossession they have had to endure from 1652 to the present day.

Khoi-San unity established

In some respects, the year 2001 marked a defining moment in the struggle of Khoi-San peoples in South Africa. For the first time in modern history, all the Khoi-San peoples of South Africa united around a single common objective, namely that of holding a national consultative conference. Over 400 delegates of the San, representing the Khomani, !Xu and the Khwe as well as all Khoekhoen, representing the Namas, Griquas, Koranas and groupings from the Western and Eastern Cape, joined forces in a landmark event in March/April in the town of Oudtshoorn. Of great significance was the fact that the Deputy President of the Republic of South Africa, Mr Jacob Zuma, opened the conference on behalf of the Presidency, as President Thabo Mbeki was abroad on an official state visit.

The National Khoi-San Oorlegplegende Konferensie (NKOK), also known as the National Khoi-San Consultative Conference, was structured around more than 30 national Khoi-San affiliated groups. The duly elected 20-person NKOK Council on which San and Khoekhoe peoples are represented, faced a daunting task in its first year of existence. Lack of funding and capacity made execution of the Council's mandate, given to it by the Conference delegates at the Oudtshoorn Conference, extremely challenging.

In some respects, encouraging progress was nevertheless made in order to realize the resolutions unanimously adopted there. The formation of the NKOK heralds a new beginning for indigenous peoples in South Africa indeed because a basis for unity of purpose has been established. A most daunting challenge is to cement this dramatic development and the new-found unity among indigenous Khoi-San peoples, as San peoples' organizations had hitherto seemingly been regarded as the only representatives of indigenous peoples in South Africa. Progress in creating an awareness of identity among Khoi-San descendants who, under apartheid, were classified as coloureds has also markedly been raised. Although official statistics are not available, there seems to be an increase in

the number of people identifying with their forgotten and suppressed heritage. This augurs well for indigenous peoples and the struggle to restore their rights.

An interesting development is the phenomenon that it seems no longer to be only impoverished rural people who are reclaiming their Khoi-San identity. Highly educated and prominent members of the community are, albeit not publicly, also starting to search for their roots. Both in public and private debates, there is a growing interest in - and publicity around - Khoi-San culture and heritage nationally, not only among Khoi-San descendants but also among other cultural groups. The interest among white South Africans appears, however, to stem largely from a commercial and tourism interest. Khoi-San rock art, traditional dance and heritage sites are of growing interest and offer something uniquely new to both local and international tourists. Such sites and practices present a real possibility for the formation of public private partnerships between Khoi-San peoples, government institutions and the private sector in order to develop them in the interest of the entire nation.

The next NKOK Conference is planned for the third quarter of 2003, to be held at Springbok, Namaqualand, when the executive must report to the conference on the implementation of the resolutions taken at the Oudtshoorn Conference.

Poverty alleviation

The national government has declared poverty eradication to be one of its main objectives. This was made tangible in the Minister of Finance's budget over the last two years when several billion Rand were allocated for such programs. The respective government departments are responsible for implementing these programs and allocating funds. The Department of Arts, Culture, Science and Technology (DACST) earmarked funds for Khoi-San poverty alleviation in the field of cultural industries. A feasibility study, conducted by the Institute for Historical Research (IHR) at the University of the Western Cape, subsequently made recommendations to DACST. Government approved these recommendations and the available funds were allocated to Khoi-San peoples in different provinces of South Africa, including the Northern Cape and Northwest Province. The Khoi-San peoples themselves are running these projects in partnership with provincial and local government structures as well as parastatals, which have the required expertise.

The National Khoi-San Legacy Project

Another poverty alleviation project involving Khoi-San peoples is the government-initiated Legacy Project. Nine different projects have been identified by the Cabinet to depict South Africa's past, including the Nelson Mandela Museum Legacy Project and the Khoi-San Legacy Project. The South African Heritage Resources Agency (SAHRA) was mandated to oversee the project. SAHRA, in turn, commissioned the IHR to take the project from the stage of conceptualization to implementation. A series of community workshops were conducted to consult with Khoi-San peoples' representatives. This was done so that the Khoi-San peoples are effectively and meaningfully consulted in the process as well as able to take on ownership of their culture. A number of sites were identified and are in the process of being developed over the next few years.

The return of the remains of Sarah Baartmann

A special category is afforded to this important issue. On Friday 3 May 2002, the remains of Sarah Baartmann, who left the country of her birth nearly two hundred years ago under duress and was never buried after her death, were returned to South Africa from France having been kept in a Paris museum all these years. The French government finally succumbed to lobbying and advocacy from both the South African government as well as Khoi-San descendants to return the remains. A government-led five-person delegation was in Paris for the official ceremony for handing over of the remains, which will now be buried at a special ceremony later in 2002. Sarah Baartmann's final resting place will be decided upon by all relevant stakeholders. This symbol of the oppression Khoi-San peoples had to endure has become a pivotal rallying point in the modern-day struggle for Khoi-San women, in particular, and all Khoi-San peoples in general. Meanwhile, a Khoi-San female academic has been appointed by the University of the Western Cape to co-ordinate an international partnership research project on all issues pertaining to the return of the remains of Sarah Baartmann.

In conclusion

There remains much hard work to be done in order to overcome the major challenges and obstacles facing the indigenous peoples of South

Africa. Their determination and will, together with the support of international structures like the United Nations and other sympathetic institutions, will galvanize greater enthusiasm to ultimately succeed.

PART II

INDIGENOUS RIGHTS

7TH SESSION OF THE UNITED NATIONS WORKING GROUP ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The seventh session of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples (WG-DDIP) was held from 28 January to 8 February 2002.¹ It was originally scheduled, as in previous years, for October-November 2001 but was postponed. At the opening session of the WG-DDIP, Mr. Luis-Enrique Chávez, a diplomat from Peru, was re-elected as the Chairperson-Rapporteur for the third consecutive term. Previously, Ambassador Jose Urrutia, former ambassador of Peru to the UN in Geneva, held this position for the first four sessions of the WG-DDIP from 1995-98. However, Mr. Chávez was recalled to Lima urgently at the end of the first week and, after some debate and discussion, Mr. José Valencia (Ecuador) was elected as acting vice-chairperson for the rest of the session.

After consultations with governments and indigenous peoples, the following work plan was agreed upon:

General discussions on participation and procedure; and, at the request of the indigenous peoples, collective rights, and land, territories and natural resources;

Specific discussions on Article 13, pending from the last session; and Articles 6 to 11. (However, only articles 6, 9 and 10 were discussed in detail. Articles 7, 8 and 11 will be discussed at the 8th session of the WG-DDIP.)

As in previous sessions, the meetings alternated between formal and informal sessions, informal for generate debate and discussion, and formal when recording any consensus. All participants, governments and indigenous delegates alike, were able to take the floor and speak under each agenda item, briefly and to the point. The Chairperson clarified that the main aim of the discussions was to have an exchange of views in order to identify, as concretely as possible, the problems some governments have with specific provisions or principles in the Draft Declaration, so as to make it easier to narrow down the differences and work towards a consensus approach. Once consensus was reached, the Chairperson would reconvene a formal session to make sure this was recorded in the minutes of the meeting.

General discussions

It is difficult to include all the questions and issues raised or to do justice to the richness of the debate. This is merely an attempt to provide an overview of the discussions that took place at the 7th session of the Working Group on the Draft Declaration in order to enable indigenous peoples and others to understand what are the main issues at stake, and how the discussion is evolving.

Participation and procedure

The second day of the WG-DDIP meeting concentrated on procedural issues, focused on:

Alternative methods: There was concern at the slow progress of the working group, given that only two more years remained before the end of the Decade in 2004. Alternative working methods were proposed, including:

(i) The establishment of a Bureau by the Government of Mexico, to be composed of the chairperson, 4 regional vice-chairpersons and two indigenous coordinators, to engage in consultations during the working group sessions, as well as between sessions. This proposal did not receive support from other governments who believed it might add another layer (Australia), and therefore make it more cumbersome (Norway). It was also pointed out that it would be difficult to include indigenous representatives as only governments could be part of the Commission on Human Rights' bodies (New Zealand). Indigenous peoples were generally more favourable but asked for more information on its practical implications;

(ii) "Friends of the Chair" by Canada, whereby a group of government and indigenous peoples' representatives would be appointed to assist the Chairperson during the sessions, a technique used earlier but discontinued. Although this received some support, (New Zealand and Norway), there was no consensus on either alternative.

However, the Chairperson-Rapporteur identified the lack of political will on the part of governments to be one of the main reasons for the slow progress of the working group, rather than any working methodology and so the working group continued with its current methods.

Government inter-sessional consultations: In October 2001, a government meeting was organized in Geneva, at the initiative of the Government of Canada. The objective was for governments to meet together and prepare for the WG-DDIP sessions. During this meeting, proposals for an alternative text to the Declaration were prepared, copies of which were available at the meeting (referred to as a “non-paper” in UN language since they had not been formally presented to the Working Group). The United States Government did not participate in the October meeting, and thus proposed many changes during the WG-DDIP sessions to the governmental discussion papers. Indigenous representatives criticised the October meeting for its lack of transparency, and as being contrary to the principles of equality and non-discrimination. Canada explained that the meeting had been held in good faith and as a way of moving the process forward by already having proposals for consideration at the working group session.

Essential Criteria: Another issue that is becoming increasingly urgent for indigenous peoples to address is the question of whether to engage in a process of re-drafting or to continue to defend the Draft Declaration as originally drafted. At this session, this was question was brought to the fore with the non-paper process.

Very few governments have declared that they can adopt the Draft Declaration as adopted by the Sub-Commission, two of these being Guatemala and, more recently, Mexico as the result of a national consultation process. Many have also stated that they can adopt some articles as currently worded. However, the majority are reluctant to agree the adoption of the entire text of the Draft Declaration as originally drafted, and have concerns or reservations with one or more of its provisions or concepts. With each session of the WG-DDIP, governments introduce more and more alternative language for discussion at the meetings, with brackets indicating where they do not agree. Indigenous peoples are consistent in their support for the adoption of the Sub Commission text, and see any attempts at re-drafting as futile and frustrating, bearing in mind that the same governments actively participated in the preparation of the original text. However, faced with the political and practical implications of the current situation, many indigenous peoples’ organizations are seriously concerned as to what measures to take to ensure that the final Declaration, when adopted, will be a strong instrument and will protect their rights and interests as distinct peoples. Mindful that any agreement to engage in re-drafting may lead to amendments and/or alterations resulting

in a weakening of the text, indigenous peoples have been referring to the following criteria as essential:

The Draft Declaration must be approached on the basis of a very high presumption of the integrity of the existing text. In order to rebut this presumption, any proposal must satisfy the following criteria:

1. *It must be reasonable.*
2. *It must be necessary.*
3. *It must improve and strengthen the existing text.*

In addition, any proposal must be consistent with the fundamental principles of:

1. *Equality.*
2. *Non-discrimination.*
3. *The prohibition of Racial Discrimination.*²

This was first introduced by the Aboriginal and Torres Strait Islander Commissioner in 1998, and further developed by the Maori Legal Service in 1999. At the 2002 session, this was also referred to by a number of indigenous organizations, including the Inuit Circumpolar Conference (ICC), the African Indigenous Women's Organization (AIWO), CAPAJ (Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos), the Indigenous Information Network (IIN, Kenya), the Metis National Council (Canada), the Ogiek Rural Integrated Project (Kenya) and the Saami Council, who made the following statement:

These principles and specific criteria, at a minimum, must be guaranteed if we are to advance negotiations and constructive dialogue with governments concerning the substantive wording of the Draft Declaration articles...such negotiations and dialogue must take place in open, plenary forum – not behind closed doors, and consistent with our demands for direct, meaningful and full participation.

Invitation to the Indigenous Caucus: In another development, the governments reaffirmed that an earlier invitation to the indigenous peoples to attend their meetings was still open. After consultation, the indigenous caucus decided not to accept the invitation, as they did not wish to divert time, attention and resources away from the plenary sessions but left it open for individual indigenous delegations to attend if they so wished.

Collective rights

The Draft Declaration contains many articles that make specific or implicit reference to collective rights, and the collective aspects of indigenous rights, such as the right to self-determination, and is integral to any discussion on indigenous peoples' rights. This is thus a fundamental concept in the discussions. As a Berber representative pointed out:

Collective rights contain the right to cultural identity, the right to protect and teach the mother language at all levels: school, university; land rights, mineral and forest rights, and the right to self-determination...ILO Convention No. 169 is the first step to recognize collective rights, the Declarations adopted at the [World Conference on Human Rights], Vienna and [World Conference against Racism], Durban another, but the adoption of this Declaration on the Rights of Indigenous Peoples will be a necessary step for the recognition of indigenous peoples' rights.

Indigenous delegates referred to existing international instruments that recognize collective rights such as the two international covenants (ICCPR and ICESCR), the International Convention on the Elimination of Racial Discrimination, ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989, the UNESCO Declaration on Race and Racial Prejudice, 1978, the African Charter on Human and Peoples' Rights, 1981, the Convention on Bio-Diversity, the Universal Declaration on Cultural Diversity (UNESCO 2001), among others.

A number of governments including Ecuador, Finland, Guatemala, Norway, Peru, the Russian Federation, Switzerland and Venezuela stated that they recognized collective rights and pointed to national legislation, including constitutional provisions, recognizing the collective rights of indigenous peoples. Norway also referred to the fact that, through its' ratification of ILO Convention No. 169, it recognized the collective rights of indigenous peoples. Guatemala, also a signatory to ILO Convention No. 169, affirmed its position thus:

For Guatemala, indigenous peoples and their collective rights are an undeniable reality, and their right to self-determination together with the right to development are two collective human rights which are fundamental, and must constitute the basis of the Declaration.

The United Kingdom recognized individual rights only, and referred to minorities. Australia, Canada and New Zealand raised the issue of possible conflicts with individual rights:

Australia appreciates that human rights are usually individual rights rather than group rights or collective rights. However, Australia has been comfortable with the concept of collective rights as the approach is reflected in our domestic legislation and policy relating to indigenous peoples and our support for non-binding UN Declarations on the rights of national, ethnic, religious or linguistic minorities. Within Australia we have recognized that certain rights may be exercised both individually and/or collectively. These include, for example, certain rights of indigenous peoples which fall under the rubric of 'native title'. Native title legislation has clearly established collective rights for indigenous peoples under the Australian legal system...Australia acknowledges that the possibility of conflict between collective rights and individual rights may need to be examined and resolved in some instances. Be that as it may, Australia does not see a need to seriously question the notion of collective rights as a general concept.

New Zealand recognized collective rights in the Draft Declaration, but on an article to article basis. It recognized collective rights in national legislation - the Treaty of Waitangi recognized the individual and collective rights of the Maori - but wished to balance collective rights with the interests of the Government and of individuals.

Canada's position could be summed up in the following statement:

The Canadian Constitution recognizes and affirms those aboriginal and treaty rights in existence as of, or created after April, 1982...Some of these rights, such as hunting or fishing rights, although held by the collective, may be exercised by the individual.

The position of the Government of Canada, as previously expressed, is that the recognition in the Draft Declaration of Rights of Indigenous Peoples as collective rights, should be considered on an article by article basis...The Canadian delegation can support the inclusion of standards in the Draft Declaration, such as collective rights to land or self-government, where those rights:

- Are of fundamental significance to indigenous peoples;
- Do not deny individuals or third party rights; and

- Can be expressed clearly enough to result in practical and identifiable rights and obligations.

This reference to third party rights generated much debate and discussion. Indigenous representatives saw this as a way of including state and corporate interests in the Draft Declaration, and argued that this would defeat the main purpose of drafting a Declaration on the Rights of Indigenous Peoples. The declaration was aimed at filling the current vacuum in protecting indigenous peoples' rights. As a way forward, Guatemala proposed the inclusion of a separate article on third party rights. Indigenous peoples did not agree:

It is indigenous peoples who need to be protected from states and corporate interests because of the historical processes of colonisation: external and internal, neo-colonisation and globalisation. Third party interests should not be included in this Declaration as they are not usually referred to in declarations, which contain general statements of moral principles, nor is this current practice. (Annex II: Proposals by Indigenous Representatives to the Report of the WG-DDIP 2002)

The Chairperson, in his summary of the discussion, noted the general consensus on the existence of collective rights. However, since there was no agreement as to which rights were collective and which were individual in the Draft Declaration, the next session of the working group should look into the articles that dealt with collective rights.

Land, territories and natural resources

This discussion was related to the previous one on collective rights as indigenous peoples' rights to land, territories and natural resources are rights enjoyed and exercised in a collective manner. Indigenous peoples described the erosion of their land rights by colonization, militarization, exploration and exploitation of forest and mineral resources and colonization.

As described by a representative from the Chittagong Hill Tracts:

Our rights to our lands and territories today are interpreted by state governments on the basis of treaties or laws that were imposed upon us under duress. Sometimes, governments deny us our ownership rights on the plea that we never used land as a commodity to own and sell when we made treaties. However, many states today utilise the minerals

upon such lands although states did not mention sub-soil rights when the concerned treaties were negotiated. It is a situation of "Heads I win, tails you lose".

The Indian Law Resource Centre informed the working group of the recent decision of the Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua of 31 Aug 2001, which found that:

... indigenous peoples have, as a matter of international law, collective rights to the lands and natural resources that they have traditionally used and occupied. The Court further stated that governments violate the human rights of indigenous peoples when they fail to take affirmative legislative or administrative measures to protect and enforce these property rights and when they authorize access to indigenous lands and resources without consulting with indigenous peoples or obtaining their consent.

Some governments, including Australia and France, clarified that while they recognized the rights of indigenous peoples to their lands, this had to be seen within the context of environmental protection, restitution and compensation. Australia described the existing draft as containing genuine and conceptual problems that had to be addressed, particularly with reference to articles 26 and 27 of the Declaration, which specified the "exclusive rights" of indigenous peoples to their lands and natural resources, and thus could be taken as denying third party rights. Peru wished for more clarification of the terms "use and possession" and also expressed concern at certain conflict of interests that might arise. New Zealand referred to the Treaty of Waitangi, which recognized the land rights of the Maori, and suggested that the different articles in the Draft Declaration relating to land rights be placed together in one comprehensive article.

Indigenous representatives made specific reference to national and international laws recognizing indigenous land rights, including ILO Convention No. 169, article 5 of the Convention on the Elimination of Racial Discrimination, and article 27 of the International Covenant on Civil and Political Rights. Within this context, indigenous representatives also drew attention to the general comments, as well as the concluding observations, of the UN Human Rights Committee on Canada, Mexico and Norway, which stated that the right to self-determination, and consequently the right to collective human

rights generally, also applies to indigenous peoples, and that from the concluding observations on Canada, it was evident that this included the right to their land and natural resources (UN documents CCPR/C/79/Add.112, CCPR/C/79/Add.109 and CCPR/C/79/Add.105).

The Chair pointed out that there was a general consensus around the special relationship of indigenous peoples to their lands but that some states wished for more clarification on specific aspects of some articles. He described this dialogue as an important step in the process.

Discussion on specific articles

Article 13

This discussion was carried over from the previous session of the WG-DDIP and was based on a governmental paper proposing alternative language for article 13 that related to the right of indigenous peoples to

Manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

Canada read out the accompanying comments to the document and clarified that some governments could accept the original text (Guatemala, Finland, Mexico, Norway, Switzerland and Venezuela), while others had problems with some of the terminology. However, it was stressed that not a single state had denied the terms and concepts in the article as presently worded; merely that some issues needed to be addressed and clarified. A new general paragraph on third party rights was suggested by some governments and read as follows:

Implementation of the rights in this Declaration shall take into account measures necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

The inclusion of third party rights was supported by Canada, New Zealand, the UK and USA, and the USA also supported the reference to “public safety, order, health or morals or the fundamental freedoms of others.”

Alternative language proposed included the insertion of the phrase “in accordance with human rights standards” (Finland, France and

New Zealand), and that it should also be “subject to domestic law” (Australia and Canada). However, Australia, Canada and New Zealand all clarified that they supported the underlying principles guiding article 13 but that they wished to have some issues clarified. Guatemala and Switzerland objected strongly to the reference to national law as being “unacceptable”, as did Finland and Norway. Norway stated that such a reference would undermine the overall objective of the process, which is to develop universal standards on the rights of indigenous peoples.

The Indian Treaty Council was firmly opposed to basing the discussion of the working group on anything other than the Sub-Commission text of the Draft Declaration. The paper under consideration by the working group was from last year, and did not reflect current realities as government positions may have changed, as in the case of Mexico, which was now prepared to adopt the Declaration as originally drafted. In addition, this procedure of introducing documents that did not indicate which positions were held by which governments made it difficult for indigenous peoples to identify who to address.

Indigenous peoples objected strongly to the amendments, including the reference to third party rights as mentioned earlier, and to “domestic laws” as summed up by the Maori delegate of Te Kawau Maro:

Domestic law should conform to International law; to do otherwise is to be in breach of a General Principle of International Law. Mr. Chairman, International Law should not be subject to domestic law, if that statement is rejected then we should all go home now...what is the point? It is precisely for reasons that domestic law has not afforded adequate protection for Indigenous Peoples that we come to an international forum. Let's be clear about the relationship between domestic law and international law. Domestic law is the vehicle by which international law is taken and implemented into domestic legal systems. International law influences, guides [and] directs domestic law. It is suggested the term “subject to domestic laws” within an international context is an incorrect phrase and should cease to be used.

The representative of the Inuit Circumpolar Conference stressed:

... the purpose of this process is to establish international standards concerning the distinct rights of indigenous peoples. The introduction of this language could potentially narrow our right to maintain and have access to our religious and sacred sites. Rather, any state

prescription of domestic law would have to be consistent with international human rights law pertaining to indigenous peoples and others.

The Chairperson agreed that there was a convergence of opinion with the indigenous peoples but that governments had concerns centred around three main issues: references to (i) human rights standards; (ii) domestic laws and (iii) third party interests.

The representative of AIPP (Asia Indigenous Peoples' Pact) expressed an opinion shared by other indigenous organizations:

... the difficulties expressed by some governments in adopting Article 13 as it exists in the text are not convincing. However genuine their difficulties or apprehensions may be, it is simply not appropriate to address them in this Declaration. There are other ways to take care of their concerns, "such as balancing indigenous rights against state responsibilities". There are separate mechanisms to handle them, or separate mechanisms can be created for this purpose...Therefore, we urge these governments to expeditiously reconsider their position.

Article 6

The original text is as follows:

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

The government discussion paper included alternative language that referred to the Convention on Genocide, 1948, and proposed a separate article on the rights of indigenous children, including a reference to the Convention on the Rights of the Child.

The discussion focused on genocide, physical and mental integrity, children and references to specific conventions. The following states were able to accept the article as originally drafted: China, Denmark, Finland, Guatemala, Mexico, Norway, Peru and Switzerland. However, Canada questioned the concept of "mental integrity" as there was no definition in international law, as did Australia and New Zealand, although the latter stressed it could support this con-

cept. Norway supported retention of “physical and mental integrity” and referred to Article 1 of the Convention against Torture, which already included this concept.

Although Australia supported the underlying principles of the article, it believed it could be strengthened, and agreed with Canada and New Zealand regarding alternative language to include specific references to the Genocide Convention. Japan also preferred the alternative language proposed in the government paper. Sweden supported efforts to strengthen the text and was able to accept the term “indigenous peoples” but had reservations regarding collective rights *per se*. It supported the alternative text with references to the Genocide Convention, as did Denmark. The USA believed that the current text did not fully reflect international law on genocide and supported the alternative language, which referred specifically to the Genocide Convention.

Some states were concerned that the original working on the removal of indigenous children was too broad and could include the adoption or transfer of custody of indigenous children in the best interests of the child. Australia, China, Denmark, Guatemala, Peru, New Zealand, Norway and Switzerland, among others, stated they could support a new separate article (new article 6.1) on the rights of indigenous children.

Indigenous representatives did not agree with the references to specific conventions, and did not believe it strengthened the text in any way, quite the contrary. An indigenous Batwa representative described the genocide of Tutsis in the Central African Republic and the need to protect indigenous peoples from this happening again in the future. The representative of Ka Lahui Hawaii clarified that if the Declaration included references to specific conventions such as the Genocide Convention or the Convention on the Rights of the Child, then this would severely curtail its scope as it would then be applicable only in those countries that had ratified the relevant conventions. The USA for instance, which was well known for not ratifying international standards, could thus not be held accountable for specific conventions it had not adhered to. With reference to the earlier discussions on collective rights and the refusal of some states to recognize this fundamental right of indigenous peoples, the Genocide Convention contained references to collective rights. Guatemala shared the concern of indigenous peoples and declared that it would be detrimental to include references to specific conventions.

There term “integrated with other inhabitants of the state” was referred to in the alternative text. This was strongly opposed by indigenous representatives, including from Kuna Yala (Panama) and Jhar-

kand (India), who described the historical processes of assimilation and integration of indigenous peoples. The representative of the Jharkhand Organization for Human Rights declared:

...historically, it has been the ones dominating us who have not wanted to integrate. They have been busy homogenizing, exploiting us...even committing genocide. In India for 300 years or so, the tendency has been to non-integrate. Now when indigenous peoples say “enough is enough”—we live our lives – you say integrate. The proposal on integration is absurd, even historically speaking.

Article 9

The original text of the article is as follows:

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such right.

The discussion centred on identity, “the right to belong”, “nations”, the possibility of conflict between customary law and human rights standards, and discrimination/disadvantage.

Some governments clarified that they could adopt the original text including Guatemala, Norway, Sweden and Switzerland, among others. New Zealand stated that it could support the first sentence. Australia had specific concerns about the original text, including about the term “nations”, which was not used in the national context, “nor is it a term that has been traditionally associated with Indigenous peoples in Australia. Its adoption in an aspirational document like the Draft Declaration could therefore raise questions and expectations about territorial and constitutional integrity...” The representative of Ka Lahui Hawaii pointed to international instruments that dealt with the concept of “nation”, including the Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960, while others drew attention to agreements and treaties concluded between indigenous peoples and states as nations and peoples with their own land, territories and resource rights, e.g. in the USA, New Zealand, and in other parts of the world.

In response to Canada’s assertion that it did not recognize a “right to belong” as it did not exist in international law, several participants, including the representative of the Inuit Circumpolar Conference, recalled the mandate of the working group, which was to adopt a new

standard on indigenous peoples, and that to limit the Declaration to existing standards would defeat the entire exercise. However, Canada supported “the freedom of indigenous peoples and individuals to belong to an indigenous community or nation in accordance with the tradition and customs of the community or nation concerned”.

Sweden withdrew a proposal to include “where those traditions and customs are consistent with international human rights standards” after listening to the opinions of indigenous representatives, and given that their concerns were also met by articles 1 and 45 of the Declaration, as well as the draft Declaration as a whole. Australia and Canada proposed deleting the second sentence (also supported by New Zealand) as the issue of protection against disadvantage was covered in other articles and might be perceived as prohibiting affirmative action programmes.

The Chairperson noted that there was a great convergence of opinion but that some concepts were not sufficiently clear as to lead to consensus, and thus had to be explored further.

Article 7

There was a brief general debate on Article 7:

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention and redress for:

- a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*
- b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;*
- c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;*
- d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;*
- e) Any form of propaganda directed against them.*

The main focus of discussion was on genocide and ethnocide, land dispossession, population transfer (forced relocation), assimilation and negative propaganda. No government paper was circulated for

this article. In support of article 7 as originally drafted were Guatemala, Mexico, Norway and Switzerland.

Guatemala strongly supported the reference to ethnocide in the original article, as it was of vital importance given the historic and continuing practice committed against indigenous peoples in different parts of the world. In addition, this was necessary to fill a gap as current definitions of genocide did not fully cover this term. The representative of the Bangladesh Indigenous Peoples' Forum concurred with this position and gave an example of the cultural ethnocide taking place in his country, including the population transfer policy implemented in the Chittagong Hill Tracts in the 1980s aimed at diluting the indigenous composition of the area. This was strengthened by the remarks of the representative of Rights and Democracy who referred to the definition of genocide in the Rome Statute for an International Criminal Court, which will have jurisdiction over genocide, war crimes and crimes against humanity:

In the statute and elements of crime, the ICC elaborated how the crime of genocide can be committed in five different ways. These...refer to art. 6 (a) (b) (c) (d) and (e)...In all cases, the crime has individual and collective elements...art. 7 of the Draft Declaration on the Rights of Indigenous Peoples is totally compatible and consistent with the Rome Statute...

Canada made some initial comments indicating the need to examine further the prohibition on "integration" as this concept differs from other concepts that are harmful to indigenous peoples and cultures, such as "assimilation". While affirming that protection against genocide was essential for the continued existence of indigenous communities and cultures, Canada questioned the term "cultural genocide" as it was not found either in the Rome Statute or its Elements of Crime. Norway clarified that it had no major problems with article 7, including the reference to ethnocide and cultural genocide, on the understanding that this included forced assimilation and the destruction of indigenous cultures. Even if these terms were not yet accepted in international law, this was a process of developing a new standard on indigenous peoples and thus it was appropriate to introduce new concepts and terms. This view was shared by all indigenous peoples, as stated by the representative of CAPAJ (Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos):

Here, it refers to the dispossession of the indigenous lands, territories and natural resources as one of the forms of provoking the ethnocide

and cultural genocide of indigenous peoples. It is not about creating a new right “exclusive” to indigenous peoples, but of filling a gap in the normative framework of international human rights to protect the survival of indigenous peoples who do not enjoy any collective protection which guarantees their continuity at present.

The Chair proposed that the discussions could continue at the next session of the working group, and asked the governments to present their proposals then.

Article 10

The original article of the Draft Declaration was as follows:

Indigenous peoples shall not be forcibly removed from their lands and territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

The main themes during this discussion centred on the issues of forcible removal and relocation; free and informed consent; just and fair compensation; and the option to return.

The discussion, as with all the above articles, was based on the original article with references to the government discussion paper.

A number of states were able to accept the article as originally drafted, including Guatemala, Mexico, Norway and Switzerland, while Cuba affirmed its support for the collective rights of indigenous peoples. While Canada accepted the principle that indigenous peoples and individuals should not be removed arbitrarily from their lands, it found the text to be ambiguous and needing clarification to include situations where removal is required, for example, for reasons of health or safety. Australia agreed, and also had concerns about the requirement for agreement on compensation prior to removal taking place as this was not possible in those cases where rapid action may be required. Many indigenous representatives described their practical experiences of forced relocation without any compensation and as a result of polices or projects, such as in the Chittagong Hill Tracts of Bangladesh (dam, and influx of settlers) and the Likanantay community in northern Chile as a result of copper mines, among other such situations.

New Zealand interpreted the article to mean that there should be no forced relocation, and wished to include the right to redress as

compensation was sometimes understood to have financial connotations only. This proposal to include indemnity for forced relocation was also supported by Guatemala as being wider in scope than compensation. Norway also emphasized the need to take into account the particular value of the special relationship indigenous peoples have to their lands and territories in this context. Indigenous representatives affirmed this approach, including the representative of Treaty 8 First Nations of Alberta who clarified:

...compensation by itself may not provide adequate remedy or redress. This is because our peoples possess a special, unique, particular and spiritual connectedness to the land which needs to be restored and for which no remedy or redress, other than restoration can be adequate.

Guatemala pointed out that there was general agreement on the substantive issues of article 10, and thus could see no problem in adopting the article.

This ended the discussions on the specific articles.

Report and future work plans

On the afternoon of the last day, the working group met to read through and adopt the report.

This included the following documents: (a) the report of the meeting with a summary of the discussions and five documents: Annex 1 - A Compilation of amendments proposed by some states for future discussions based on the Sub-Commission text (a new title to more accurately reflect the fact that some states can accept the original draft); Annex 2 - Proposals by Indigenous Representatives, which contained the views and positions of the indigenous peoples on the issues discussed; Annex 3 - Comments by the NGO Movimiento Indio "Tupaj Amaru"; Annex 4 - The Mexican Proposal of a Bureau; and Annex 5 - Proposal by the Guatemalan Delegation to Facilitate Consensus on various articles of the Draft Declaration (a separate paragraph on third party rights).³

While reading through the draft report, and during the discussion that followed when the report was read out and agreed clause by clause, indigenous representatives voiced their concern at the inclusion in the report of the government discussion papers. They questioned this approach as not being a true reflection of the debate. Indigenous representatives stressed that this was contrary to the spirit

of dialogue and equal participation on which the working group was based, and did not include the interchange of views that took place in the meeting itself in a spirit of positive and constructive dialogue. Norway and some other governments stressed that the report should also include the arguments for retaining the original text, clarified by many governments during the discussions, in order to provide a more balanced perspective. Mexico and Guatemala also raised the question as to whether, in the future, the report should identify the positions held by specific states instead of the current practice of using the anonymous general term of “states” prefixed with “some”, “many”, “a few” etc.

The proposed dates for the next session of the working group are 2-13 Dec 2002. For the next session, it was agreed that the working group would consider articles 3, 31, 36 and 25-30 on lands and complete the discussion on articles 7, 8 and 11 pending from this session.

Conclusion

At the end of the meeting, the Working Group on the Draft Declaration had adopted not one single article. However, substantive issues were discussed, and the positions of the individual states made clearer during this session. A positive aspect of this process is that indigenous peoples have been able to engage in dialogue and discussion with the governments in a constructive manner, and to do their best to address and allay their concerns.

What seems increasingly uncertain is whether the Declaration can be adopted within the framework of the Decade and, if this is not the case, what the next step should be. This is the question that indigenous peoples, and those states that sincerely wish to see a Declaration on the Rights of Indigenous Peoples adopted, have to address.

Notes

- 1 *Editor's note:* This article is an abridged version of the original text by Mrs. Chandra Roy. Due to our limited space, we are unfortunately unable to include the introductory section, in which the author provides extremely useful information regarding the background of the Working Group, indigenous participation, working methodologies etc. For a full version please visit our website at: <http://www.iwogia.org>
- 2 ATSIC 2001: *Setting International Standards: An analysis of the United Nations Declaration on the Rights of Indigenous Peoples and the first six sessions of the Commission on Human Rights Working Group*, Prepared for

the Aboriginal and Torres Strait Islander Commission by Sarah Pritchard, June 2001, 3rd edition at page 34.

- 3 For more details please see the WG-DDIP report on:
www.unhchr.ch/huridoca.nsf/Documents?openFrameset

THE PERMANENT FORUM ON INDIGENOUS ISSUES

The United Nations Economic and Social Council established the Permanent Forum on Indigenous Issues on July 2000, on the recommendation of the Commission on Human Rights.

This decision was a breakthrough achievement in the decades-long struggle of indigenous peoples to make their needs and concerns known and to gain standing within the international community. The new UN body brings new ground, as it formally integrates indigenous peoples and their representatives into the structure of the United Nations. It marks the first time in history that representatives of states and non-state actors have been accorded parity in a high level body within the United Nations.

In previous editions of *The Indigenous World*, detailed information has been provided on the debates that have taken place during the negotiation process between indigenous peoples' representatives and the government delegations around establishing a Permanent Forum that would respond to the needs and demands of indigenous peoples. In this issue, we will endeavour to give a brief summary of the historical process that led up to establishment of the Forum, a short description of the nature of the Forum and a résumé of events that have taken place over the last year, with special reference to the indigenous processes for nominating their candidates.

Description of the Permanent Forum

- : The Permanent Forum on Indigenous Issues is located at a high level
- : within the United Nations system, being a subsidiary organ to the
- : Economic and Social Council – ECOSOC.

The Permanent Forum on Indigenous Issues will comprise **16 members**, eight of which will be nominated by governments and eight by the President of ECOSOC, on the basis of broad consultation with indigenous groups. The selection process will have to take into account principles of representativity, and the diversity and geographic distribution of indigenous peoples.

All members of the Forum will act as independent experts on indigenous affairs on a personal basis for a three-year period with the possibility of re-election or nomination for a further term.

The Forum's mandate is a broad one, covering all indigenous issues relating to economic and social development, human rights, the environment, culture, education and health.

Specifically, the Forum will have to:

- Provide expert advice and recommendations on indigenous affairs to the UN Economic and Social Council.
- Raise awareness and promote the integration and coordination of activities related to issues of concern to indigenous peoples within the UN system.
- Prepare and disseminate information on indigenous peoples issues.

The Forum will hold an annual ten-day meeting at either the UN headquarters in Geneva or the UN head office in New York, or any other place the Permanent Forum may decide, in line with the UN's existing procedures and financial regulations.

The meetings will be open, like those of the Working Group on Indigenous Populations. Governments, intergovernmental organisations, NGOs and indigenous peoples' organisations will be able to participate in the Forum as observers.

The Permanent Forum will submit an annual report to the ECOSOC Council on its activities, including any recommendations, for its approval. The report will be distributed to the relevant UN bodies, funds, programmes and agencies.

Funding for the Permanent Forum will come from existing resources, through the regular budget of the United Nations and its specialised agencies, and via possible donations.

Five years following its establishment, ECOSOC will undertake an evaluation of the Permanent Forum's rules of procedure, including the method for selecting its members.

The path towards the first session of the Permanent Forum on Indigenous Issues

The challenges did not end with the official establishment of the Permanent Forum in 2000, however, for there was a need to ensure that ECOSOC's resolution was adequately implemented and that the recently established Permanent Forum would be in a position to respond to the expectations of indigenous peoples.

In this respect, the two most important challenges faced by indigenous organisations during this year were:

- That of ensuring indigenous control over the nomination of the eight indigenous experts.
- That of achieving the allocation, from the UN system, of the necessary financial resources to make possible the creation of an independent Secretariat, staffed by qualified indigenous people, to service the Permanent Forum.

Indigenous processes of regional consultation for nominating candidates

Throughout the whole discussion process on establishing the Permanent Forum, and more particularly following its official establishment, one of the main demands of the indigenous organisations was that of controlling the nomination process for the eight indigenous candidates. Although the resolution refers to the fact that the appointments will be made by the President of ECOSOC on the basis of wide consultation with the indigenous organisations, it does not specify any criteria by which to define what "broad consultation" with indigenous organisations means.

For this reason, over the last year the indigenous organisations have particularly focused on the fact that the best way of "ensuring the broad consultation of indigenous organisations", as established by the resolution on the Permanent Forum on Indigenous Issues, was through regional consultations organised by indigenous peoples, which would nominate candidates for the indigenous members.

Already in 2000, indigenous peoples agreed on a regional division for the nomination of the eight indigenous experts. Their recommendation was that the eight indigenous experts should be nominated on the basis of seven geo-cultural regions: Asia, Africa, Arctic, North America, South America, Central America, and Pacific with one rotat-

ing seat between the three major regions – Asia, Africa and Central/South America and the Caribbean.

During 2001, the indigenous organisations held a number of meetings with the vice-president of ECOSOC and with Mrs. Mary Robinson, High Commissioner for Human Rights, in which they endorsed the above-mentioned regional distribution of the indigenous experts and expressed their concern that, unless the indigenous peoples were able to recommend their own candidates, through the widest possible regional indigenous consultations, there would be a risk of certain governments trying to control or influence the nomination process for indigenous candidates. This would obviously occur without the participation or consent of the indigenous peoples and would run counter to the spirit of the establishment of the Permanent Forum.

In February 2001, the High Commissioner for Human Rights distributed a circular inviting indigenous peoples' organisations to submit their individual nominations and requesting them to send their lists of candidates prior to 1 October 2001.

This circular caused a great deal of concern among many indigenous organisations, as the request for individual nominations sidelined their own regional consultation processes, which were considered the only way of ensuring the support of indigenous organisations and the legitimacy of the candidates.

In May and July 2001, indigenous representatives held meetings with the vice-president of ECOSOC in which they once again expressed their points of view on the nomination process and defended their proposal for candidates via regional consultations.

In spite of a lack of official funding to support the indigenous regional consultation process, the indigenous organisations organised their consultations for the nomination of candidates during the second half of 2001. These consultations were held to nominate candidates from Asia, Central America, South America, Russia, the Pacific and the Arctic.

The candidates nominated through these indigenous regional consultations were

South America - Amazon Region:	Mr. Antonio Jacanamijoy
South America – Andes/Southern Cone:	Mr. Aucan Huilcaman
Asia:	Mr. Parshuram Tamang
Africa:	Mr. Ayitegau Kouevi
Arctic:	Mr. Ole Henrik Magga
Russia:	Mr. Pavel Sulyanziga
Central America:	Mr. Marcial Arias

North America:
Pacific:

Mr. Willie Littlechild
Mrs. Mililani Trask

The processes by which these consultations were organised was often arduous and, in some cases, a source of controversy but they undoubtedly represented the first significant effort on the part of the indigenous organisations to reach a consensus around nominating their own “experts”, thus guaranteeing the necessary legitimacy of the eight indigenous expert members of the Permanent Forum. This was undoubtedly only a start, and these processes will need to be improved and perfected on future occasions but the experience has established a particularly constructive precedent in the search for adequate procedures for the election of the indigenous “experts”.

In addition to the candidates nominated by the regional consultations, the Office of the High Commissioner received approximately fifteen individual nominations from different indigenous organisations.

ECOSOC’s resolution, July 2001

The substantive meeting of ECOSOC held in Geneva in July 2001 once more considered the issue of the Permanent Forum on Indigenous Issues and adopted a resolution in which it was established that:

- The first session would be held in New York from 13 to 24 May 2001.
- The regional distribution of the eight experts to be nominated by Governments would correspond to the five regional groups operating within the UN system with a rotational system established between the regions for the three remaining places.
- The ECOSOC President would announce the choice of the 16 members no later than 15 December 2001.

Finally, the resolution called upon the General Assembly to consider, in its 2002-2003 budget, an allocation of resources to the Permanent Forum appropriate to its broad mandate.

This meeting of ECOSOC took place on the same dates as the 19th session of the Working Group on Indigenous Populations and so the indigenous caucus, meeting in Geneva, decided to ask ECOSOC if it would be possible to speak on the agenda point devoted to the Permanent Forum. ECOSOC accepted this request from the indigenous caucus and an intervention was made to the plenary in which they once more high-

lighted the importance of the fact that the nomination process should take into account the recommendations of the regional indigenous consultations and also the need for the Permanent Forum to have its own secretariat plus the financial resources necessary to fulfil its mandate.

Nomination of the 16 members of the Permanent Forum

At the end of December 2001, the President of ECOSOC made known the names of the Permanent Forum members.

The experts nominated by the governments were:

Mrs. Otilia Lux García de Cotí (Guatemala)
Mr. Marcos Matias Alonso (Mexico)
Mr. Wayne Lord (Canada)
Mrs. Ida Nicolaisen (Denmark)
Mr. Yuri A. Boitchenko (Russian Federation)
Ms. Njuma Ekundanayo (Democratic Republic of Congo)
Mr. Yuji Iwasawa (Japan)

The nomination of one expert from the Asia regional group remained pending.

The indigenous experts appointed by the President of ECOSOC were:

Mr. Ayitegau Kouevi (Togo)
Mr. Willie Littlechild (Canada)
Mr. Ole Henrik Magga (Norway)
Ms. Zinaida Strogalschikova (Russian Federation)
Mr. Parshuram Tamang (Nepal)
Ms. Mililani Trask (United States of America)
Mr. Antonio Jacanamijoy (Colombia)
Mr. Fortunato Turpo Choquehuanca (Peru)

Unfortunately, the ECOSOC President did not appoint all the candidates elected in the regional consultations but it is important to note that, of the eight indigenous experts appointed, 6 are the result of regional consultation nominations. This is in fact significant recognition on the part of ECOSOC of indigenous peoples' internal processes and a great achievement in the process of recognition of the right of indigenous peoples to identify their own indigenous

expert members of the Permanent Forum through consultation processes.

The independent secretariat and financial resources

The need for the Permanent Forum to have the financial resources necessary to fulfil its mandate and the allocation from the UN regular budget of the financial resources necessary to establishing its own secretariat, reporting directly to the ECOSOC secretariat, and with qualified indigenous staff, has been and continues to be one of the main demands of the indigenous organisations in relation to the establishment of the Permanent Forum.

Throughout the whole year, indigenous representatives fought hard for the financial bodies of the UN system to consider their demands for allocation of the funding necessary for the establishment of a secretariat that would service the Permanent Forum, thus giving it the capacity to implement its mandate adequately. Unfortunately, and in spite of all the efforts made by the indigenous organisations to gain the necessary funding, the only and exclusive allocation considered in the biannual budget (2002 and 2003) of the United Nations was for the first session of the Permanent Forum to be held.

The issue of funding of the Permanent Forum thus continues to be one of the continuing major challenges and it still remains to be seen to what extent the UN system is prepared to commit itself to the establishment of a Permanent Forum with the necessary funding to be able to satisfactorily fulfil the task entrusted to it by ECOSOC.

Depriving the Forum of the financial resources with which to establish its own secretariat and a programme of inter-sessional activities would be the most effective way of preventing it from fulfilling its role, turning it into a body with very little direct influence and a minimal capacity for action.

Final considerations

The establishment of the Permanent Forum undoubtedly marks an historic milestone but it also marks the beginning of a long process that will require great efforts on the part of all those involved to ensure that the Permanent Forum is able to fulfil its role successfully within the United Nations system. Members of the Forum, governments, indigenous peoples' representatives and NGOs are faced with the challenge of establishing and developing rules of proce-

ture for the Permanent Forum that will not reduce its capacity for action and that will enable it to implement its broad mandate in the best possible way. It is clear that the process, which requires that the Permanent Forum move from theory to action, from good intentions to concrete results that are of benefit to indigenous peoples, consolidating the recognition and protection of their fundamental rights within the UN system, will be a long and difficult one. With the greatest of efforts, indigenous peoples have accomplished the goal to establish the Permanent Forum and the first obstacle has been surmounted but there still remain many obstacles ahead. The firm and coordinated support of all those involved in the process will be essential if the process is to move forward successfully, and if the Permanent Forum is to be capable of responding to the expectations of the indigenous peoples.

SPECIAL UN RAPPORTEUR ON THE SITUATION OF THE HUMAN RIGHTS OF INDIGENOUS PEOPLE

In 2001 the Commission on Human Rights decided to appoint a Special Rapporteur on the Situation of the Human Rights of Indigenous People. Later this year, the Chairperson of the Commission on Human Rights appointed Dr. Rodolfo Stavenhagen, a Mexican research professor specialized in indigenous rights, as the Special Rapporteur for a three year period.

The appointment of the Special Rapporteur is a significant achievement of indigenous peoples in their on-going pursuit for the protection and recognition of their fundamental rights by the United Nations.

The mandate of the Special Rapporteur is:

- To gather information and communications from all relevant sources – including governments, indigenous peoples and their communities and organisations – on violations of human rights and fundamental freedoms of indigenous peoples.
- To formulate recommendations and proposals on measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous peoples.
- To work in close relation with other special rapporteurs, spe-

cial representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.

The work of the Special Rapporteur involves fact-finding missions, and communications with governments with regard to the alleged violations of the human rights of indigenous peoples.

In his first rapport, presented to the Commission on Human Rights in April 2002, Dr. Stavenhagen provided an overview of the main human rights issues faced by indigenous peoples and set out the agenda for his future activities.

The Special Rapporteur's first rapport (E/CN.4/2002/97 and E/CN.4/2002/97 Add1) can be found on the web site of the UN Office of the High Commissioner for Human Rights:

<http://www.unhchr.ch/indigenous/rapporteur.htm>

IWGIA would like to take this opportunity to encourage indigenous organisations and communities to make use of the Special Rapporteur mechanism by submitting to him information pertaining to the violation of their rights, so that he can act on such information.

Any information intended for the Special Rapporteur may be sent to:

Mr. Rodolfo Stavenhagen
Special Rapporteur on the situation of the human rights of indigenous peoples
Office of the High Commissioner for Human Rights
8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland
Fax: 41 22 917 90 10
Email: jwoo.hchr@unog.ch

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR)

: **A**n interesting and promising process is currently developing
: within the African Commission on Human and Peoples' Rights
: (ACHPR) concerning the promotion and protection of the human

rights of indigenous peoples and communities in Africa, and we give here a short update for the past 1-2 years.

The background to the initiation of the process can briefly be summarized as follows: in 1999, IWGIA held a conference on the situation of indigenous peoples in Africa in cooperation with PIN-GOs Forum in Tanzania. This conference recommended that the African Commission on Human and Peoples' Rights should be encouraged to address the human rights situation of indigenous peoples in Africa, which it had so far never done before. One of the members of the African Commission – Commissioner Barney Pityana from South Africa - participated in the Tanzania conference and, during the following sessions of the African Commission in Rwanda and Algeria respectively, he brought up the issue. Initially, the African Commission tended to reject the issue, as it did not find the term *indigenous peoples* applicable to African conditions. The main argument was that all Africans are indigenous to Africa and that no particular group can claim indigenous status.

However, during the 28th Ordinary Session of the African Commission, which took place in Benin in October 2000, the situation of indigenous peoples was on the agenda as a separate agenda item. Although the issue was initially not positively received, its inclusion on the official agenda was a crucial historical step forward since it gave the Commission and indigenous people the possibility of pursuing the matter further. During the Benin session, a "*Resolution on the Rights of Indigenous People/Communities in Africa*" was adopted by the Commission. The resolution resolved to set up a working group with the following mandate:

- To examine the concept of indigenous people and communities in Africa;
- To study the implications of the African Charter on the human rights and well-being of indigenous communities;
- To consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities.

The adoption of this resolution was a remarkable step forward, indicating the willingness of the African Commission to debate the issue. The 29th Ordinary Session of the African Commission took place in Tripoli, Libya from 23 April – 7 May 2001. For the first time ever, five indigenous representatives participated in this session, and they were allowed to present a statement, even though none of their organizations have observer status with the Commission. The indigenous

representatives participated and spoke in the session, organized a seminar during the session and presented recommendations to the African Commission for the future work of the proposed Working Group on the Rights of Indigenous People/Communities in Africa.

The indigenous participation in the session of the African Commission in Libya was very important as, for the first time, indigenous people had the opportunity of presenting their cases directly to the African Commission. They actively lobbied the governments and Commissioners and, through the seminar they organized during the session, they got the chance to voice their concerns and discuss directly with other human rights NGOs and interested state parties.

During the private session of the 29th Session in Libya, the “*Working Group on the Rights of Indigenous People/Communities in Africa*” was established by the African Commission.

This Working Group has a different nature than the UN Working Group on Indigenous Populations. The Working Group under the African Commission is a small task force to which a few people are nominated by the African Commission in their personal capacity as experts. It is not an open forum with broad participation like the UN Working Group. The “Working Group” model is one of the mechanisms that exist within the African Commission to study various human rights issues of concern, and there are presently also other Working Groups on other topics. The members nominated by the African Commission to serve on the Working Group were:

- Commissioner Barney Pitso Ralea (chairman of the Working Group) (from South Africa)
- Commissioner and chairman of the African Commission Kamel Rezag Bara (from Algeria)
- Commissioner Andrew Chigovera (from Zimbabwe)
- Naomi Kipuri (indigenous expert – Maasai, Kenya)
- Zéphyrin Kalimba (indigenous expert – Batwa, Rwanda)
- Mohamed Khattali (indigenous expert – Tuareg, Mali)
- Marianne Jensen (IWGIA, independent expert)

Fiona Adolu from the secretariat of the African Commission was designated secretary to the Working Group.

The Working Group held its first meeting in the Gambia on October 12, 2001, prior to the start of the 30th Session of the African Commission which took place from 13 – 27 October 2001. During the meeting, it was agreed that the first task of the Working Group would be to develop a Conceptual Framework Paper. This paper would be

the first step in the formulation of a report to be submitted to the African Commission – presumably in April-May 2003. It was decided that the paper should make some initial discussion of the characteristics of indigenous peoples in Africa and give an idea of which groups of peoples we are talking about, defining their concrete human rights problems. A first draft of this paper would have to be ready before the next session of the Commission, where it would be discussed at a one-day round table meeting.

It was decided that, provided funding could be obtained, a wider consultative seminar should be conducted in 2002 to discuss the findings of the Conceptual Framework Paper with a broader audience of indigenous people and experts on the issue.

It was furthermore considered that it was important for more indigenous people themselves to participate in the forthcoming sessions of the African Commission in order to present their situation, and that their organizations should apply for observer status with the Commission so that they would be allowed to participate and speak in the sessions.

Another important activity of the Commission is the preparation of an analysis of the African Charter on Human and Peoples' Rights seen in the light of the discussion of the human rights of indigenous peoples.

In the 30th Session in the Gambia, two of the indigenous representatives of the Working Group and IWGIA made statements under agenda item 10(i) "Situation of indigenous people", which is maintained as an agenda point under agenda item 10 "Promotional Activities". In his statement, the representative of the government of South Africa welcomed the establishment of the Working Group as an important initiative. However, some of the commissioners strongly voiced their opposition to the issue, stating that the African Commission seemed to be taking on its fragile shoulders an issue that was not the concern of the Commission. They maintained that the term *indigenous* could not be used meaningfully in an African context and that it implied negative colonial connotations. This position was, however, contested by other commissioners, reflecting the differing positions within the Commission.

A first draft of the Conceptual Framework Paper was produced by the Working Group prior to the round table meeting, which took place as planned prior to the 31st Ordinary Session of the African Commission in Pretoria, South Africa from 2-16 May 2002. The round table meeting was attended by the members of the Working Group and four invited experts. The draft paper was discussed, and the approach

used in the paper seemed to be generally accepted. During the round table meeting it was agreed to proceed with the further drafting of the report, which will hopefully be discussed at a wider consultative seminar in October 2002.

During the 31st session, Commissioner Barney Pityana presented a progress report of the work of the Working Group and two of the indigenous experts gave statements on behalf of the Working Group. Organisations such as the International Labour Organization (ILO), the Botswana Center for Human Rights and IWGIA also gave statements. The comments from those commissioners who spoke were generally positive and constructive, encouraging more of the commissioners to take an active interest in the issue of the human rights of indigenous peoples and minorities.

Several commissioners have now expressed an interest in dealing with the issue and in cooperating with the Working Group. This open attitude on the part of the African Commission is very commendable and encouraging. There is no doubt that the issue of indigenous peoples remains difficult in an African context. However, the African Commission is a major platform of debate, and if the African Commission does endorse the significance of supporting marginalized and vulnerable groups such as indigenous peoples, this will send a very important message and help facilitate a much needed dialogue between African governments and indigenous peoples.

PART III

IWGIA PUBLICATIONS AND
GENERAL INFORMATIONS

IWGIA PUBLICATIONS 2001/2002

No.107 Thomas Köhler & Kathrin Wessendorf (eds.): *On the Way to a New Millennium: Indigenous Peoples in the Russian North.* RAIPON & IWGIA 2002. 292 p. ill. & maps. US\$ 16.00; GBP 11,20; DKK 120,00. ISBN: 87-90730-52-6

No.106 Fergus MacKay: *A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System.* Forest Peoples Programme & IWGIA 2002. US\$10.00, GBP 7,00, DKK 85,00 - ISBN: 87-90730-59-3

No.105 Suhas Chakma & Marianne Jensen (eds.): *Racism against Indigenous Peoples.* Asian Indigenous and Tribal Peoples Network & IWGIA 2001. 336 p. US\$ 16,00; GBP 11.20; DKK 120,00. ISBN: 87-90730-46-1

Indigenous Affairs 2001

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Bolivia (in print) 2/2002

Urban Indigenous 3/2002

Poverty 4/2002

IN SPANISH

Beatriz Huertas Castillo. *Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad.* IWGIA 2002. 256 p., ill. & maps. S/60 – US\$ 18,00. ISBN 87-90730-57-7.

Mattiace, Shannan L, Rosalva Aída Hernández y Jan Rus (eds). *Tierra, libertad y autonomía: impactos regionales del zapatismo en Chiapas.* CIESAS & IWGIA 2002. 442 p., ill. & maps. 130 MXP – US\$13.50. ISBN 968-496-443-9.

Fergus MacKay. *Guía para los Derechos de los Pueblos Indígenas en el Sistema Interamericano de Derechos Humanos.* Forest Peoples' Programme & IWGIA, 2002. 171 p. US\$ 10.00, GBP 7,00, DKK 85,00. ISBN: 87-90730-58-5.

García Hierro, Pedro, Alberto Chirif Tirado & Alexandre Surrallés Calonge. *Una Historia Para el Futuro. Territorios y Pueblos Indígenas en Alto Amazonas.* CORPI, Racimos de Ungurahui & IWGIA 2001, 175 p., ill. & maps. ISBN: 87-90730-55-0.

Roberto Balza Alarcón. *Tierra, Territorio y Territorialidad Indígena. Un Estudio Antropológico sobre la Evolución en las Formas de Ocupación del Espacio*

del Pueblo Indígena Chiquitano de la Ex-Reducción Jesuita de San José;
APCOB, SNV & IWGIA 2001, 356 p., ill & maps. ISBN: 99905-0-038-X
99905-0-043-6.

ASUNTOS INDÍGENAS 2001

Racismo 1/2001

Militarización 2/2001

Auto-determinación 3/2001

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Procesos Internacionales –

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Bolivia (en preparación) 2/2002

Indígenas Urbanos 3/2002

Pobreza 4/2002.

PUBLICATIONS IN OTHER LANGUAGES

Marianne Jensen and Greta M. Maganga (eds.): *Wenyeji Asilia Katika Afrika Mashariki, Kati Na Kusini* (Swahili translation of *Indigenous Affairs no. 2/99* on Hunter-Gatherers and Pastoralists in Africa); IWGIA 2001, 148 pages. ISBN: 87-90730-44-5 - US\$ 10.50; GBP 7,30; DKK 85,00

Jens Dahl & Alejandro Parellada (eds.): *Katutubong Mamamayan* (Tagalog - Philippines - translation of *Pueblos Indígenas*); IWGIA 2001, 131 pages ISBN 87-90730-40-2

Jens Dahl & Alejandro Parellada (eds.): *Masyarakat Adat di Dunia. Eksistensi Dan Perjuangannya* (Bahasa - Indonesia translation of *Pueblos Indígenas*) IWGIA 2001, 139 p. ISBN 87-90730-39-9

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In Danish

Annelin Eriksen & Knut Rio: *STILLEHAVSFOLK I MELANESIEN*

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ISSN: 1399-9540 / ISBN: 87-90730-54-2 DKK 25,00

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