

THE INDIGENOUS WORLD 2005

Copenhagen 2005

THE INDIGENOUS WORLD 2005

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EDITORIAL
CONTRIBUTORS

EDITORIAL

The year 2004 marked the end of the first International Decade of the World's Indigenous People and, for many, this was an opportunity to look back and assess the progress made since 1995.

At international and regional level, some important achievements have been made. There has been the creation of the UN Permanent Forum on Indigenous Issues (2000), the designation of a UN Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People (2001), the recognition by the African Commission on Human and Peoples' Rights of the problems faced by indigenous peoples/communities in Africa (2003) and the increased activity of the Inter-American Commission on Human Rights around issues affecting indigenous peoples in Central and South America. There has also been substantial progress in raising and promoting indigenous concerns within several UN programmes and, in particular, within the various international processes on environment and sustainable development, where respect for and protection of indigenous peoples' rights has now been written into certain paragraphs of the final documents of the World Summit on Sustainable Development (Johannesburg 2002), the IUCN World Parks Congress (Durban 2003) and the COP7 (Kuala Lumpur 2004; see article in this volume). Indigenous women, too, can look back on a decade that started with the Beijing Indigenous Women's Declaration in 1995 and during which they were increasingly able to assert their rights and influence international debates – such as for instance during the 2004 Permanent Forum session (see this volume).

A great disappointment, however, has been the ending of the mandate of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples in December 2004 without having achieved what was a "major objective" of the Decade – the adoption of a Declaration on the Rights of Indigenous Peoples by the UN General Assembly. It is

therefore crucial to indigenous peoples worldwide that the Working Group's mandate be extended by the Commission on Human Rights, so that a strong and uplifting UN Declaration on the Rights of Indigenous Peoples can be adopted by the General Assembly as soon as possible. This is consistent with the General Assembly Resolution on the Second International Decade of the World's Indigenous People, adopted in December 2004, which "urges all parties involved in the process of negotiation to do their utmost to carry out successfully the mandate of the open-ended intersessional working group established by the Commission on Human Rights in its resolution 1995/32 and to present for adoption as soon as possible a final draft United Nations declaration on the rights of indigenous peoples".

As the concept of "indigenous" has gained increased acceptance and recognition internationally, indigenous peoples have become more self-confident and vocal at national level. Indigenous organisations, including indigenous women's organisations, have multiplied and gained strength, even at times political influence, as in the case of Ecuador.

But the picture is varied and differs from country to country and continent to continent. There are examples of indigenous peoples gaining independence (East Timor) or *de facto* recognition of their right to self-determination (Canada). The vast majority of Latin American countries (with the notable exception of Chile) now constitutionally recognize the multi-ethnic nature of their populations, as well as indigenous peoples' land rights. Of the 17 countries worldwide that have ratified ILO Convention No. 169, 13 are Latin American and Caribbean. In Asia and Africa, on the other hand, many countries still refuse to admit even the existence of indigenous peoples within their borders, let alone recognize their rights.

Globally, the Decade has thus been a mitigated success. As the many country reports in this volume of *The Indigenous World* show, much remains to be done – at international level but even more so at national and local level.

The new decade will, to a very large extent, coincide with the implementation of the Millennium Declaration adopted in 2000 by 191 countries, and who thereby committed themselves to achieving eight

major "Millennium" Development Goals (MDGs). 2015, i.e. when the decade ends, will in fact be the year when the goals on poverty, education, gender equality, child mortality, maternal health and HIV/AIDS are expected to have been met - if not 100% then at least to a very significant degree (50% or even 75%).

Indigenous peoples, however, have justly raised their concern over the fact that neither the Millennium Declaration nor the MDGs mention indigenous peoples, although these should be an obvious target group since they are usually the most exposed to poverty, illiteracy, poor health, etc., and are now also beginning to feel the devastating effect that HIV/AIDS can have on relatively small population groups (see e.g. Cambodia and the section on the Pacific).

Efforts are being made, however, to redress this situation. The forthcoming Permanent Forum session (May 2005) will thus focus on two of the goals – the eradication of poverty and the achievement of universal primary education - and the ILO (see this volume) and other major UN agencies who form part of the Inter-Agency Support Group to the Permanent Forum (IASG) have, during 2004, been looking at how concern for indigenous peoples can be included in their MDGs. Important work is also being done in terms of defining relevant indicators for assessing and monitoring the MDGs from an indigenous point of view. Right now, this angle is missing. For many indigenous peoples who survive on a subsistence economy, for instance, the MDG of "reducing by half the proportion of people living on less than a dollar a day" makes little sense. For them poverty should rather be seen in terms of deprivation – whether it be loss of land and access to natural resources or loss of traditional culture, knowledge and languages.

However, indigenous peoples and their organisations will have to face up to a major challenge – namely that efforts to achieve the MDGs may well take place at the expense of indigenous peoples' cultures and livelihoods. This volume of *The Indigenous World* abounds in examples of "projects" carried out by states to create "development" and ensure national economic growth. Whether they be hydro-power dams (China, Laos), mining (India), logging (Russia) or nature conservation programmes (Ethiopia), these projects have one thing in common: they drive indigenous peoples off their ancestral lands, deprive them of

their subsistence resources and endanger their cultures. Yet looking at some of the 48 current MDG indicators, this situation may well continue since, in order to comply with the MDGs, governments will have to achieve sustained and broad-based economic growth; markedly increase their budgets for education, health and sanitation; improve the ratio of areas protected in order to maintain biological diversity, etc. It is to be feared that many countries will intensify their infrastructure investments, concentrate their efforts on health and education in easily accessible regions and turn to areas inhabited by indigenous peoples in order to meet environmental requirements.

The active and informed participation of indigenous organisations in assessing and monitoring the MDGs and states' and international agencies' efforts to achieve them will therefore be absolutely crucial in the years to come. In some countries, such as Tanzania and Kenya (this volume), indigenous organisations already have some experience from the participatory approach taken in relation to the Poverty Reduction Strategy Papers (PRSPs) and the preparation of a comprehensive country-based strategy for poverty reduction. Similar indigenous involvement must be encouraged and developed in other countries, and be extended to include the whole MDG process. This will provide indigenous organisations with valuable experience and information that can be fed into the Permanent Forum and the IASG, thereby enabling the various UN agencies and mechanisms to take affirmative action if and when necessary. □

Diana Vinding
Coordinating co-editor

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IWGIA would like to extend warm thanks to the following people and organizations for having contributed to *The Indigenous World 2005*. We would also like to thank those contributors who wished to remain anonymous and are therefore not mentioned below. Without the help of these people, this publication would not have been possible.

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PART I

REGION AND
COUNTRY REPORTS

THE CIRCUMPOLAR NORTH

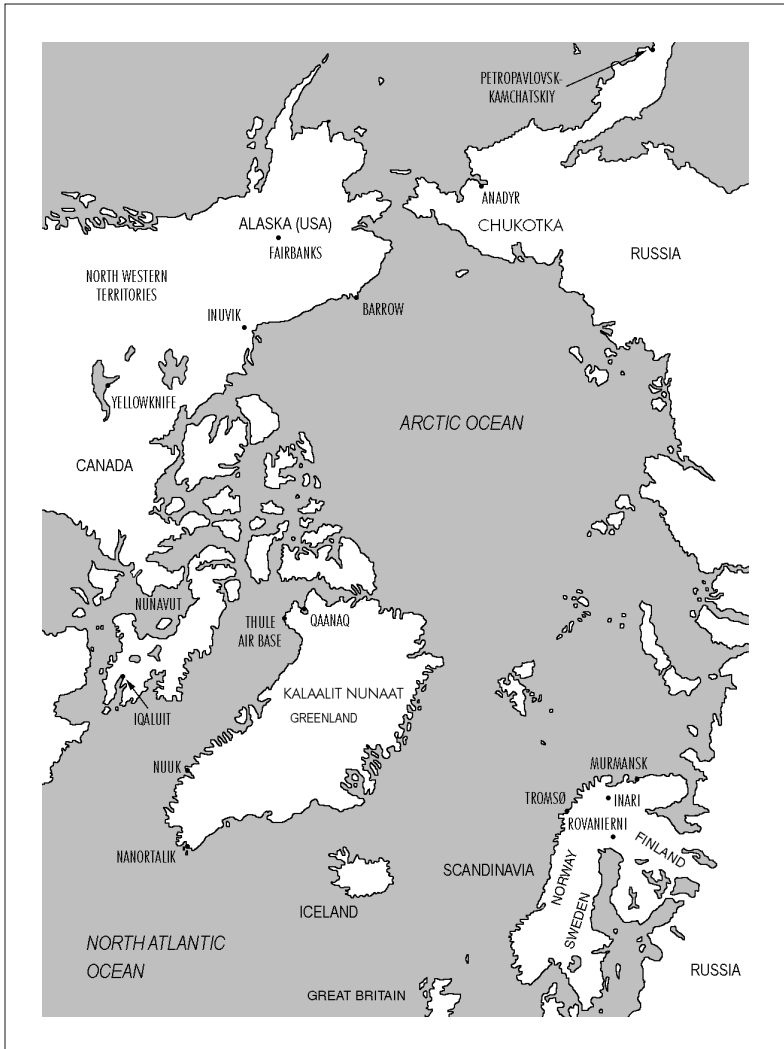
ARCTIC COUNCIL

In November 2004 the Member States, Permanent Participants and Observers to the Arctic Council convened for the Ministerial meeting in Reykjavik, Iceland.¹ At this meeting, which marked the end of the Icelandic chairmanship, the ministers and heads of delegations saw the release and conclusion of several reports and assessments of activities. The ministers also signed the Reykjavik Declaration, which will guide the work of the Russian chairmanship of the AC over the coming two years. There are encouraging signs that the largest of the Arctic states is taking its circumpolar leadership of the Arctic Council seriously. The first and most important being its ratification of the Kyoto Protocol, thereby showing some concern for environmental issues. With the Russian Federation's ratification, the protocol will come into force on 16 February 2005.

The Arctic Climate Impact Assessment

More than 250 scientists and indigenous peoples from 15 countries prepared the Arctic Climate Impact Assessment (ACIA), which was presented to the Arctic Council ministers in Reykjavik. The assessment concludes that the Arctic is likely to feel the effects of climate change more than other regions of the earth. There are several reasons for this, including a thinner Arctic atmosphere, and an increase in the amount of heat the land and sea absorb when not covered by snow and ice for so long each year. The darker land and sea keep the heat longer, instead of reflecting it back into space.

The most obvious effect on Arctic peoples will be changes in the food resources on which they rely. Reindeer herders may find it difficult to find the right sort of pasture for their herds, as ice forms over



the land in winter and new kinds of plants appear in place of the older ones. Migration routes may change, as rivers run faster in the spring, and a lack of snow and ice in the autumn may make travelling difficult.

Drafting ACIA Policy Recommendations

Policy formulation is a complex process and the sensitivity of certain topics, such as climate change, was this time clearly expressed in the Arctic Council's free interpretation of its rules of procedure. In the meetings to draft the policy paper based on the Arctic Climate Impact Assessment (ACIA), leading up to the Ministerial meeting, the indigenous organisations were not allowed the same number of representatives as the Member States. This was somewhat surprising and discouraging, considering that the Arctic States have, at many international fora, continuously stressed the equal participation of indigenous organisations and states within the Arctic Council. It was of great concern to the indigenous peoples' representatives, who very much felt that this was an attempt to weaken their voice on the very important policy issue of climate change. Fortunately, during the meeting of the Senior Arctic Officials that preceded the Ministerial meeting, both Member States and Permanent Participants were allowed two representatives each around the table. To keep the numbers down and ensure efficiency, the meeting was however closed to anybody else when the Reykjavik Declaration and the ACIA policy paper were discussed. It is quite understandable that drafting should not be done by a large group. However, it is of concern that the agenda items of an official Arctic Council meeting should be closed to observers to the Arctic Council without any debate, and this procedure has certainly created a most worrying precedent for future meetings. Does the chairman of the Arctic Council now have the right to close meetings to the observers whenever a contentious issue arises? Additionally, the press were not allowed in the room except for specific press conferences.

Furthermore, even with equal representation at the drafting meeting, the Permanent Participants did not feel they succeeded in including a strong enough text on the policy recommendations for the ACIA, which would require more action from the Member States to take steps to decrease greenhouse gas emissions and, furthermore, to support the peoples living in the North in their efforts to adapt to and deal with the warming climate and its consequences.

Indigenous peoples are also concerned at the growing trend among states and industry to see climate change as an opportunity to open the Arctic up to infrastructural and industrial development. Indigenous peoples are left with the challenges and problems of a warming environment. There is also increasing concern regarding indigenous rights to resources and land, which are potentially threatened by the increasing development of natural resources in the region. Specific wording on this issue, suggested by indigenous representatives in the form of a footnote to the policy recommendations, was not accepted by the Member States.

The Inuit Circumpolar Conference (ICC) sees climate change as a human rights issue and feels that the unwillingness of the United States to reduce its greenhouse gas emissions and take concrete and immediate action with regard to climate change violates the human rights of the people living in the Arctic. The ICC has therefore decided to take the human rights component of environmental concerns a step further, and it plans to seek a ruling from the Inter-American Commission on Human Rights to the effect that the U.S. is threatening their existence by contributing substantially to global warming. Even though the Commission has no enforcement powers, a declaration could form the foundations of a lawsuit against the U.S. in an international court or against international companies in the federal court. There is a precedent of the Inter-American Commission treating issues of environmental degradation as human rights issues.²

Arctic Human Development Report

The Arctic Human Development Report (AHDR), which formed part of the Icelandic Chairmanship's program in the Arctic Council, is a substantial assessment that deals with human development on a regional scale – a report on the state of the Arctic's economies, societies, languages, governance and legal arrangements, to name but a few topics. Indigenous peoples' representatives were intimately involved in developing the report and were well represented in the Report's steering committee and the executive committee. As such, they were in-

volved in identifying authors and experts, as well as contributing case studies.

This exercise not only drew policy relevant conclusions but also revealed gaps in knowledge, provided regional perspectives on human development and looked at a number of regional success stories.

In comparison with the UN's Human Development index, the AHDR revealed some other aspects of significance to human development in the Arctic, such as: influence over own destiny, sense of belonging to a local culture and proximity to nature.

The AHDR should be considered as a first step towards taking development in the Arctic further, and follow-up activities will be considered in relation to the Arctic Council Sustainable Development Program. However, whereas the ACIA includes separate policy recommendations, the Member States' emphasis that the AHDR report merely reflects the opinions of the authors could raise concerns as to their intention to consider action based on the report. The difference between the AHDR and ACIA lies in the policy discussion.³

Other important work during the past year has been the development of the Arctic Marine Strategic Plan (AMSP) and the finalising of several projects highly relevant to indigenous peoples.⁴ □

Notes and references

- 1 The Arctic Council (AC) is an intergovernmental organization comprising eight Member States with territories in the Arctic realm (Canada, the USA, the Russian Federation, Finland, Sweden, Norway, Denmark/Greenland/Faroe Islands and Iceland). Six indigenous organizations have the status of Permanent Participants to the AC, and a few states and international organizations have observer status.
- 2 For more information, visit: <http://www.amap.no/acia/index.html>
- 3 For more information, visit: <http://www.svs.is/AHDR>.
- 4 For more information, visit: <http://www.arctic-council.org>; <http://www.arcticpeoples.org>.

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, on the west coast. In 1953, Greenland became an integrated part of Denmark by law and, in 1979, Home Rule was established following negotiations between Denmark and Greenland. Since then, Greenland has had its own Home Rule Parliament and Government responsible for most internal matters. The population of Greenland numbers 56,000 inhabitants, 87 per cent of whom are ethnic Greenlanders (Inuit).

The road to self-government

Towards the end of the 20th century, many Greenlanders felt that the Home Rule arrangement had served its purpose and no longer matched with reality. In 1999, the Home Rule government therefore established a Commission on Self-government to investigate the possibility of taking over more responsibilities from the Danish state. The Commission delivered a report in spring 2003, endorsed by the Home Rule Parliament.

In early 2004, representatives of the Greenland Home Rule government met with the Danish prime minister to present their own terms of reference for the work ahead. Following negotiations between the Danish government and the Home Rule government, a Danish-Greenlandic Commission was established and inaugurated on Greenland's national day, 21 June. The Commission, which is chaired by a member of the Home Rule Parliament, has the following mandate:

The Commission shall, with reference to Greenland's constitutional position and in conformity with the Greenlandic peoples' right of self-deter-

mination in accordance to international law consider and suggest ways by which the Greenlandic authorities can assume further control where this is constitutionally possible.

The mandate of the Commission is thus clearly to suggest self-government for Greenland – within the Danish realm. However, the mandate also states: “There is an agreement between the Danish government and the Greenlandic Home Rule government that it rests with Greenlandic people to decide if Greenland wants independence.” In spite of this, and in spite of assurances from the Danish prime minister, some Greenlandic politicians feel strongly that the constitutional framework within which the Commission works is restricting their political aspirations. One such restriction is that the Greenlandic people is not recognised as a people under international law. However, a suggestion from among others the two Greenlandic members of the Danish Parliament, to let the Commission investigate the circumstances by which Greenland became an integrated part of the Danish realm in 1953 was rejected outright by the Danish prime minister.

There seems to be widespread agreement within Greenland that they should be as independent as possible for a country with little more than 50,000 inhabitants. Among the limiting factors are the fact that Greenland depends on annual financial block grants from the Danish state. Although these transfers have made it possible to establish a modern society, they have also resulted in dependency and passivity. The comparatively low educational level in Greenland is another restricting factor because it means that not all positions can be filled by Greenlanders.

It is important to note a certain discrepancy between the goals and ambitions of those politicians who are negotiating self-government (to some extent the same ones who negotiated Home Rule in the 1970s) and those of the younger generations who suffer from a deficient educational system and are unable to settle in a labour market that operates under conditions defined outside of Greenland. Other population groups are more concerned with economic security than with constitutional arrangements. All this has led to some degree of political confusion as to the line followed by the Home Rule Parliament and govern-



ment. While the aims might seem clear, the ways and means by which to create new economic, social and cultural realities have been much disputed. The most disputed case in 2004 was the abolition of the system that had, since colonial times, set fixed prices on a number of

products such as water, electricity and daily consumer goods in all communities in Greenland.

Modernising the economy

It has always been seen as a matter of solidarity that water, electricity, petrol and many other products should be traded at the same price in all communities along the vast Greenlandic coast. When Home Rule took control of all trading in Greenland, the costs of this system became apparent and it was forced to compete with other public expenditure in areas of education, health care, etc. It was with some surprise that the system came under attack from the two left-wing parties, Inuit Ataqatigiit and Siumut. However, the old system was no longer being seen as an expression of solidarity but rather as a pretext for doing nothing to develop the small communities. The matter was heatedly debated throughout the whole year and, when Parliament finally decided on differentiated prices from January 2005, it warned of significant changes in the future economy of Greenland. In the longer term, the aim is to introduce a pricing system for each community that corresponds to the cost of providing the products (water, electricity) or importing them. It may force some communities to develop new initiatives to save money and it may also change the demography and lead to the depopulation of other communities. However, it may also lead some communities to expand their potential for economic development.

In the years ahead, other controversial issues related to economic development can be expected to arise. One of the Home Rule ministers, Jørgen Wæver Johansen, took the debate on the pricing system as a sign of the need for Greenlandic consensus around the economic policy to be pursued. Without such a consensus, Greenland will be in a complicated situation when negotiating further self-government. Jørgen Wæver Johansen himself soon became the focus of attention after attacking the director of Royal Greenland, which dominates the fishing industry in Greenland, for not having conferred with the owner, the Home Rule, on matters concerning the future of the company. The result was that responsibility for publicly owned industries was

taken away from Jørgen Wæver Johansen. However, the important point for the future of the Greenlandic economy is that this controversy revealed deep inconsistencies between the politicians' desires to promote the interests of their own constituencies and those of a company operating on the world market for fishing products. Twenty-five years after the introduction of Home Rule, the Greenlandic authorities have managed to convert Royal Greenland from a company that operated only within Greenland controlling the whole Greenlandic fishing industry (trawlers, processing) into a company that owns fishing industries in Denmark, Germany and other countries, and has a wide-spread network of export activities.

Thule and the US Missile Defence System

In the early 1950s, during the Cold War, the United States established a military air force base and missile warning system in the northernmost part of Greenland, at Thule. Although nuclear weapons have never been allowed on Danish territory, it has not only been revealed that the US failed to respect this policy but also that the Danish authorities, in a number of cases, deceived the Greenlandic authorities. The result has been mistrust and, when the United States requested an upgrading of the radar system in Thule as part of their missile defence system, it was met with demands from Greenland to be part of the decision-making process. Defence is not under Home Rule authority but, in the end, the Danish government acquiesced and an updated agreement on future US military activities was negotiated with the participation of the Home Rule government. This was the first time in history that this latter had co-signed an international agreement with the United States. The US secretary of State, Colin Powell, the Danish minister of Foreign Affairs, Per Stig Møller, and the Home Rule minister for Foreign Affairs, Joseph Motzfeldt, signed the agreement in the small community of Igaliku in south Greenland in August.

While the political significance of the agreement to Greenland seems obvious, as it opens the path for direct negotiations between US and Greenlandic authorities, public questions have been raised as to

how much Greenland got out of the agreement which, besides the upgrading of the radar system, also contains an environmental agreement.

The Commission on Administration of Justice

It took 10 years for the Commission on Administration of Justice to come to an agreement on recommendations for a new system of justice in Greenland. In August, the 2,200 page-long report was delivered to the relevant Home Rule minister, who stressed the enormous significance of the report. Greenland is often said to have the best justice system in the world, combining traditional cultural practices with Western notions of justice. The current system was developed shortly after World War II and there has been general agreement that changes are now needed. One reason is that serious criminals have to stay in prison in Denmark, far from their relatives and their home country.

The current court system in Greenland is, to a very large extent, built upon lay judges and these have increasingly experienced problems in coping with modern legal problems. The Commission's report therefore recommends that the current system of lay judges and lay defenders should continue, whilst a training system for those involved in the courts should also be established. Besides the local and regional courts, the Commission recommends that a judicial court be established to handle complicated legal cases. The Danish High Court will remain the final court of appeal.

For the time being, there are only open detention centres in Greenland and, if the Greenlanders now serving long sentences in closed prisons in Denmark should return home, significant investments will need to be made. This has already raised the issue of how much of the costs will be covered by the Danish state and how much by the Greenland Home Rule. These negotiations could be further complicated by the ongoing negotiations within the Danish-Greenlandic Self-Government Commission and a solution may take some years.

25 years of Home Rule

In 2004, Greenland celebrated 25 years of Home Rule and, by and large, the country was able to look back over a period that has been more successful than anticipated. In 1979 few if any expected that the country would be able to take control of most of its internal affairs. The economy, the educational system, political governance, the health sector, etc., have all come under Greenlandic control. This progress is often overlooked when the public is faced with problems ranging from social malaise and political mismanagement to economic scandals. These issues cannot be overlooked, however, and the responsibility to solve them lies with the Greenlandic authorities themselves.

The economic future, however, is more complicated. Although the country seems to be gradually becoming more interesting for mining companies - for the time being gold mining - it is still completely dependent on the fishing sector and there are few signs that Greenland will, within the foreseeable future, be able to extract itself from its financial and labour dependence on the outside world. □

SÁPMI - NORWAY

Almost two years have passed since Norway presented a new land management act for Finnmark County on April 4, 2003. This Act was supposed to close the process commenced in the 70s and 80s in Norway following the controversy over Sámi land rights in connection with the establishment of a hydroelectric power plant in Alta. No proposal has yet been presented that complies with ILO Convention 169, which Norway has ratified.

The Finnmark Act

As regular readers of IWGIA's Yearbook may recall, the Norwegian parliamentary committee responsible for the *Finnmark Act* decided, on the basis of a report from an independent group of experts (government appointed), that the Act had to comply with Norway's obligations under international law. An initiative to initiate so-called *consultations* between the Norwegian Parliament's Legal Committee and the Sámi Parliament was launched. The aim of the consultations was to find a way of moving the issue forward and also obtaining formal consent from the Sámi Parliament before a decision could be made on the *Finnmark Act*.

In March 2004, the ILO Committee of Experts presented its comments on the proposed act and, among other things, advised that:

The process and the substance are inextricably intertwined in the requirements of the Convention and in the present conflict. It appears to the Committee that if the Sámi Parliament, as the acknowledged representative of the Sámi people of Norway, were to agree to the proposal, they could accept this solution as a resolution of the claims of land rights which



have long been the subject of negotiation between the Sámi and the Government. The adoption of the Finnmark Estate without such agreement amounts, however, to an expropriation of rights recognized in judicial decisions in Norway and under the Convention.

The difficulty has consequently been to establish a procedure that could lead to the consent called for under ILO Convention 169 but also

demanded from the Sámi Parliament. At present no such proposal has been tabled, and one of the obstacles has been the lack of procedural rules within Norway's constitutional framework to deal with such a requirement.

There are signs that there will be a proposal ready by the spring of 2005, and the ambition to finalize the *Finnmark Act* before the parliamentary elections in September 2005, both for the Norwegian and the Sámi parliaments, will hopefully be fulfilled. There is a clear risk that it may be postponed further but, then again, it will hopefully be worth the wait.

The difficult task of finding a solution to the present *Finnmark Act* has, nevertheless, encouraged an overall discussion on finding ways of handling difficult issues between the Norwegian government and the Sámi Parliament. So far, Norway has refused to use the term *negotiations* and has insisted on using the term *consultations* in its relationship with the Sámi Parliament. In the short run, this could be seen as a mere play on words but it shows a disturbing lack of fundamental recognition of the Sámi counterpart as a rights holder that cannot be overruled by arbitrary political decisions on the part of the state.

At present there are ongoing talks between the Norwegian government and the Sámi Parliament with regard to establishing mutually agreed procedural rules on how to handle disputes. These talks are not public, and it remains to be seen whether such rules will materialize in the near future.

ILO Convention 169 specifies, in quite some detail, that the state party must reach agreement with, or gain the consent of the indigenous people in question, especially through their recognized representative institutions. It will be interesting to see how Norway plans to reach such agreement without negotiating.

The Sámi Convention

An encouraging development in the work on Sámi rights issues has been the progress in the work on a Sámi Convention. This work began as an initiative of the Saami Council at its conference in 1986, where the

idea was formally launched. A Sámi Convention was to be established to harmonize the rights of the Sámi people in Norway, Sweden, Finland and Russia. In 2003 Norway, Sweden and Finland agreed to establish a joint expert group of representatives appointed by the governments and the Sámi Parliaments of the respective countries. This group should, by the end of 2005 (November), come up with a proposed draft of such a Sámi Convention. At present Russia is not involved in this work but the expert group has stated that it will formulate a text that keeps this possibility open.

The Sámi Convention expert group will build its proposal in harmony with contemporary international law on indigenous peoples, and specify elements of special importance to the Sámi people. The proposal is expected to draw on ILO Convention 169 and the UN Draft Declaration on the Rights of Indigenous Peoples.

Once the expert group has presented its proposal, the Convention will undergo a political procedure that includes acceptance on the part of the three state parliaments involved but also acceptance on the part of the respective Sámi Parliaments. If any one of them says no, the Convention will not be enforced. The exact proposed procedure is not known but the idea seems to be to establish a Convention recognized both by the countries as well as the Sámi Parliaments. Necessary support for the Convention will thereby be safeguarded and it will be able to constitute a common legal framework for Sámi individuals and collectives.

Concluding remarks

It seems as if the Nordic countries are continuing their work on refining and improving the legal framework of support for the rights of the Sámi people. It is to be hoped that this will also be forthcoming in the many conflict issues, including an improved relationship with the Sámi Parliaments, safeguarding long-term solutions to issues where agreement is long overdue. Agreements cannot usually be reached on the basis of unilateral *decisions*. □

SÁPMI THE SWEDISH SIDE

During the second half of the 20th and the first years of the 21st century, Sweden has appointed inquiry after inquiry with the task of reviewing the Sámi people's rights. During 2004, the inquiry committees appointed by the Swedish government continued their work - the Boundary Commission and the government committee with the task of investigating the Sámi people's hunting and fishing rights. Most of the previous inquiries have concluded that Sweden does violate the Sámi people's right to land, waters and natural resources. And yet during 2004, as during previous years, Sweden took no steps to recognize the rights of the Sámi people.

The right to self-determination

A Swedish government inquiry released in 2002¹ admitted that the Sámi people was entitled to self-determination. However, at the same time, it artificially limited this right to encompass only the right to control the Sámi people's *cultural* development. Thus, during 2004 Sweden continuously denied the Sámi people the right to control their *economic and social* development, as called for by Article 1.2. of the UN Covenant on Civil and Political Rights (CCPR). This lack of political willingness to provide the Sámi people with the necessary authority to administer their own society and take their future into their own hands is one of the greatest threats to the future sustainability of the Sámi culture.

The Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD) announced in its Concluding Observations² in March 2004 that the Boundary Commission (see *The Indigenous World 2004*) should be given every opportunity to finish its work and that it was urgent to do so within the allotted timeframe. The Committee also recommended that Sweden introduce adequate legislation, in consultation with the Sámi people, in relation to the findings of the Boundary Commission in order to remove the legal uncertainty regarding Sámi land rights. The Committee also noted that Sweden had not ratified ILO Convention No. 169 and invited Sweden to accelerate all preliminary work in order to proceed towards its ratification.

The Committee also noted the cases of land disputes between Sámi and non-Sámi in courts of law, whereby the interests of the non-Sámi frequently override those of the Sámi, and the latter are allegedly not provided with the financial means to support litigation in respect of their right to land. Following the Committee's observation in March came the Supreme Court's denial of leave to appeal on 29 April 2004, which means that these cases cannot be heard further in Sweden. The Sámi parties have, however, applied to the European Court of Human Rights in Strasbourg to hear the cases. This will mean greater legal costs for the Sámi people but it also shows the need for clarity over Sámi land rights and their international position. There will be a similar case in 2005 in the area of Västerbotten, where the reindeer herders' right to use private land for their reindeer is being investigated.

The right to land

As indicated above, Sweden's policy towards legal rights to Sámi traditional land, waters and natural resources remains essentially the same as during the time when Sweden viewed the Sámi culture as inferior to the Swedish. The Sámi people were the first settlers in their traditional territories and Swedish law recognizes occupation as a

mean of acquiring legal title to land.³ And yet non-Sámi courts have constantly found in favour of non-Sámi parties in cases concerning conflicts over the Sámi people's traditional land, the reason being that even though no authority today would claim that Sámi culture was inferior to that of the non-Sámi, the Swedish authorities' assumption continues to be that the Sámi people have no legal right to their traditional lands. This trend continued during 2004, causing serious problems for the Sámi population.

On hunting and fishing rights in particular

Until 1992, Sámi hunting and fishing rights were administered by the Swedish authorities, it always being clearly understood that it was the *Sámi* hunting and fishing rights they was administering. Then, in 1992, the government suddenly announced that it was no longer administering the *Sámi* people's hunting and fishing rights but the *state's*. It has never offered any explanation as to how these rights came to be transferred from the Sámi people to the state.⁴ Legal scholars have referred to the regulation as a confiscation of the Sámi people's hunting and fishing rights. In 2001, the government committee appointed to propose a new policy on reindeer husbandry concluded that the regulation constituted an infringement of hunting- and fishing rights the Sámi people had acquired through use of the land areas in question since time immemorial. In addition, the committee concluded that the regulation violated the Sámi people's right to property and possibly also their constitutional right not to be subjected to racial discrimination.⁵ The government committee concluded by suggesting that a new committee should be appointed with a mandate to survey the hunting and fishing rights from a strictly legal viewpoint. In 2003, the government appointed a committee to address hunting and fishing rights in particular *but* with a mandate also to take political aspects into account. The committee is set to publish its conclusions in 2005.

The Sámi language

On April 1, 2000, new legislation allowing Sámi to use the Sámi language in legal and administrative proceedings came into force. The *Sámi Language Act*⁶ constitutes a commendable effort to safeguard the cultural rights of the Sámi people. However, the act only applies to the four northernmost municipalities in Sweden and thus excludes substantial parts of *Sápmi*, including areas where distinct Sámi dialects very close to extinction are spoken. While commending the government for enacting the *Sámi Language Act*, in its Concluding Observations the CERD Committee urged Sweden to broaden the scope of the act to cover the whole of *Sápmi*. Unfortunately, the Language Act has not had the hoped for impact on Sámi society. Recent analyses by the Swedish Parliament showed that many Sámis tend to use Swedish instead of Sámi when dealing with the public authorities. According to the person responsible for the analysis, the municipalities show a passive resistance to the Sámi language. From a long-term perspective, this could lead to the disappearance of the Sámi language. □

Notes and references

- 1 *Sametingets roll i det svenska folkstyret*, SOU 2002:77
- 2 The Committee on the Elimination of Racial Discrimination CERD/C/64/CO/8
- 3 See e.g. Supreme Court NJA 1981 s. 1, the so-called *Taxed Lapp Mountain Case*.
- 4 The policy towards the Sámi people's hunting and fishing rights constitutes an excellent example of Swedish Sámi policy in general. The Swedish government first took control of hunting and fishing rights, "morally justifying" it by the fact that the Sámi people belonged to an inferior culture, incapable of knowing its own good, and which could not be allowed to stand in the way of the development of superior Swedish society. One hundred years later, the Swedish government declared that it no longer adhered to *cultural hierarchy theories*, and apologized for wrongdoings in the past. However, in practice, at the same time it now uses the order created during the *cultural hierarchy theories*

era to take full control of the Sámi people's hunting and fishing rights, all of a sudden claiming that they belong to the state.

- 5 See "*En ny rennäringspolitik – öppna samebyar och samverkan med andra markanvändare*", Betänkande av Rennäringspolitiska kommittén, SOU 2001:101, p. 120 f.
- 6 In Swedish: *Lag (1999:1175) om rätt att använda samiska hos förvaltningsmyndigheter och domstolar.*

SÁPMI - FINLAND

Finland still treats the Saami people as a national linguistic minority rather than an indigenous people¹ and ignores the special relationship the Saami people enjoys with its surrounding environment and natural resources, livelihoods, legal systems and traditions, giving the false impression that legal protection of linguistic rights alone is sufficient for the Saami people to be able to maintain its culture.

Periodic report to Human Rights Committee

In 2004, Finland submitted its 5th periodic report under Article 40 of the International Covenant on Civil and Political Rights. The oral hearing was held on 18-19 October 2004. The Saami Council submitted a shadow report to the Human Rights Committee dealing particularly with the flaws and mistakes in implementing the rights of Saami people. In its Concluding Observations, the Committee stated the following:

The Committee regrets that it has not received a clear answer concerning the rights of the Sami as an indigenous people (Constitution, sect. 17, subsect. 3), in the light of article 1 of the Covenant. It reiterates its concern over the failure to settle the question of Sami rights to land ownership and the various public and private uses of land that affect the Sami's traditional means of subsistence - in particular reindeer breeding - thus endangering their traditional culture and way of life, and hence their identity.

The State party should, in conjunction with the Sami people, swiftly take decisive action to arrive at an appropriate solution to the land dispute with due regard for the need to preserve the Sami identity in accordance

with article 27 of the Covenant. Meanwhile it is requested to refrain from any action that might adversely prejudice settlement of the issue of Sami land rights. (para. 17, CCPR/CO/82/FIN, Concluding Observations/Comments)

Land rights

In 2003, the Finnish government suddenly announced to the Finnish Parliament that the Finnish state had legal deeds to large parts of the Saami people's traditional territories. The announcement came as a surprise to the Saami Parliament, which thought that it was engaged in an open dialogue with the government regarding the land rights. Without awaiting the results of the surveys it claimed to be conducting, the government went "behind the back" of the Saami Parliament and sought to manufacture legal evidence that it was the owner of the areas in question. A County Court has approved the registration of these legal deeds, even though relevant legislation is crystal clear on the fact that it is not possible to grant deeds to unregistered property. The Saami Parliament is in the process of appealing the decision as being in formal breach of the law. Meanwhile, the Finnish government is using the registration in its legislative work. For example, in a recent bill to the Parliament regarding national parks in the area, the government claimed that the land in question was old state-owned property, as evidenced by the land register.

In 2004, the Finnish Parliament passed a new law on the National Forestry Board (*Metsähallitus*), strengthening the role of the Board. The role of the Board is henceforth both that of state commercial enterprise and government body. As a commercial enterprise, the Board uses so-called state land² for commercial purposes. For example, the Board sells fishing licenses, hires out cabins and sells hunting licenses. Since the Board is also a government authority governing these lands on behalf of the state, it is impossible for Saami to file complaints regarding the Board's commercial activities.

Reindeer husbandry

Finland's *Reindeer Breeding Act* aims to protect the *industry* of reindeer husbandry, which is not the same as protecting reindeer herding as an important part of Saami culture. Further, the Act privatises what is fundamentally a collective livelihood, disregarding the Saami people's collective right to its traditional territories. The annual income of reindeer herding Saami is below the definition of poverty in Finland. This is a direct result of the discrimination of reindeer herding in relation to agriculture in support and structural policies, resulting in young Saami not being able to take up reindeer husbandry and thus slowly killing an important part of Saami culture.

Media rights

YLE, the national television broadcasting company, does not broadcast Saami children's programs. In comparison, the Norwegian Broadcasting Company broadcasts Saami children's TV programs in the Saami language twice a week, 44 weeks a year. The Swedish national broadcasting company also produces children's programs in the Saami language, broadcast on the national television channel. The Norwegian and Swedish broadcasting companies exchange their children's programs, resulting in high-quality productions. Over the years, Finland has been invited to join this cooperation but has declined time and again. In 2004, Saami children petitioned YLE to have Saami children's programmes on Finnish television. Member of Parliament, Mr. Esko Juhani Tennila, who sits on the Board of YLE, promised to promote children's demands within the Board.

Language rights generally

A new *Saami Language Act* was enacted in 2004. It still remains to be seen how this will work in practise. The new Act attempts to safeguard

and promote all three languages spoken in Finland, namely North-Saami, Enare-Saami and Skolt-Saami. Enare-Saami and Skolt-Saami particularly need radical revitalization efforts if the languages are to be kept alive.

In 2004, the Association of the Enare-Saami Language was handed a “Gollegiella” prize from the Nordic Saami ministers for the person or association that had worked hardest in promoting the Saami language. That same year, the association was also awarded a prize from the Finnish minister of Education for its good work in promoting the language of Enare-Saami children. The association has maintained an Enare-Saami language “nest” for Enare-Saami children who do not speak their language. A language nest is a kind of kindergarten that teaches the language to the children.

In 1997, when the language nest started its activities, there was only one child under school age who spoke Enare-Saami as its mother tongue. The language nest has had remarkable results for the Enare-Saami. In school, there are now two classes using Enare-Saami as the language of instruction. The parents have also started learning the language. The status of Enare-Saami among the majority and, more importantly, among the Enare-Saami themselves, has increased substantially. But even though the achievements are evident, the language nest is not a permanent institution with secure financing. In actual fact, the Association works on a year by year basis. This makes the future very uncertain and puts a great deal of pressure on the Association’s volunteer workers. □

Notes and sources

- 1 Even though the Finnish Constitution states differently. Unfortunately, however, the spirit of the Finnish Constitution has not been implemented in concrete legislation.
- 2 In the Saami Home Land, the Saami have claimed ownership of these so-called State lands.

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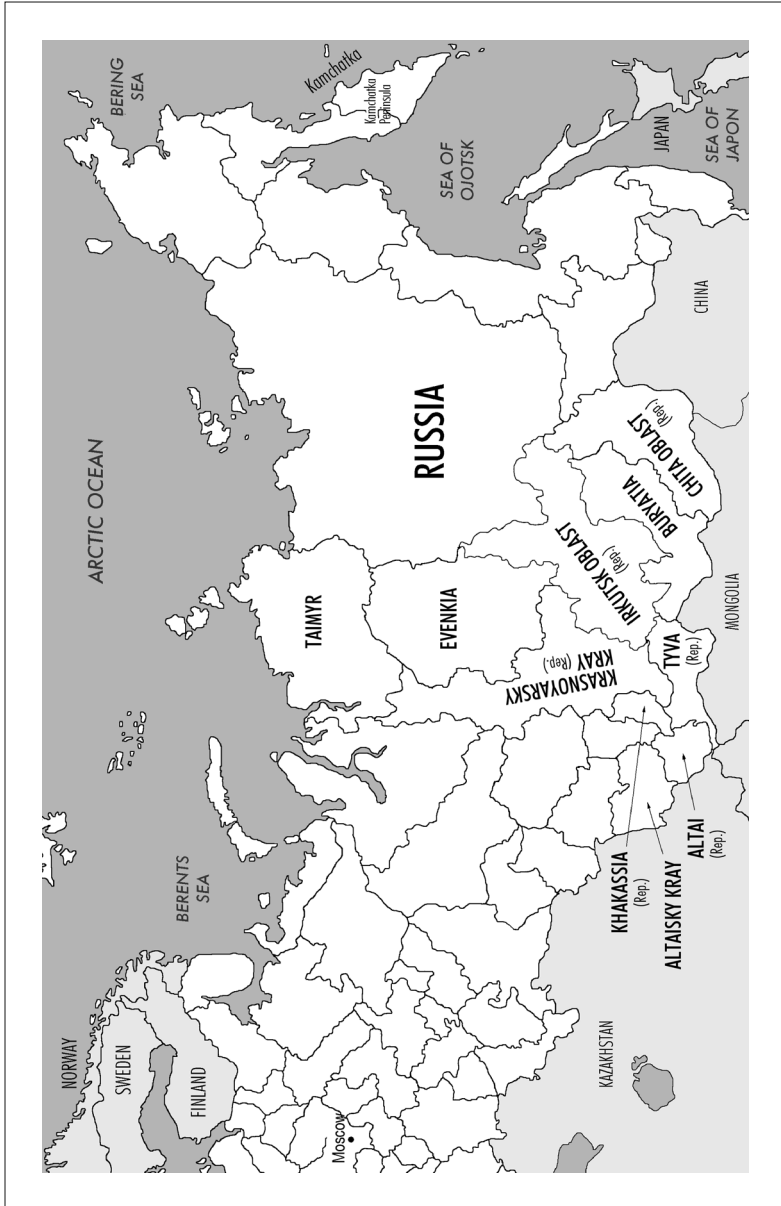
RUSSIA

President Putin's general tendency towards centralization of power also had an impact on the numerically small indigenous peoples of Russia during 2004. Following his re-election in April, the Russian president speeded up a process to unify the Russian provinces into bigger units and, in August, a broad package was presented to simplify the country's legislation. Developments on a macro-level were reflected on a micro-level.

The federal law of August 22, 2004

On July 2, 2004 the State Duma adopted a draft federal law *On changes in federal acts of the Russian Federation* at its first reading.¹ The law was adopted at its second reading on August 2, 2004 and signed by President Putin on August 22, 2004. This 400-page package includes changes to 167 federal laws, among them the federal laws on the rights of indigenous peoples.

In the *Law on the guarantees of the rights of indigenous numerically small peoples of the Russian Federation*, the article on socio-economic and cultural development (Art. 4), the articles on the protection of the original habitats, traditional way of life, economic systems and crafts of numerically small peoples (Art. 6 and 7) and the article on the rights of indigenous peoples' representation in the legislative organs of power (Art. 13) were all removed. The new law states that the state organs of power will "participate" in the protection of indigenous peoples' habitats and traditional way of life whereas the former legislation stated that the Russian Federation would "implement" these functions. The changes can therefore be seen as a substantial reduction in the Russian state's commitment. Many changes in the new draft law affect the eco-



conomic and social rights of indigenous peoples, both as indigenous peoples and as citizens of the Russian Federation. Rights to free social services for indigenous peoples are, for example, removed.

The *Law on the Basic Principles for Organizing Obshinas for Indigenous Peoples of the North, Siberia and Far East of the Russian Federation* has also been changed, removing economic support for and benefits to *obshinas* and individual members of *obshinas* and limiting decision-making power at local level. An *obshina* is an organisation that unites indigenous individuals and may consist of a family or a whole community. The *obshina* carries out commercial or cultural activities for example.

These changes may constitute a serious threat to the legislative basis of indigenous peoples' rights in Russia and there is a need for urgent support to indigenous peoples in lobbying and regional capacity building around the defense of their rights.

Opinions as to the effects of this law on indigenous peoples differ, however. Whereas some fear that they will lose the rights they had claimed through regional processes and legislation, others do not think that the new law changes the essence of the Russian Federation's policy towards indigenous peoples.

This is the opinion of a leading specialist on the Russian Constitution, Professor V.A. Kryazhkov. He argues that the constitutional guarantees remain unchanged, and earlier legislation adopted by the provinces is not rescinded, he argues.

In December 2004, the State Duma began to discuss a new draft law at its first reading with some indication that the division of power in the law of August 22, 2004 was being reviewed.

The unification

The "unification process" is best illustrated by the example of the three provinces of Krasnoyarsky Kray, Evenkia and Taimyr being unified into one administrative region, affecting many of the indigenous peoples of Siberia. Whether such unification was a good or a bad thing was widely debated throughout 2004.

In October 2004, a Coordinating Council meeting of the Russian Association of Indigenous Peoples of the North (RAIPON), the umbrella organisation of the indigenous peoples of Russia, was held by Krasnoyarsk Association and chaired by its president Ekaterina Sinkevich, in co-operation with the Administration of the Krasnoyarsky Kray and the Consultative Council for Numerically Small Indigenous Peoples' Affairs under the plenipotentiary of the Russian president. Press attention in the region was limited although a few articles appeared in the local press, mainly focusing on the main topic of discussion on the official agenda, which was the consequences for indigenous peoples of the forthcoming unification of the three provinces (*subyekty*) of Krasnoyarsky Kray, Evenkia and Taimyr into one large province (*subject*), "Krasnoyarsky Kray". As the representative of the plenipotentiary of the Russian president put it,

*You can agree with this policy or not, but you should know our position. The unification can be delayed, slowed down, but it cannot be stopped. It is part of the president's policy to ensure the unity of our country.*²

The discussion during the meeting in Krasnoyarsk reflected the general atmosphere with regard to centralization, both on a macro and micro level. Concerns were voiced regarding unclear roles and responsibilities for indigenous peoples' issues within the provincial administrations, as well as the distribution of power between existing regional indigenous associations. Unification is an attempt to streamline decision-making and may lead to less democratic development in Russia. There is a worry that freedom of speech and the right to vote and elect leaders may be reduced in this process. The role of the indigenous association in the field of information sharing was, however, clearly stressed by the president's representative.

Fishing legislation – an example of progress

In the fall of 2003, work began on lobbying indigenous peoples' interests around the federal legislative initiative on fishing and preserva-

tion of aquatic biological resources. The vice-president of RAIPON dealing with fishing, Dmitry Berezhkov,³ made several trips to Moscow to meet with representatives of the Federal Duma of the Russian Federation, members of the Federation Council of the Russian Federation, representatives of the Ministry of Agriculture of the Russian Federation, etc.

The recommendations radically change six articles of the legislation that concern the fishing rights of the numerically small indigenous peoples of the North. The law specifically mentions indigenous peoples' fishing as an industry. The principles of allocating fishing grounds and quotas for the needs of the indigenous peoples are also changed. President Vladimir Putin signed this Federal Legislation in December and the law will come into effect in January 2005.

Southern Siberia

Within the Russian Federation, southern Siberia⁴ is second only to the Caucasus in terms of ethnic diversity. Tyvans (Tuvans), Altaians, Khakassians and Buryats live in southern Siberia, all major ethnic groups (also called nationalities) after which four of Russia's 21 national republics are named. In addition, 11 of Russia's 45 officially recognized "numerically small indigenous peoples" are found in southern Siberia.⁵ All of these peoples are indigenous; the difference between the titular nationalities and the "numerically small peoples" is population numbers and the rights inherent to the different designations.

In order to be considered "numerically small," an indigenous people must number fewer than 50,000. Peoples with this designation are entitled to special rights, privileges and concessions as laid out in several new federal-level laws passed since 2000. For example, they can be exempted from land and income taxes; they are supposed to have priority rights to certain natural resources; they have the right to substitute military service for alternative civil service; and they can start collecting retirement benefits at an earlier age. Indigenous groups that are larger than 50,000 do not qualify for the above benefits but they have the right to form larger political and administrative units (republics),

with the associated increase in potential for self-governance that this entails. For example, the language of a titular nationality enjoys equal status to Russian as the official language of the republic, and the indigenous language can be the language of instruction in institutes of higher education. Republics have their own republic-level parliaments, elect their own president and can draft their own constitution (which is subordinate to the Constitution of the Russian Federation). As such, the titular indigenous nationality of a republic can generally assert a much more influential voice in federal-level politics.

Census wars

Debates over population figures heated up prior to the 2002 census and intensified as the official statistics began to trickle through in early 2004. The identity politics invoked by various ethnic entities demonstrates not only what a politically potent resource official recognition as a “numerically small indigenous people” has become in Russia but also how socially constructed this category can be. Questions about overlapping ethnic designations and who can or cannot claim to belong to an indigenous group came up in the Tofa (Tofalar) community of south-western Irkutsk Oblast among people of mixed Tofa-Russian parentage, as well as among the Tozhu (Tuvinsty-Todzhintsy) in the north-eastern region of the Republic of Tyva. In Tyva, where the Tozhu (numbering 4,400) are a recognized “numerically small indigenous people” within the indigenous majority Tyvan (Tuvan) nation (numbering approximately 240,000), there has been resistance to enacting the republic-level laws necessary for the Tozhu to benefit from their status as a separate “numerically small indigenous people”. Doing so, they fear, would advantage the Tozhu over the rest of the Tyvan population and create tensions between the Tozhu and non-Tozhu Tyvans. This fear is most likely unfounded, as, in practice, these advantages often do not materialize, especially for those groups without adequate or effective political representation. While some groups are well organized, politically active and have achieved relatively high profiles, others struggle for recognition. For example, the Tozhu were officially

designated a “numerically small indigenous people” in 1993 yet many Tozhu themselves are still unaware of the designation or what it entails. Throughout Soviet times, virtually all of the district-level administrators, teachers and state farm directors in Tozhu District were non-Tozhu, and even today the Tozhu people are greatly under-represented in positions of authority and influence. At republic level, there is no well-educated Tozhu intelligentsia living in urban areas to represent their interests, and none of the people in the administration dealing with issues related to the Tozhu people and Tozhu District are ethnic Tozhu. At federal level, there are even greater problems of representation, complicated by a general failure to distinguish between the Tozhu and the Tyva population in faraway Moscow.

Nowhere have these census wars been more contentious than in the Republic of Altai, where in previous censuses several Turkic-language peoples were grouped together under the umbrella term “Altaians”. According to the 1989 census, there were 59,100 Altaians within Gorno-Altai Autonomous Oblast. Being above the 50,000 threshold, they thus had the right to be considered for the status of a titular nationality in their own separate republic. This status was granted in 1991 with the formation of the Gorno-Altai Republic, later renamed the Republic of Altai. However, the term “Altaiian” comprises a number of indigenous groups including Kumandy (Kumandin), Teleut, Chalkandu (Chelkan), Tuba and Telengit who, in addition to considering themselves Altaiian, also identify themselves as distinct peoples. With greater political freedom to assert ethnic identity, increasing awareness of the benefits of official recognition as a “numerically small indigenous people” and the ever-rising profile of the international indigenous peoples’ movement came an increasingly insistent clamour for recognition from some of these groups. Official recognition of the first four of these groups was not a great cause for concern on the part of the remaining Altaiians because their populations were relatively small within the Republic of Altai. However, the Telengits’ official designation as a separate “numerically small indigenous people” in 2000 was a cause for alarm for many Altaiians. Preliminary estimates suggested that there could be as many as 17,000 Telengits. If all of them identified themselves as Telengit rather than Altaiian on the census form, the pop-

ulation of Altaians could drop below the 50,000 threshold, potentially endangering the administrative status of their national republic. Such fears were fuelled by officials in neighbouring Altaiski Kray, a larger and economically more powerful but administratively less autonomous political unit, where an expectation was being publicly expressed that the Republic of Altai would lose its status as an autonomous republic and become annexed to Altaiski Kray. In the event, only 2,400 people identified themselves as Telengit in the 2002 census so, for the time being, this “number game” of identity politics in the Republic of Altai has settled down.

The new Forest Code

Approximately 70 percent of all land throughout Russia is categorized as *lesnoi fond* (“forest fund”) and has, up to now, been ineligible for sale. However, in an effort to stimulate development of the timber industry, the Russian government passed controversial amendments to the *Forest Code* (*Lesnoi Kodeks*) in December 2004. The revised law allows for the outright sale of forest lands to the highest bidder, or the opportunity to lease forest lands for 99 years with the option to purchase. Consistent with other centralizing administrative measures that have become the hallmark of the Putin regime, the revised law also concentrates power over the management of forest lands exclusively in the hands of federal-level organs, and effectively removes the power of provinces (republics, oblasts, krays, okrugs, etc.) to exert control over these lands. These changes will render southern Siberia particularly vulnerable to timber extraction. The region is heavily forested, on the southern edge of Siberia’s vast boreal forest. It is bisected by the Trans-Siberian and Baikal-Amur railroads and the population centers that have grown up along these railroads. It is also closest to China and Mongolia, both of which are accessible by rail and have a great demand for raw timber. Finally, in southern Siberia, as throughout all of Russia, plant biomass productivity is low and tree growth extremely slow, factors that make official forecasts of the forest’s capacity for regeneration sound unreasonably optimistic.

The threat these changes to the *Forest Code* pose to the indigenous peoples of southern Siberia is best exemplified by the situation of the Tozhu in north-eastern Tyva. Nearly 90 percent of Tozhu District (4,040,040 of the district's total 4,475,749 hectares) is officially listed as state forest fund lands. Until 2001, there were four nominally indigenous-led reindeer-herding *obshchinas* (cooperative enterprises) that had protected usufruct rights to approximately 1,500,000 hectares (15,000 km²) within Tozhu District but these *obshchinas* have now been officially dismantled. At present, the Tozhu reindeer herder-hunters range freely over much of this land but without secure legal rights or tenure. The Tyvan government has recently announced a project to improve water transportation on the upper Yenisei River specifically to take better advantage of timber resources. Tozhu District is the most heavily forested region of Tyva, and the Bii Khem River, one of two large rivers that come together to form the Yenisei, runs through the southern part of Tozhu District, while the Kham Syra River, a large tributary of the Bii Khem, runs through the northern part. Forests in the vicinity of these rivers and their tributaries will most likely be the first to be exploited for timber, with the timber either floated downriver or brought downriver by barge. But the forests along these rivers are prime reindeer pasturage, hunting and gathering grounds for the Tozhu, and the rivers are important for fishing. The new changes to the *Forest Code*, coupled with the dismantling of the *obshchinas*, will make it easier for the formerly protected *obshchina* lands to be sold out from under the indigenous peoples of Tozhu district.

Indigenous peoples, protected territories and tourism

Southern Siberia is experiencing rapid growth in both tourism and nature protection initiatives. There are more than 100 tourist companies based in Russia and abroad organizing tours to the Republics of Altai, Tyva, Buryatia and Khakassia. The popularity of outdoor adventure and ecotourism in this region is indicative of the interdependence between tourism and nature protection. The Russian Federation has one of the world's most extensive systems of protected areas, with nearly

10 percent of Russia's vast territory under one form of protection or another.⁶ In southern Siberia the figure is even higher (11.4%), with a particularly ambitious WWF-led programme for expanding the protected territories in the region to nearly 20 percent.⁷ It is often assumed that nature protection measures are inherently good for both the environment and the people who make their living directly from the environment but this assumption obscures often conflicting notions and practices related to the land. The philosophy behind protected territories in Russia has been one of top-down planning, excluding humans from the territories and prohibiting all human activities. The *Azas Zapovednik* in Tozhu District offers an instructive example. With the establishment of the *Azas Zapovednik* in 1984, rich reindeer pastures, hunting grounds and rivers important to the subsistence of the Tozhu people suddenly became off-limits. Such disregard for the local people in the establishment of parks and other protected territories, combined with reduced hunting territories and the withdrawal of state salaries since the collapse of the Soviet Union has forced local inhabitants to turn to unregulated hunting to meet subsistence needs and to generate an income. But while indigenous peoples' subsistence hunting activities are being prosecuted as "poaching," tourists are enticed to southern Siberia by the promise of good hunting on many of the same protected territories that indigenous peoples are prohibited from using.

On the other hand, tourism and nature protection, if designed and managed locally, can be a source of culturally and environmentally sustainable economic growth. In the Republic of Altai, indigenous peoples and other residents have banded together and used republic-level laws to establish several locally designed and managed nature parks. In this way, they have used the existing legal framework to assert their rights to retain control over land, to channel the flow of tourists and to provide a framework within which local people can represent themselves to outsiders, rather than surrendering control of both their land and their image to central authorities or outside organisations. However, the complex and often contradictory nature of overlapping legal systems at the republic and federal levels creates confusion and opens the door to manipulation of laws by politically powerful players. Since December 2004, the governments of 22 administra-

tive units of the Russian Federation have moved to abolish a total of 149 regionally organized nature parks, citing a new federal law that stipulates that all parks must be under federal management. The Republic of Altai decided to liquidate five such parks, three of which were established by local residents. In Altai, the decision was repealed in February due to public outcry, but other administrative units of the Russian Federation have yet to repeal their decisions as of this writing.

Oil Pipeline

2004 witnessed heated debate over a proposed oil pipeline from Angarsk, in southern Irkutsk Oblast near the south-western tip of Lake Baikal, to the Chinese oil city of Daqing. The 2,300-km pipeline would have run along the southern edge of Baikal and through Buryatia and the Chita region, territories where the Soyot, Evenki and Western Buryats live. The plan has been shelved for the time being, at least in part due to objections over the potential ecological damage to the Baikal watershed, but a deal for an alternate pipeline has been signed with Japan. The new pipeline will run 4,200 km through an area of high seismic activity from Taishet in Irkutsk Oblast to Perevoznaya, a small bay on the Sea of Japan. With an estimated price tag of \$15-18 billion, this alternate pipeline will require costly and environmentally threatening prospecting and exploitation of oil resources throughout southern Siberia in order to recoup the investment, with all the predictable consequences. While this pipeline will not immediately affect the Soyot or Western Buryats, it will threaten the natural resource base upon which various reindeer-herding and hunting Evenki groups depend. □

Notes

- 1 Russian federal laws are normally first introduced in the Lower Chamber of the Parliament (the State Duma). The Duma can then decide to continue with an initiative (adopt it at its first reading) and consider it in one of its commissions where experts, for example indigenous peoples' experts, can be invited to comment on the law. A final legal text is

adopted at a second reading of the Duma. After that the law is sent on to the Upper Chamber (the Federal Assembly). A law comes into force when signed by the president.

- 2 Thomas K hler’s notes from the meeting.
- 3 RAIPON has vice-presidents on specific topics, such as health, the environment, culture, youth and, since the spring of 2004, a vice-president on fishing issues, D. Berezhkov.
- 4 In this text, the term “southern Siberia” designates the area roughly comprising the Republics of Altai, Khakassia, Tyva and Kemerovo Oblast; the eastern section of Altaiskii Krai, southern portions of Krasnoyarsk Krai and Irkutsk Oblast, and western Buryatia.
- 5 Chalkandu (Chelkan), Chulym, Evenki, Kumandy, Shor (Shortsy), Soyot, Telengit, Teleut, Tofa (Tofalary), Tozhu (Tuvintsy-Todzhintsy), Tuba.
- 6 In Russian federal law, there are seven categories of specially protected natural territories, including *zapovedniki* (strictly protected nature reserves), *zakazniki* (wildlife refuges), *natsional’nye parki* (national parks), *prirodnye parki* (nature parks), *pamyatniki prirody* (natural monuments) and others.
- 7 These figures are from 2001. They have been culled from **Kupriyanov, A.N. (ed.) 2001. Sistema Osobo Okhranyaemykh Prirodnykh Territorii Altai-Sayanskogo Ekoregiona** (The System of Specially Protected Natural Territories of the Altai-Sayan Ecoregion). Kemerovo: Izdatel’skii Dom AZIYA (published in collaboration with WWF), and are based on data for Kemerovo Oblast and the Republics of Altai, Tyva and Khakassia only. Because only parts of Altai and Krasnoyarsk Krays, Irkutsk Oblast and Buryatia are considered part of the Altai-Sayan Ecoregion for the purposes of Kupriyanov’s report, a reliable breakdown of the data to include only relevant regions was not readily available, so these areas are not included in the above figures.

ALASKA

The Alaska Native population has grown dramatically over the last 40 years. In 1960, the Native population was estimated at 42,522 or 18.8% of the population. Even with the large in-migration of non-Natives to Alaska, the percentage of Native population has remained close to 19%.

Based on assumptions of stable rates of natural increase, it is predicted that the Alaska Native population will increase to 140,000 by 2010 and 165,000 by 2020. This will have serious implications in terms of the work force, care of the elderly and the school system.

Employment data indicates that Alaska Natives are participating in the cash economy at an increasing rate. However, Alaska Natives continue to be under-represented in professional, managerial, technical and sales occupations.

First Alaskans Institute

The First Alaskans Institute was founded by the Alaska Federation of Natives (AFN) in 1989 as the AFN Foundation, a non-profit organization. First Alaskans focuses on three priority areas: education, leadership development and public policy and, in 2003, it created the Alaska Native Policy Center. The Alaska Native Policy Center (ANPC) is a place where Native minds shape their future, giving voice to the Native intellect and offering opportunities for Native solutions to Native issues. The ANPC enables Alaska Natives to be informed about and actively involved in the critical issues that will determine their future as 21st century indigenous people. One of the first projects of the ANPC is the Our Choices—Our Future project, a knowledge development effort intended to provide information and encourage public discussion



about present-day conditions of life for Alaska Natives at both statewide and regional levels. The analysis identified the following issues as the “drivers” that affect all aspects of Native peoples’ lives, whether they live in rural villages, regional centers or urban communities:

- Effective state schools and family efforts to close the education gap;
- Economic development, job creation, training and work placement;
- A lower cost of living, including energy expenses; and
- Healthy, successful families and communities.

Alaska Native corporations balance culture with business

The business corporations created under the Alaska Native Claims Settlement Act (ANCSA) continue to contribute to Alaska’s economy

through dividends, jobs and scholarships. The total revenue for these corporations in 1997 (the latest figures available) was \$2.9 billion. However, boards of directors and managers must face the challenge of balancing the social well-being of their shareholders with money-making opportunities. Above all, they must not jeopardize traditional hunting and fishing areas. The unique relationship to the land that has sustained Alaska Natives for over 10,000 years encourages decisions based on sustainability and cultural values, not just profit. Alaska Native Elders play a key role in advising corporate leaders through Elder advisory councils and other consultations. ANCSA corporations are unique to the business world in many ways, as they bring together Alaska Native cultural values with business practices to define self-determination for Alaska Natives. Culturally sensitive higher education programs must serve to train Alaska Natives to manage their own organizations. One such example is the University of Alaska Fairbanks Rural Development BA and MA degree programs, which contribute to the self-determination of ANCSA corporations as graduates and students join them in many key leadership roles.

In 2004 the Alaska Federation of Natives (AFN), the political advocacy organization for Alaska Native tribal entities and corporations, began investigating the concept of *Knowledge Based Economies* as a foundation for appropriate development projects for Alaska's indigenous peoples. The AFN sponsored an economic summit in Anchorage in July and another in September in Washington DC during the grand opening of the National Museum of the American Indian (see article on the USA, this volume). Even with the success of corporations in Alaska, there continues to be a need for economic opportunities for indigenous peoples and their remote communities.

Senator reverses position on tribal funding

In 2003, U.S. Senator Ted Stevens of Alaska proposed "regionalizing" government funding to Alaska's indigenous tribes because he felt the administration costs were too high to provide funding to each of the 231 federally recognized tribes in Alaska (see also *The Indigenous World*

2004). The tribes depend on the funding to provide a wide range of health, education and social services to their members. Many Alaska Natives were pleasantly surprised when Stevens reversed his position while addressing the 2004 Alaska Federation of Natives convention, saying his new position was influenced by a tour of indigenous communities in rural Alaska. "I'm not going to use the term 'regionalization' any more," Stevens said. "I've seen the fruits of your labor and I'm here to tell you I liked what I saw."

The Arctic National Wildlife Refuge (ANWR)

The controversy continues in Alaska and throughout the entire U.S. over the possible opening up of the Arctic National Wildlife Refuge (ANWR) to oil development. The ANWR was created under the *Alaska National Interest Lands Conservation Act* of 1980 (ANILCA) and is closed to oil or gas development unless the U.S. Congress passes a law authorizing development and the U.S. President agrees. A portion of the 19 million acre refuge, the 1.5 million acre Coastal Plain, is being proposed for development. Congress passed a law in 1995 allowing such development but it was vetoed by then President Bill Clinton.

There is one indigenous village within the refuge, the Inupiat village of Kaktovik on Barter Island. A survey showed that the majority of Inupiat there were in favor of oil development in the refuge although there was a vocal Inupiat minority opposed. A national poll shows that 53% of American voters are in favor of opening up the refuge. The Gwich'in Athabascans of both Alaska and Canada, along with many environmental groups, have actively opposed refuge oil development. The Gwich'in depend on the Porcupine Caribou herd that migrates through the refuge for their main food supply and fear that oil development will negatively impact on the herd.

The Republican-controlled U.S. Senate is expected to pass a bill authorizing ANWR development in early 2005. It will, however, have to be agreed by the House of Representatives and then signed by President Bush in order to take effect.

Health and Education

Great changes have been made in the management and direction of the Alaska Native Health system, with striking improvements in the health status of Alaska Natives.

- Life expectancy for Alaska Natives has increased from 46 years in 1950 to 69 years in 1997;
- 81% of Native children have been immunized against common childhood diseases;
- Native infant mortality rate - once three times higher than that of all American infants - is now nearly the same as the national average.

Access to health care has also improved through telemedicine and an expansion of the Community Health Care Program. In spite of this progress, much work remains to be done. Diabetes, cancer and chronic pulmonary disease are all on the increase and the rate of death by unintentional injury is nearly four times that of the rest of the nation. Among teens, high rates of suicide and alcohol and substance abuse are reaching near epidemic proportions. Programs addressing prevention and treatment are envisioned or already in place, and the progress of the past gives hope for the future.

While progress has been made in the area of education, as in health, much remains to be accomplished. Since 1974, 155 new high schools have been built and staffed - most of them in remote rural communities. These new schools have made secondary education without leaving home a reality. As a result, the percentage of 18-25 year-old Alaska Natives with high school diplomas rose from 48% in 1980 to 73% in 2000 and, over the same period, the number of Natives who went on to college tripled. However, disparities and inequities persist in sub-standard rates of academic performance and attendance rates. Between 2001 and 2003, only 49% of Native third graders passed the state reading test, and only 14.3% of Native 11th and 12th graders passed a reading test required for attainment of a diploma.

Between 1998 and 2000, the Native high school drop-out rate nearly doubled. And, in a state population that is 19% Native, only 5% of certified elementary and secondary teachers, and only 3% of university faculty staff, were Natives. And so with education, just as with health, though much has been accomplished, there remains much room for improvement. □

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DENENDEH (Northwest Territories) - Canada

Denendeh¹ is the traditional territory of the Gwich'in tribal council, Sahtu Dene council, Deh Cho First Nations, Tlicho government and the Akaticho territory government.² These five regional Dene governments make up the Dene Nation. Two historic Treaties, 8 (1900) and 11 (1921) have been signed but not fully implemented, and three modern land claims are complete for most of Denendeh.

The Tlicho agreement

A significant change in Denendeh was the ratification of the Tlicho (Dogrib Treaty 11) Land Claim and Self Government Agreement. The Tlicho Agreement was ratified by the Canadian Parliament during the winter of 2004, making the Tlicho the fourth self-governing First Nation in Canada (following agreements with the Yukon First Nations, Nisga'a and Cree of northern Quebec). There were Canadian politicians, in particular from the Conservative Party of Canada, who claimed the Agreement was a threat to Canadian sovereignty. These politicians sought to keep the Tlicho under the *Indian Act*.³ Debate and rhetoric from the Conservatives, led by Jim Prentice, did not sway the minority Liberal government who, with support of members from the New Democratic Party, saw the Tlicho Agreement as the culmination of Canadian self-government policy and negotiations initiated by the Dogrib in 1921. For the Tlicho, the Agreement is a step towards decolonization. The Agreement is now ratified and the Tlicho have a long journey ahead to implement it as well as the companion Intergovernmental Services Agreement, Financing Agreement and Tlicho Tax

Treatment Agreement. Each of these agreements outlines the elements necessary for the Tlicho to build the capacity and authority to manage their own affairs.

Self-government

Similarly, the Gwich'in continue to implement their land claim agreement and are working with the Inuvialuit, an Inuit people living in the northernmost part of the Northwest Territories, to develop a joint self-government agreement. The Gwich'in Tribal Council joined the Council of Yukon First Nations, the umbrella organization of First Nations in the Yukon Territory, affirming the ties between the Gwich'in in Denendeh and the Yukon. The Gwich'in assert self-government as a recognition of Aboriginal rights. The Gwich'in position, supported by the Dene Nation, is to strengthen ties between all northern indigenous peoples.

The Sahtu Dene continue to work towards community-based self-government agreements. The Sahtu are preparing for the pressures of development by advanced planning and the development of protected areas. The Sahtu Dene are concerned, for example at Behdzi Ahda, that further oil and gas exploration will yield more finds, development and greater impacts (the Canadian Arctic Resources Committee (CARC) projects the cumulative effects as being dependent on the development of a Mackenzie Gas Pipeline).

The advance of self-government in Denendeh is seen by the Akaitcho territory government and Deh Cho First Nations as positive recognition of Treaty Rights. In the "North Slave Geological Province", a rush on staking suggests that interest in diamonds has not yet calmed down. Third party interests threaten Aboriginal sovereignty and put the federal and territorial governments on notice as being responsible for payment of compensation when Dene lands are alienated without prior and informed consent. The recent announcements from the province of British Columbia on cases involving the Haida and the Tlingit suggest that the duty to consult is the sole responsibility of the federal and territorial governments.

Oil and gas development

In the year ahead, the Dene will advance major governance initiatives including: devolution, revenue and resource sharing, sustainable development and improving the living conditions in Denendeh. 2004 ended - and 2005 started - with development of a major environmental assessment for the MacKenzie Gas Project (MGP). The planned project will see the development of three large natural gas gathering fields and construction of a major gas pipeline from the Beaufort Delta along the Deh Cho (MacKenzie River) to northern Alberta, where it will enter existing pipelines. The MGP has been both encouraged and opposed by the Dene. However, unlike the first proposed pipeline, the new proposal promises benefits to more northerners and "manageable" social and environmental impacts. When Justice Thomas Berger recommended a moratorium thirty years ago, it was to ensure that when development did advance, the Dene would have settled their land claims. Many Dene communities are now in a much better position to adapt, adjust to and accommodate the impacts of development, and to capture the benefits. There is, however, continued opposition to the pipeline development, with some claiming that the environmental and social impacts will change the Dene and their lands forever. In the Deh Cho, opposition to the Joint Review Panel was sparked by concern that Deh Cho First Nations would not be adequately consulted when reviewing the Environmental Impact Statement. The Gwich'in and Inuvialuit desire to obtain economic income from development of the MGP is understandable, as is the Deh Cho resistance.

International involvement

The Dene National Chief, Noeline Villebrun, served her first year as vice chair of the Arctic Athabaskan Council (AAC).⁴ Major achievements for the Dene in the AAC during the year include: participating in the Arctic Climate Impact Assessment (presenting at the Reykjavik Symposium), contributing to the Arctic Human Development Assess-

ment Report, attending the tenth Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change, and participating actively at the Arctic Council (see also article on the Arctic Council, this volume). Another important international activity in Denendeh included the third meeting of the Northern Research Forum. The year ahead will see several important initiatives, including the meeting of Arctic Indigenous Leaders in Denendeh, the annual Assembly of First Nations congress, and continued dialogue on northern research initiatives, such as planning for the International Polar Year. □

Notes

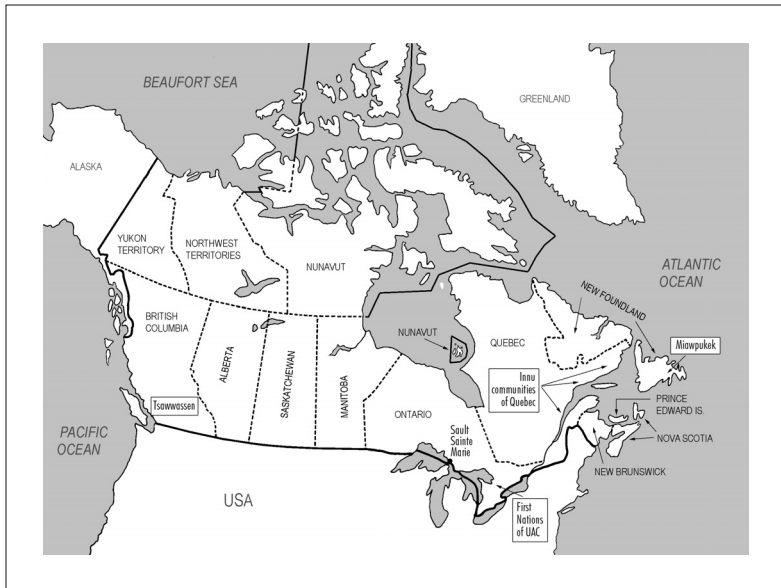
- 1 The Northwest Territories (NWT) is one of three political jurisdictions 60 degrees north of the Canadian provinces. The Dene (Athabaskan) peoples call their country Denendeh. (See map p.77, this volume.)
- 2 The Gwich'in tribal council communities are: Aklavik, Nihtat (Inuvik), Tettit (Fort McPherson) and Gwichya (Tsiighetchic). The Sahtu Dene council communities are: Begade Shotagotine, Deline, Behzai Ahda, K'asho Gotine and Tulita. The Deh Cho First Nations communities are: Sambaa K'e (Trout Lake), Lidlii Kue (Fort Simpson), Jean Marie River, Nahanni Butte, Acho Dene Koe, Deh Gah Got'ie (Fort Providence), Ka'agee Tu (Kakisa), Katlodeeche (Hay River Dene Reserve), West Point and Pehdzeh Ki (Wrigly). Tliche government: communities of Bechoko, Wha Ti, Dechi Laot'i and Gameti; and the Akaticho territory government: communities of Deninu K-ue, Salt River, Dettah, Ndilo, Smith Landing and Lutsel K'e.
- 3 The *Indian Act*, passed in 1876, is the legislation that provides Canada with a legal framework for managing Indian affairs and lands reserved for Indians. The Act governs most aspects of status Indian lives, both on and off reserve. Once a First Nation has signed a self-government agreement, it no longer falls under the *Indian Act*.
- 4 The Dene Nation is a founding treaty member of the Arctic Athabaskan Council (AAC), which represents the larger group of Athabaskan peoples in Denendeh, the Yukon Territory and Alaska on an international level (in particular as a Permanent Participant to the Arctic Council).



CANADA

In Canada, the *Constitution Act* (1982) recognizes three groups as Aboriginal peoples: First Nations (or Indians, as they are often known), Métis and Inuit. In the provinces, excluding the Territories in the North, according to Canada's 2001 census the highest concentrations of Aboriginal peoples were in the prairies of the central and western part of Canada, with Saskatchewan having the highest percentage (9%) in relation to non-Aboriginal peoples. The total Aboriginal population is divided roughly in half between those who live in urban environments and those who live in rural areas. Winnipeg (Manitoba) has the most Aboriginal inhabitants, followed by Edmonton (Alberta), Vancouver (British Columbia) and then Calgary (Alberta). First Nations peoples comprise the largest percentage of the total Aboriginal population (roughly 67%), followed by Métis (roughly 26%).

First Nations were historically designated as Indian bands but most object to the lack of political organization that "band" infers and have changed their received titles, often using their own languages. First Nations held most of the historical claims to territories in the provinces through the land surrenders and treaties negotiated with British colonial administrators or the Canadian government, and the *Constitution Act* protects the rights established through these treaties. However, there are several discrepancies in this generalization due to historical/territorial differences between the provinces. One example that extends to southern Canada is the many First Nations in British Columbia that did/do not have treaties since that province did not historically recognize their land and resource claims. The territories that were defined for each band are called reserves but many contemporary First Nation peoples live off-reserve, often in order to access urban centers for employment, education, etc.



Métis are historically associated with the mixed-heritage populations that arose from the European interests in the fur trade. The Métis' status as indigenous has been ambiguous and tenuous in the eyes of fur trade and colonial administrators and later governments (US and Canada). The most well-known Métis organized resistance to the Canadian government occurred in the 19th century: first in the Red River region of current day Manitoba (1869-1870), and then along the South Saskatchewan River in what is now central Saskatchewan (1884-1885). These Métis were trying to secure rights to the lands they occupied. The only place where Métis have been able to secure land is in Alberta, through a provincial agreement in 1938.

With constitutional recognition, the Métis have expanded to include people who may not identify with the historical Métis populations in western Canada. There are also Aboriginal peoples who either never obtained treaty or status rights or lost these rights because of certain policies; these people are known as "Non-Status Indians". In many places in the provinces, the boundaries between First Nations, Métis and "Non-Status Indian" peoples are complicated and blurred

since there is a complex history of intermarriage and changing provincial and federal policies with which to contend.

2004 developments

The year 2004 began with the minister of Indian Affairs and Northern Development announcing the Government of Canada's renewed commitment to Aboriginal communities moving towards their inherent right to self-government. Since Paul Martin took over as prime minister in 2003, the federal government has taken a more conciliatory approach to Aboriginal issues. Perhaps this stance was due to past Indian Affairs Minister Nault's failed attempts to legislate the highly criticized *First Nations Governance Act* in 2003 (see *The Indigenous World 2002-2003 and 2004*) or Paul Martin's election strategy in 2004. Regardless of the cause, there have been many positive and collaborative moves by the federal government towards Aboriginal organizations.

The prime example of this was Paul Martin's April meeting with leaders of the Assembly of First Nations (AFN), the Métis National Council and the Inuit Tapiriit Kanatam, the three largest national organizations for each Aboriginal group. Representatives from the Congress of Aboriginal Peoples, which represents Métis and off-reserve Indians, and the Native Women's Association of Canada were also invited. This was the first "Round Table" in a series of on-going discussions for specific sectors (Health, Education, Housing, Economic Opportunities, Negotiations, Accountability) and they are continuing into 2005. At the April meeting, the delegates emphasized the importance of holistic approaches since these issues are interrelated. These sessions address the very real gaps between Aboriginal peoples and Canadians across all the sectors and will provide the backdrop to and recommendations for future meetings in 2005 that will culminate in the First Ministers' Meeting on Aboriginal Issues.

The Health and Education sessions both centered upon accessibility and jurisdiction issues as well as training and support of Aboriginal people and traditional values. Mental health, child development and the importance of Aboriginal women were also key focal points in the

health discussions. In the education discussions, AFN representatives emphasized the negativity of a Pan-Aboriginal approach¹ since First Nations are culturally diverse and have locally-based needs; they also stressed the need for more funding in the areas of language and curriculum for education programs. Four priorities were delineated in the Housing session: ways to increase the housing supply, improvements and maintenance of housing quality, jurisdiction/control and accountability, and finally affordable and accessible housing. The Economic Opportunities session applauded recent examples of Aboriginal entrepreneurship; those at the session agreed that this activity should be maintained and amplified. The AFN specifically noted that economic policy discussions should also intersect with other issues: the involvement of women and youth, urban environments, language support and sustaining environmental resources. The sessions on Negotiation and Accountability are taking place in January 2005; however the AFN has released its plan for the Negotiation session in order to address the imbalance of power that First Nations face in the way current negotiations are being framed.

The following sections highlight specific issues in First Nations and Métis communities.

Potential for self-government

In December, two First Nations made progress towards self-government. These groups follow several others who have either attained final agreements or are at various stages in the process. A Mi'kmaq community on the South Central Coast of Newfoundland, the Miawpukek First Nation, met with Canada and the Province of Labrador and Newfoundland to formalize its intent to create a Self-Government Framework Agreement and targeted the completion for such a framework as mid-2005, the final agreement to be completed by 2009. In the Miawpukek's proposal for self-government, there is a desire for members in their community to take more active roles in education, land and wildlife management, and legal affairs. The Miawpukek are also in negotiations to expand their current reserve.

The Miawpukek did not obtain recognition under the *Indian Act* until 1984 and they are the only officially recognized Mi'kmaq group on Newfoundland. Currently there are 782 on-reserve and 1,633 off-reserve Miawpukek members. The Mi'kmaq are Algonquian-speakers who also live in New Brunswick and Nova Scotia. In the 1999 *Marshall case*, the latter Mi'kmaq won the right to harvest fish. However, the Miawpukek have been denied these more extensive rights even though they have been successfully operating their own aquaculture program for the past 20 years.

Further along in the process of self-government are the United Anishnaabe Councils (UAC) of Ontario. The UAC announced that they have completed their government negotiations and will begin the ratification process for the Anishnaabe Government Agreement (AGA). Ratification involves each of the four First Nations in the UAC voting on this agreement, which is expected to happen in the summer of 2005. After ratification by the First Nation's members, it needs parliamentary support in Ontario. The UAC consists of approximately 4,200 members of the Chippewa Nation of Beausoleil, the Mississauga Nations of Curve Lake and Hiawatha, and the Pottawatomi Nation of Moose Deer Point, located in south-central Ontario. The AGA will revitalize the historic ties these communities have had with each other and will replace much of the *Indian Act*² so that they will have more command over their own affairs. Specifically, they will have authority in 13 aspects of government, including "the selection of public officials, education, land, natural resources, *e-naadziyang* (culture), *anishnaabemwin* (language), economic development and the operation of business".³ The UAC were formed in 1985 to strengthen their communities, and for the last decade have worked within their communities to achieve the AGA.

First Nations treaty negotiations

March 2004 saw two separate "Agreements in Principle" (AIP) for future treaty negotiations: one in British Columbia (BC) and the other in Quebec. The Tsawwassen First Nation of BC met with provincial and

Canada representatives and signed an AIP towards finalizing their treaty. The AIP is the fourth stage in the six-stage treaty process set up in 1993 by the BC Treaty Commission. What remains are the negotiations for the final agreement and the implementation of this agreement as a treaty. In total, 55 BC First Nations are at some stage in this treaty process. The Nisga'a became the first BC group to establish a modern treaty in 2000.

The Tsawwassen are a Coastal Salish people with approximately 235 members. They follow four other BC groups in reaching this stage of the treaty process but are unique in that they would initiate the first urban treaty in the Lower Mainland of BC. The reserve is around 25 kilometers south-west of Vancouver, its southern edge bordering the BC ferries' causeway and its northern edge bordering the Vancouver Port Authority's (VPA) coal port. The AIP designates Tsawwassen lands as including their current reserve, along with about 365 hectares of Crown land nearby. No longer "wards" on federal land, they will own this land, including subsurface and forest rights. However, the federal government would retain Highway 17, and the Tsawwassen claims to cultural artifacts under this Highway are to be negotiated in future talks. The AIP also gives the Tsawwassen the right to harvest fish for domestic purposes as well as incentives to be involved in fisheries management. On their treaty lands, they will be able to regulate these resources and, within their traditional territories beyond their treaty lands in provincial and national parks or protected areas, they will be allowed to gather plants and strip bark for domestic purposes. The Tsawwassen also recently obtained compensation from the VPA for the land and marine degradation the VPA has caused as well as specific agreements for including the Tsawwassen in future VPA developments.

In the Northeast four Innu Chiefs, along with Quebec and Canada representatives, signed an "Agreement in Principle of a General Nature" for a treaty. The chiefs represent four Innu communities, three of which are organized under the Mamuitun Tribal Council, the fourth – Nutashkuan - having recently joined the treaty process. The communities span the region from the Saguenay-Lac-Saint-Jean region to the North Shore of the St. Lawrence River; their composite membership is

approximately 8,900, on and off-reserve. The AIP would cede ownership of about 3,022 square kilometers of federal and provincial lands, including the current reserves, to the Innu. However, a major portion of the land is attached to Nutashkuan and, for this land, the government would retain the hydraulic and subsurface resources, although the Innu would have the right to concede exploration and extraction as well as a one quarter share in ownership. In addition, the agreement provides the framework for the right to practice *Innu Aitun*, the traditional Innu use of their ancestral territory Nitassinan. Thus, Innu harvesting will be given priority, but only in relation to government interests in ecological management. Future negotiations will define Nitassinan within Quebec. Finally, the agreement also includes major monetary compensation from the government for past infringements on Nitassinan, such as hydroelectric development.

This agreement was the latest in a series of negotiations with Quebec that began in the late 1970s, when the Innu, along with the Atikamekw to the west, began to approach Quebec with regard to land claims. Of late, the negotiations have politically divided the Atikamekw from the Innu, who are further divided into three parties. The Innu, also known as the Montagnais in Quebec, are Algonquian-speakers who also live in Labrador and Newfoundland.

Métis harvesting rights: repercussions of Powley

On September 19, 2003 the Supreme Court of Canada sided in favor of Steve Powley, a Métis from Sault Ste Marie, Ontario, as having the Aboriginal right to hunt. The case began in 1993 when Steve Powley shot a moose and the Ontario Ministry of Natural Resources charged him and his son for hunting without licenses. After several years in provincial and federal courts, the *Powley case* ultimately reaffirmed the unique status of Métis as established in the 1982 Constitutional Act and further clarified the rights of specific Métis communities.

The *Powley case* also provides the basis for Métis to extend these rights to other regions, and in 2004 the Métis National Council's (MNC) provincial affiliates proposed several initiatives/agreements for Métis

harvesting rights. This means that those Métis who have membership within the provincial arms of the MNC (e.g. Métis Nation of Alberta, Métis Nation of Ontario, etc.) have potential access to the harvesting rights that each organization has agreed upon with their provincial governments. Some provinces have not agreed to any proposals, while others have only agreed to limited degrees. For example, British Columbia has refused to formally negotiate with the Métis Provincial Council of British Columbia; Ontario has only permitted harvesting in regions north of Sudbury; and Saskatchewan has only permitted harvesting in northwestern regions, which were already established in a previous court case. Furthermore, other Métis organizations such as the Ontario Métis Aboriginal Association and the Council of Aboriginal Peoples have issued complaints that these harvesting rights should extend beyond just member-affiliates of the MNC. □

Notes and sources

- 1 A pan-Aboriginal approach is all encompassing and does not give consideration to cultural differences and needs.
- 2 The *Indian Act*, passed in 1876, is the legislation that provides the Government of Canada with the legal framework of authority over Indians and lands reserved for Indians. It governs all aspects of status Indian lives, livelihoods, lifestyles, standard of living and quality of life, both on and off reserve.
- 3 **Indian and Northern Affairs Canada. 2004.** Backgrounder Highlights of Anishnaabe Government Agreement. http://ainc-inac.gc.ca/nr/prs/s-d2004/02551abk_e.html; downloaded Jan. 14, 2005.

Assembly of First Nations: www.afn.ca

Métis National Council: www.metisnation.ca

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Congress of Aboriginal Peoples: www.abo-peoples.org

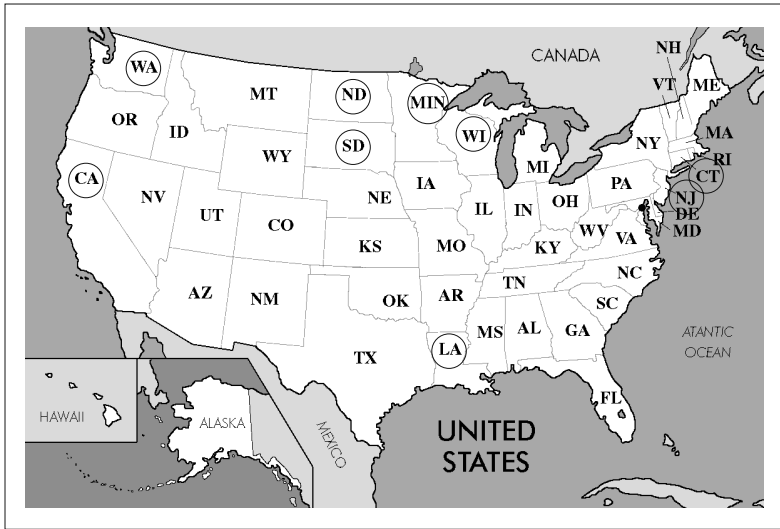
British Columbia's Treaty Negotiation's Office: www.prov.gov.bc.ca/tno

THE UNITED STATES

According to the 2000 national census figures, 4,119,301 people in the United States identified themselves as a member of an American Indian or Alaska Native tribe. This includes people who exclusively self-identified as Native as well as those who identified as a member of two or more “races” (this terminology being used in official documents in the United States). The Indian Health Service estimated its service population to be around 1.5 million in 2000. In comparison to other segments of American society, the American Indian population in the United States is overall marked by a high percentage of young people, high unemployment on reservations, high poverty, low life expectancy rates for both sexes, high rates of diabetes, heart problems, alcoholism and suicide, and a low high school and college graduation rate. Reservations have been granted limited sovereignty but are under the control of the federal government.

The war in Iraq and federal elections took the spotlight in national politics in 2004, and they and their consequences impacted, and will continue to impact, on Native American communities. While some communities, like Western Shoshone, continue the protest against the war, Native communities still have the highest ethnic percentage of soldiers in the United States army, and several Native soldiers have been killed in Iraq. On the other hand, reservation-based manufacturers that undertake contract work for the military are experiencing an economic upturn.

Several states are concerned with Native gaming operations, particularly California and Minnesota. The most important cultural event in 2004 was probably the opening of the National Museum of the American Indian.



Elections

In the presidential elections, George W. Bush won against John Kerry. In the hope that Kerry would listen more to Native issues and voices and perhaps appoint a Native American to the cabinet, the Navajo Nation, among others, had endorsed him. In other election-related news, Senator Nighthorse Campbell from Colorado, the only Native American senator, retired this year.

One of the most closely watched states in the 2004 elections was South Dakota, where Indian reservations have established themselves as kingmakers in state-wide, national elections. In 2002, Tim Johnson (Democrat) won a senatorial election by a slim margin, with crucial support coming from the reservations. In June 2004, Stephanie Herseth (Democrat) won a very close replacement election for the state's lone seat in the House of Representatives, again with significant help from the state's Indian reservations. She defended her seat in the general elections in November. However, Senator Tom Daschle (Democrat), the Senate Minority Leader, lost his seat to John Thune (Republican). The South Dakota senate election was marked by huge out-of-state monetary contributions, Democratic efforts to get the Native vote out

and a Republican reaction to the last two elections narrowly lost because of reservation votes. After allegations of voting fraud on reservations in 2002, workers for the Thune campaign took pictures of early voters on reservations and wrote down license plate numbers of cars outside polling stations in November. This in turn led to accusations of voter intimidation.

Both Daschle and Thune campaigned heavily on reservations and made efforts to listen to Native concerns. While Daschle's defeat was initially regarded as proof that the Indian vote does not carry too much weight, Thune won the election narrowly, in part because he had made inroads among the reservation vote. It seems that the South Dakota reservations have established themselves as a powerful electorate. It is hoped that this will ensure that the state's national congressional delegation will listen to the needs and wants of tribal governments and grassroots organizations in the future.

In state politics, however, South Dakota wanted action to be delayed in order to remedy a change in voting districts that was found to violate the rights of Native American voters. In the United States, voting districts are not geographically given but can be redrawn according to demographics. This is sometimes used to restrict the influence of ethnic groups or political parties by limiting their political representation. In this case, the reservation vote had been split by a redrawing of districts, ensuring that the Indian vote would remain a minority in the new districts for state elections.

Gaming

The only issue directly affecting American Indian policies that came to the fore on election day was Indian gaming. In Washington State and Wisconsin, votes on local initiatives seemed to support the casino projects of local tribes who have entered into contracts with the experienced Mohegan tribe of Connecticut, operator of the Mohegan Sun Casino. The Cowlitz and Menominee tribes have signed multi-million dollar agreements with the Mohegans in order to benefit from their practical and political expertise in running successful gaming opera-

tions. In related developments, the Mohegan tribe's professional women's basketball team, Connecticut Sun, lost in the Women's National Basketball Association finals. Several tribes are hoping to expand into the professional sports business, and some are buying horse racing tracks. It is not a coincidence that the proposed Menominee casino in Kenosha, Wisconsin, is to be built at a greyhound track.

Increasingly, tribes are coming under pressure from cash-strapped states to share gaming revenues in return for a continuation of tribal gaming monopolies. Under the law, tribal gaming operations cannot be taxed by the states, although some states have entered into agreements with tribes to share a certain percentage of their revenues in return for restricting casinos under state law. States are now pushing tribes for more revenue sharing. This year, California secured one billion dollars of future increased revenue from five tribes. Governor Schwarzenegger (Republican) upset tribes, however, by campaigning for the need for gubernatorial control of gaming compacts on the basis that the tribes "are ripping us off". In Minnesota, Governor Pawlenty (Republican) has not been successful in pressuring tribes to share revenues. The governor has threatened to allow gaming state-wide if the tribes will not agree to his proposed deal, which calls on them to give the state 350 million dollars a year from their gaming revenues.

A casino compact is also involved in the partial settlement of a long-standing Oneida land claim with the state of New York. The suit, dating back to 1970 and relating to over 100,000 acres taken illegally in 1795, was originally brought by three Oneida tribal governments: the Oneida Nation of Wisconsin, the Oneida Indian Nation of New York and the Oneida of the Thames in Canada. All of these tribes trace their ancestry back to the land in question. The Supreme Court ruled in favor of the tribes in 1985, and a mediation process began in 2002. In 2004, the Oneida Nation of Wisconsin agreed to a settlement involving 1,000 acres of land in central New York and a 300-acre casino development close to New York City. Governor Pataki announced that the deal would settle all pending land claims, which upset the Oneidas in New York. The Oneida Indian Nation of New York has not accepted the settlement. As in previous years, this latest attempt to settle the land claims also seems to be an attempt to pit the tribes against each other.

In 2002, the Oneida Indian Nation of New York accepted a settlement involving 500 million dollars and a 35,000-acre reservation but the deal fell through because the Oneidas of Wisconsin and Canada were never consulted about it.

New York State also offered another Wisconsin tribe a casino deal in settlement of old land claims. The Stockbridge-Munsee band of Mohicans were to receive rights to operate a 333-acre casino in New York. The Stockbridge-Munsee, as well as the Oneida Nation of Wisconsin, had agreed to remit all state taxes on the respective lands offered in order to settle their claims. News of these deals was not well received by New York tribes already operating casinos in the state. The Oneida Indian Nation of New York has begun lobbying against out-of-state tribes receiving casino licenses in New York, which would prevent the Wisconsin tribes from operating their promised casinos. In turn, the two tribes argue that they have only been placed outside the state by forces of history, and should therefore not be considered out-of-state tribes.

Land and recognition

The *Cobell v. Norton* lawsuit over the mishandling and misappropriation of money owed to Indian trust account holders is still ongoing, but has entered mediation. This case is aimed at remedying the fact that the federal government holds Indian lands in trust and collects income from them but has never paid that income to thousands of beneficiaries. So far the mediation is going nowhere, as the federal government is still blocking attempts to ascertain the true extent of debt to Indian account holders.

Two court cases have the potential to fundamentally impact on Indian land policies in the future. A federal appeals court is hearing *Carciari v. Norton*, a challenge from the governor of Rhode Island against any right of the federal government to take tribal lands into trust. This case has potentially far-flung consequences for the core of United States Indian policies. The Supreme Court has also agreed to hear *Sherrill, New York v. Oneida Indian Nation* in early 2005. This case originated with the city of Sherrill wanting to tax property that had been bought

by the Oneida Nation. The Oneidas argued that because these properties lay within the original boundaries of their reservation, which had been illegally dispossessed, they legally constituted Indian Country and were therefore not taxable, even though they had only recently been purchased. In 2003, a federal appeals court agreed with the Oneida that the Treaty of Canandaigua, which set up the reservation in 1794, was still in force. However, a dissenter voiced doubts as to whether the Oneida Nation of New York had been in continuous existence for the last 150 years, and argued that this would negate their right to the land. In taking this case, the Supreme Court has surprised many observers, and a long list of *amicus* briefs have been filed from both sides. These allow interest groups not directly affiliated with the parties to become involved in a case. In this particular case, the U.S. Solicitor General has filed a brief in favor of the Oneida Nation.

In other land-related cases, tribes on the Plains won a victory in a sacred land case in early January 2004. The proposed shooting range at Bear Butte in South Dakota, a sacred place for several tribes but especially for the Lakota and Cheyenne, has been dropped. Unexpectedly, the project's backers filed papers with the court declaring that they would abandon the shooting range development. In addition, a dispute between social scientists has flared up again in the journal *Ethnohistory* over federal recognition of the Houma Indians of Louisiana, pending before the Bureau of Acknowledgement Research. Federal recognition depends on proof that the applicant tribe was a socially and culturally distinct unity before contact and has been so continuously since. The issue of whether or not the United Houma Nation, Inc. represents people of historical Native American identity was also tied in with an indigenous land claim against Texaco, in which the scientists involved gave testimony on opposing sides, and which the Houma lost.¹

Culture and economy

After fifteen years of planning, the National Museum of the American Indian opened its doors in September 2004 on the National Mall in Washington, D.C. The museum opening was a huge event attended by

about 20,000 Native Americans from all over the country. It marked the representation of the country's indigenous peoples via their own museum in the nation's capital. The museum, whose key leadership positions are held by Native Americans, sees its mission not only in exhibition and education but in giving a voice to Native communities, and in a "special responsibility" to perpetuate native culture and community. While the museum has been celebrated by some, its exhibitions have drawn criticism from others as overlooking or dismissing scholarship and presenting history from a romantic perspective. Wherever one comes down on the issue of scholarship and education, it is clear that the museum has indeed established a space and a potential for Native Americans to express their own perspectives of history and culture, and is at least a visible reminder of the continued presence of Native Americans in American society today.

From 1997 to 2000, the number of businesses owned by Native Americans grew by 84%, while their gross revenues rose by 179% to 34.3 billion dollars. The majority of these businesses are micro-enterprises. These numbers are very encouraging and show that the increasing number of small loan funds for business development on reservations is having a real impact. Large economic disparities remain, however, between urban and rural Native American populations, and between Native Americans and other groups in American society. Residents of many reservations in rural areas remain deeply impoverished, with higher rates of infant mortality, alcoholism and diabetes, and lower life expectancy. In 1990, a third of all Indians lived below the poverty line, compared to 13.1 percent of the population as a whole. As in all American ethnic groups, American Indian women are most affected by these issues. A report by the Institute for Women's Policy Research found that one quarter of Indian women nationwide live in poverty, a figure that rises to almost forty percent for Indian single mothers.

Education

Around 500,000 American Indian and Alaska Natives are enrolled in the state school system, 50,000 of whom attend Bureau of Indian Af-

fairs (BIA) schools. Under the Bush administration's "*No Child Left Behind*" Act, all schools have to meet certain standards, evaluated in standardized tests, or face sanctions. This is supposed to help reform schools and elevate the standard of education. BIA schools, which can set their own standards, are mostly trying to achieve the standards set by the states in which they are located. Federal budgets that cut BIA programs, however, do not help in this regard. For reservation schools, like many other rural schools, the act creates problems. Sanctions for underachieving schools include: the parents' right to send their children to a successful school within the same district (although this is impossible if there is only one, as in many rural areas); removing under-performing teachers (virtually impossible considering the high turnover rate at reservation schools); changing the school administration (with the consequent problem of finding enough qualified people); or even shutting the school down. The last option would theoretically force students to attend a better school but, if there is only one to begin with, it is hard to understand how draining money from a problem school can improve education for its students.

Tribal sovereignty

In *U.S. v. Lara*, the Supreme Court ruled in April 2004 that a tribal court system prosecutes as a separate sovereign, even when prosecuting a non-member Indian. Bureau of Indian Affairs (BIA) police officers had arrested Lara for public intoxication on the Spirit Lake Nation reservation. Lara was a member of a federally recognized Indian tribe but not a member of the Spirit Lake Nation. During the arrest, Lara attacked a police officer. The tribe convicted him of assault and the federal government subsequently prosecuted him for assault on a federal officer. Lara argued that this violated the double jeopardy clause, which prevents multiple convictions for the same crime. The Supreme Court ruled that the tribal court had acted as a "separate sovereign" from the United States and, therefore, double jeopardy was not at issue.

In its more prosaic effects, this case upheld and strengthened previous court decisions to affirm that tribal court systems can not only

prosecute members of their own tribes but any Indian (and, although not implied in this case, in some instances also non-Indians) as long as the crimes prosecuted fall under the federal limitations for tribal legal sovereignty and the severity of crimes committed.

While this decision upheld tribal sovereignty in general, by declaring reservations to be distinct sovereigns from the United States, and was hailed as a victory by many tribal governments, under the specifics of the case the decision also reaffirmed the granting of “plenary and exclusive” power to legislate over Indian tribes to the United States Congress. As such, as Justice Thomas pointed out, Congress was reaffirmed in its power to “regulate virtually every aspect of the tribes without rendering tribal sovereignty a nullity”. In other words, tribal sovereignty is still absolutely regulated by one particular branch of the federal government, and can be limited, expanded or practically abolished at will. □

Notes

- 1 *Ethnohistory* 48, no.3 (2001):473-494; *Ethnohistory* 51, no. 4 (2004): 779-797.

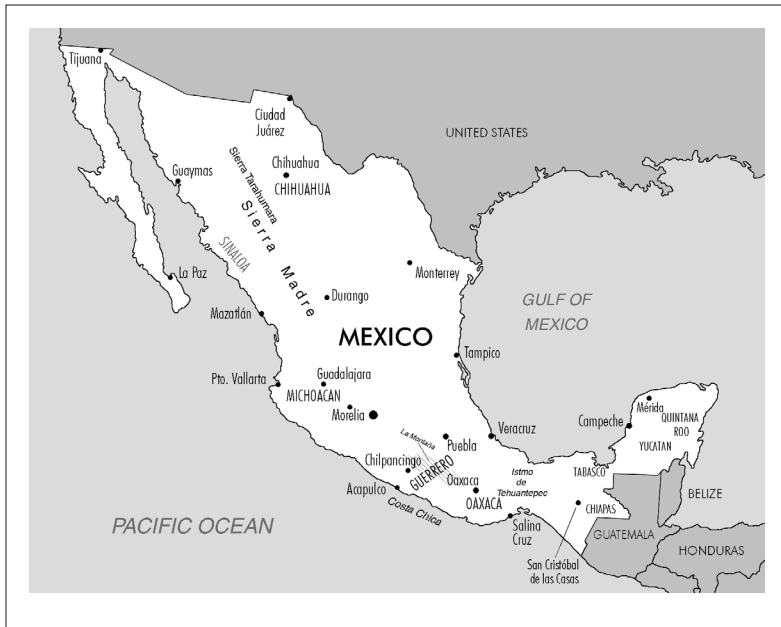


MEXICO

According to data from the National Population Council (*Consejo Nacional para la Población*) and the National Indigenist Institute (*Instituto Nacional Indigenista*), the indigenous population in Mexico totals 12,707,000.¹ More than 60 indigenous languages are spoken in the country. Among the most widespread are Náhuatl, Maya, Zapoteco, Mixteco, Tzeltal and Tzotzil. Yucatán, Oaxaca, Chiapas and Quintana Roo are considered to be the states with the highest indigenous population. Of the country's 2,433 municipalities, 803 are designated as indigenous, with at least 30% of their population being indigenous. 88% of the indigenous municipalities are highly or very highly marginalised.²

To promote: the verb of change?

Following his mission to Mexico in 2003, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, presented his report to the Commission on Human Rights in early 2004. One of his most important recommendations was that the Mexican Congress of the Union should "reopen the debate on constitutional reform as regards indigenous issues, with the aim of clearly establishing the fundamental rights of indigenous peoples in accordance with current international legislation and in line with the principles of the San Andrés Agreement". He also indicated that the Chiapas peace negotiations with the Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional* - EZLN) would need to form a high priority for the federal government, and should respect the existence of "los Caracoles" and "las Juntas de Buen Gobierno" (Good Governance Committees - JBGs).³ With regard to ILO



Convention No.169, he affirmed that it needed to be reflected in all corresponding legislation.⁴

The Mexican government's response to this report, which is little known, is interesting in this regard. It focuses on two issues established by the Rapporteur as priorities: the conflicts over land ("hot spots") and the political conflict over power, particularly at municipal level. The government stresses that the lack of progress has been due largely to a lack of financial resources. Such is the case of indigenous prisoners, with regard to whom "the public authorities lack sufficient resources to ensure strict application of the law". It indicates that, in the "current economic climate", it is impossible to provide more resources to indigenous populations. This begs the question as to why such a "climate" is, however, conducive to favouring bankers with large sums of money. It would seem that the indigenous exist within a different "climate" that prevents them from receiving any significant support.

In its response, the government indicates that it will promote the start of a debate in the Congress of the Union on a new constitutional

reform that takes the San Andrés Larrainzar agreements as its starting point; it will promote, prior consultation with the indigenous peoples, reforms of state constitutions, with the aim of obtaining recognition of their fundamental rights; it will promote the fact that national legislation should reflect ILO Convention 169; that the communities should be responsible for controlling, preserving and renewing the natural resources in National Protected Areas; that the right to cultural difference should be taken into account; that collective rights should be respected; that there should be translators of indigenous languages within the Public Ministries; that the physical and psychological torture used by police and military bodies should be eradicated; and it will promote amnesty laws for indigenous people imprisoned for political or social reasons. In addition to recognising and respecting the community structures, the government "will promote recognition of and respect for their own forms of internal government on the part of state governments, along with other forms of conflict resolution specific to indigenous peoples".⁵

The verb promote appears no less than 22 times in the actions the Mexican government has undertaken to implement. One issue the government mentions is that of "bringing the conflict in Chiapas to a final solution". It is the duty of indigenous organisations, civil society and human rights defenders to monitor how the government will promote these actions to the benefit of indigenous peoples.⁶ Constitutional reform around indigenous issues and the conflict with the EZLN are two outstanding areas. It is therefore important that this document be distributed, analysed and discussed. This is the task of each and every one of us.

Chiapas, a thing of the past?

The federal government's position on the Chiapas problem can be summarised in Vicente Fox's response to a question asked of him with regard to the EZLN. He replied, "This issue is virtually a thing of the past here; we've all moved on now."⁷ Quite clearly, a statement of this nature lacks any real meaning. Persistent violations of indigenous

rights continue in Chiapas, there is a heavy presence on the part of the Mexican Army, armed paramilitary groups persist, the intellectual authors of the Acteal massacre still go unpunished and there remains the problem of the displaced indigenous, among other things.⁸

In August 2004, one year on from the birth of the Caracoles and the Juntas de Buen Gobierno, the EZLN conducted an evaluation of the latter's activities. In a series of communiqués,⁹ it indicated two failings on the part of the JBGs: the place of women and the relationship between the politico-military structure and the autonomous governments. With regard to women, it indicated that whilst "female participation was between 33% and 40% in the Indigenous Revolutionary Clandestine Committees (*Comités Clandestinos Revolucionarios Indígenas*), it was on average less than one per cent in the autonomous councils and JBGs. Women continue to be passed over when appointing cooperative committees (*comisariados ejidales*) and municipal staff. Government work is still the prerogative of men". With regard to the politico-military structure, the problem lies in the fact that, in some JBGs and Caracoles, Zapatista comandantes take decisions that do not fall within their remit, and this causes problems.

On the other hand, the communiqués also list various areas of progress. They note the support the movement has been receiving from national and international civil society from the very start. Over the last year, the five JBGs have raised almost 12.5 million pesos (more than a million US\$), of which they have spent 10 million. This expenditure has largely been to improve living conditions. Thanks to the support of civil society, the health system in Los Altos de Chiapas now provides free medical care, hygiene campaigns are being carried out in the JBGs, and regional and municipal clinics have been built. More than 50 schools have been built throughout the region, in addition to the 300 already in existence and a municipal grocery store has been built and is now in operation. There is also a cooperative of displaced women and various agricultural and livestock production cooperatives.

During this first year, agreements were also reached for the preservation of the forests in the autonomous territories and banning the cultivation, trafficking and consumption of drugs. Vehicles passing

through the area are recorded to avoid trafficking in people, drugs, arms and timber. The communiqués highlight that, with the creation of the Caracoles and the JBGs, a decision was taken to implement the San Andrés Agreements and demonstrate, in practice, that they wanted to be a part of Mexico. They stress that the JBGs were created to serve everyone and that they maintain constant communication with different social organisations, with many official municipalities and with the state government. One JBG thus allowed the State Electoral Institute (*Instituto Estatal Electoral*) to enter its territory for the October elections¹⁰ and the prevailing laws in the Autonomous Municipalities complement the state and federal legal systems. The EZLN notes that if the country is, in fact, in a process of disintegration, this is not “due to indigenous autonomy, but to a veritable internal war, to the merciless destruction of its foundations: sovereignty over natural resources, social policy and the national economy”. Sub-comandante Marcos concludes, “The destruction of the Mexican nation is not taking place on Zapatista land. Quite the contrary, what is happening here is one possible way of reconstructing it”.¹¹

Women declare war

In early September, the Group of Communities for the Defence of the Human Rights and Natural Resources of the Mazahua People (*Frente de Comunidades para la Defensa de los Derechos Humanos y los Recursos Naturales del Pueblo Mazahua*) staged a sit-in aimed at obtaining a decision from the state of Mexico’s government with regard to its demands, which included a request for two million pesos compensation, the introduction of drinking water into the communities, the return of lands, and support for agricultural/livestock and eco-tourism projects in the area. The indigenous Mazahua installed themselves in front of the Berros waterworks,¹² in Villa de Allende municipality, state of Mexico.

Faced with the authorities’ failure to respond, around 60 Mazahua women decided to form a military organisation under the name of the Zapatista Women’s Army for the Defence of Water (*Ejército Zapatista de Mujeres por la Defensa del Agua*). They set up their barracks in

front of the entrance to the waterworks, holding demonstrations of their “military tactics” and marching armed with wooden rifles, sticks and machetes. They requested a meeting with the Minister for National Defence to inform him of why they had decided to take up arms and organise in this military fashion.

The indigenous protesters, federal authorities from the Ministries of the Interior and Environment and Natural Resources (SEMARNAT), along with representatives of the state of Mexico’s government, subsequently agreed to return to the negotiating table. A few days later, the minister for the Environment and Natural Resources visited the area and promised an integrated development project. At a second meeting, the two parties to the conflict reached, among others, the following agreements: a) to build latrines; b) to build ponds to hold rainwater and to begin clean water projects; c) to create family greenhouses and grain stores; d) to rehabilitate the irrigation systems and build 120 tanks and ten small reservoirs for water storage. However, in October the Mazahua complained that their demands had still not been answered.¹³ As of writing this article, the Mazahua are organising another sit-in in Mexico City, in front of the SEMARNAT offices, in search of a concrete response to their demands.

Oaxaca: the repression continues

On 15 September, 14 members of the “Ricardo Flores Magón” Oaxaca Popular Indigenous Council (*Consejo Indígena Popular de Oaxaca* - CIPO) were arrested. They had been staging a sit-in since April in front of the government offices and the church of Santo Domingo in the state capital, demanding a solution to their land, political and social problems. They complained that they had been beaten by elements of the police force. In addition, the Inter-American Commission on Human Rights (IACHR) requested precautionary measures from the state and federal governments to protect the physical integrity and legal security of Raúl Gatica, along with other CIPO leaders, due to the acts of intimidation and harassment they were suffering.¹⁴ Another regrettable event, towards the end of September, was the murder of Lino Antonio Almaraz,

a member of the Union of Peoples against Repression and Militarization in the Loxicha Region (*Unión de Pueblos contra la Represión y Militarización de la Región Loxicha*), who was shot dead.¹⁵

Guerrero: discrimination that kills

The deaths of indigenous migrant workers, young people and children form a bleak backdrop that concentrates the tragedy of these people on their struggle for survival.

Through lack of work, hundreds of families from four indigenous Guerrero peoples¹⁶ travel to the north of the country every year to work as agricultural labourers. They receive 55 pesos (5 US\$) for a 10-hour day. Women and children are most at risk from serious illness, but there is no medical care nor, in the case of death, any compensation from the company that hires these workers.

2004 saw the deaths of a number of children due to the poor medical cover provided by the Guerrero Department of Health. In January 2004, four Me'phaa children died in Laguna Seca community, Tlacoapa municipality, after having eaten contaminated biscuits they found discarded outside a small shop. Despite there being a basic community hospital one hour away, the medical staff could do nothing through lack of the necessary stomach pumping equipment and lack of medicine. In November, failure to treat their pneumonia in time led to the deaths of three Me'phaa children from Puerto Buenavista community in Acatepec municipality, along with another Náhuatl child from Chipepetec, Tlapa municipality.

Sócrates Tolentino González, 18 years of age, was arrested on 14 January by Zapotitlán Tablas municipal police for "suspicious" behaviour, being drunk and having taken drugs. Early in the morning of the following day, a group of police officers informed Mrs. Lucía Genaro that her son had committed suicide. His mother states that his body bore twelve wounds, a number of them to his head and stomach. According to the medical expert's report, the cause of death was fractures to the skull and thoracic cage. Despite this, the police continue to enjoy impunity.

Persecution and threats

The struggle of the Amuzgos of Xochistlahuaca municipality for an indigenous government (see *The Indigenous World 2004*) continues to be criminalized by the state government which, through the Attorney-General's office, instigated 12 investigations into the traditional authorities during 2004. On 15 July, the president of the cooperative committee was arrested for trying to resolve a land problem through conciliation.

On 9 December, in Ayutla, via an anonymous letter left on the door of her house, the indigenous leader Obtilia Eugenio Manuel was threatened for continuing to denounce the rapes of two women by soldiers during February and March 2002 in Ayutla and Acatepec municipalities. Precautionary measures have been requested from the Inter-American Commission on Human Rights to guarantee her safety and demand that those responsible be brought to justice.

Teotihuacán and the arrival of Wal-Mart

North American giant Wal-Mart's construction of the Aurrerá store in area C of the polygon demarcating the Teotihuacán archaeological zone led to a number of protests. Following a request submitted in March, the multinational had obtained the go ahead from the National Institute for Anthropology and History (*Instituto Nacional de Antropología e Historia* - INAH) in May.

On 27 September, the INAH repeated that the project "could not be cancelled" because there were no pre-Hispanic architectonic structures or "remains of great importance" on the land. The government of the state of Mexico stated that it would be impossible to relocate the shop, despite a commitment made by the state governor, because the investors had complied with the legal building requirements appropriately and within the time given. Demonstrations were held against the shop's construction, which nonetheless finally opened in early November.

Earlier, Adolfo Sánchez Vázquez, lecturer at the National Autonomous University of Mexico (*Universidad Nacional Autónoma de México* – UNAM) had said that it was a “violation of the culture and national traditions of a country. All in all it demonstrates the multinationals’ disdain for a sovereign and independent country, and for a site such as Teotihuacán, which must be respected for what it represents as a testimony both to our culture and our history. This action is evidence of a policy that has failed to sufficiently defend our culture and national traditions”.¹⁷

The end of a six-year mandate: which way for indigenous issues?

There are just two years to go before the federal elections. The poverty in which the indigenous live (marginalisation, migration, illiteracy, harassment on the part of the Mexican Army, repression and discrimination) is not a thing of the past but very much rooted in the present. Mexico’s indigenous peoples need a real change and, to achieve this, we need to re-open the debate on constitutional reform around indigenous issues. The indigenous have shown themselves to be in favour of this at various national and international fora. This is a first step and if it cannot be achieved within this government’s six-year term then at least the foundations must be laid, with a political agreement to achieve it in the future. The main issue at stake is a two-pronged one of indigenous/extreme poverty reform, and it is here that real change must take place. □

Notes

- 1 Or around 12% of the total population (104,907,990 in 2003). —Ed.
- 2 Office of Representation for the Development of Indigenous Peoples and the National Indigenist Institute, Programa Nacional para el Desarrollo de los Pueblos Indígenas 2001-2006, Mexico. See <http://www.cdi.gob.mx>.

- 3 New structures introduced by the EZLN in 2003 and which substitute los Aguascalientes. See *The Indigenous World 2004* and <http://www.fzln.org.mx>.
- 4 Report of the Commission on Human Rights Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples Mr. Rodolfo Stavenhagen. Mission to Mexico from 1 to 18 June 2003. E/CN.4/2004/80/Add.2. See www.unhcr.ch/indigenous/rapporteur.htm.
- 5 Response from the Permanent Mission of Mexico to the report of the Special Rapporteur following his mission to Mexico. Geneva, Switzerland, March 2004. E/CN.4/2004/G/22. See www.unhcr.ch/indigenous/rapporteur.htm.
- 6 In relation to land conflicts, the Department for Agrarian Reform has indicated the existence of "14 hot spots" in the country. Of these, nine had been resolved as of the end of 2004. See <http://www.sra.gob.mx>.
- 7 *La Jornada*, 12 January 2005.
- 8 **Fray Bartolomé de las Casas Human Rights Centre A.C. 2004.** Los Derechos de Pueblos Indígenas en Chiapas. Informe Preliminar, Chiapas 2002-2003.
- 9 See the EZLN comunicués, August 2004: <http://www.fzln.org.mx>.
- 10 In the 3 October municipal elections, the Institutional Revolutionary Party (*Partido Revolucionario Institucional* -PRI) won back government in the main towns of Chiapas, including the capital, which for the past nine years had been under the control of the National Action Party (*Partido Acción Nacional*). New authorities were elected for the 118 town councils and the local Congress. The PRI lost its absolute majority in the local Congress, but continues to be the main political force in the state.
- 11 See the EZLN comunicués, August 2004: <http://www.fzln.org.mx>.
- 12 The water flow captured by the Villa Victoria, Valle de Bravo, Chilesdo and Colorines reservoirs is channelled to this waterworks, which forms part of the Cutzamala supply system. This water is sanitized and then distributed to the Federal District.
- 13 *La Jornada*, September-October 2004.
- 14 Letter from Marcos Matías Alonso to José Murat Casab, Oaxaca State Governor, Mexico Federal District, 19 November 2004. For further information see <http://www.nodo50.org/cipo>.
- 15 Information on the repression in Loxicha can be found at <http://www.laneta.apc.org/rio/loxicha>.
- 16 They are the Me'phaa (Tlapaneco), Na savi (Mixteco), Náhuatl and Suljaa' (Amuzgo) peoples —Ed.
- 17 *La Jornada*, 5 November 2004.

GUATEMALA

Guatemala is home to approximately 6 million indigenous inhabitants (60% of the total population) belonging to 23 peoples, of which 21 are of Mayan descent, 1 Xinca and 1 Garífuna. The most numerous are the K'iché, K'akchiquel, Mam, K'eqchi and Tzutujil peoples. Four peoples have for some years now been facing serious difficulties in preserving their linguistic heritage, to the point of possible extinction. These are the Itzá, Xinca, Chorti and Mopan peoples, although the real reason is not their reduced numbers, as has been wrongly suggested, but the pressures imposed on them by the country's dominant non-indigenous culture.

The official statistics highlight a clear correspondence between the areas of greatest indigenous population and the regions of highest poverty. This confirms the fact that indigenous people continue to suffer from severe social exclusion, existing on the margins of the state's social investment programmes with regard particularly to education, health, infrastructure and job opportunities.

This report highlights the great efforts made by indigenous organisations during 2004 to fight for the fundamental rights of indigenous peoples but also their situation in relation to the rest of society which, in contrast, has made no significant progress, as illustrated by the general continuing trend of exclusion, marginalisation, racism and misappropriation of indigenous rights.

Scarce indigenous representation

2004 saw a change in government authorities throughout the country as a result of the general elections that took place at the end of 2003, at which the president and vice president of the Republic were elected



along with deputies to Congress and the Municipal Councils. Most of the posts were won by a coalition of new, small right-wing political parties known as the Grand National Alliance (Gran Alianza Nacional - GANA), led by the country's business elite. Although efforts were made to form a political party representing the indigenous, this idea never came to fruition. Most of the parties in the elections did, however, raise the banner of the indigenous struggle and include leaders from indigenous communities on their lists, albeit generally in secondary positions with little possibility of winning. On 14 January 2004, a

mere 15 deputies of indigenous descent took up their posts out of a possible total of 158, in other words less than 10%, along with five high-level officials in the government ministries and departments. The new cabinet was considered by indigenous analysts to be exclusive, discriminatory and imposed on the Maya people.

Progress in legislation

Both the legislative and executive branches of the new government focused their concerns on the anti-corruption caused, according to them, by the previous government. For this reason, indigenous interests took a back seat and consequently laws favourable to the indigenous peoples were not passed. However, the indigenous organisations did play a role through their involvement in the various committees to discuss relevant laws such the *Ley del Catastro* (Land Registry Law). Towards the end of the year, important agreements were reached that may enable this law to be approved by the Congress of the Republic early in 2005. The *Ley de Idiomas Nacionales* (Law on National Languages) (Congress Decree 19-2003), approved the previous year, received little attention from the new government in terms of its implementation, although progress was made in producing educational materials, particularly the "Neologisms in 11 Maya Languages", within the context of the project known as the "Universalisation of Basic Education" being implemented by the Ministry of Education. For its part, the Ministry for the Environment and Natural Resources approved a decree that will provide support to the authorities on the issue of natural resource use and will promote "the values, practices and knowledge existing among the Maya, Garífuna and Xinca peoples and communities with regard to environmental protection and improvement and the sustainable use of natural resources".¹ However, decisions taken on the issue of mining show that this Ministry was not acting in the interests of the indigenous peoples at all, as we shall see further on. In addition, no significant progress was made with regard to various laws affecting indigenous peoples that some had hoped would be approved,

such as the *Ley de Aguas* (Water Law) and the *Ley de Desarrollo Rural* (Rural Development Law).

Free trade goes ahead despite opposition

Despite strong opposition from indigenous and peasant farmer organisations throughout the country, and throughout Central America in general, the government continued with its plans to formalise the Free Trade Treaty with the United States, which was almost finalised this year. Some hurdles, such as Guatemala's protection of generic medicines, were modified under pressure from the United States. Different analyses published throughout the year drew attention to the negative impacts this treaty may have on local economies, particularly in terms of agriculture, trade and small industries, all areas in which the indigenous population make a significant contribution. Despite this, the government continued with the negotiations, failing to incorporate aspects of interest to the indigenous peoples.

The “rule of law” invoked to impose mining

In 2004, the government gave its full backing to mining on indigenous territories, specifically those of the Mam and Sipacapense, in the west of the country. Despite strong opposition from the indigenous and popular organisations, the government mobilised the whole state security apparatus in support of the mining companies, violently suppressing indigenous protests. Such was the case, for example, of the community Los Encuentros, in Sololá department. This violent government reaction obviously had the support of the business elite, who argued that the rule of law was in this way being guaranteed. This issue has demonstrated that the creation of the Maya Policies Unit within the Ministry for the Environment and Natural Resources was merely a device by which to legitimise mining interests at all costs.

Repression, struggle and achievements

The indigenous organisations were active in the main national and international events focussing on indigenous peoples' issues. At local level, however, various indigenous and peasant demonstrations were severely suppressed by government forces. The violent evictions of indigenous and peasant farmers who were occupying a number of local farms as a means of lobbying the government must be noted in this regard. One such case involved the deaths of 10 people following a violent eviction from the Villa Linda Farm on 31 August, demonstrating that repression is indeed the government's chosen response to social demands.

Elsewhere, the struggle to achieve implementation of the Peace Accords signed in 1996 continued, particularly around issues on which both the indigenous and peasant movements were agreed, such as Land and Rural Development. However, the United Nations Mission in Guatemala, responsible for monitoring fulfilment of the Peace Accords, brought its operations to a close at the end of 2004, leaving concrete implementation of most of these agreements pending, particularly those related to the Identity and Rights of Indigenous Peoples. On the issue of land and rural development, the indigenous and peasant organisations, under the leadership of the National Coordinating Body of Peasant Organisations (*Coordinadora Nacional de Organizaciones Campesinas* - CNOC), continued its struggle to get a specific article on the rights of indigenous communities included in the new law, concretely on the need for collective titling where this tradition exists along with respect for the traditional institutions of territorial management. Individual titling could, according to these organisations, lead to the destruction of indigenous communities.

Still on a national level, one of the main achievements of the indigenous peoples' struggle was the proposal to create a Maya University, which was presented at the end of the year by the National Council of Maya Education (*Consejo Nacional de Educación Maya*). With this it is hoped to be able to contribute to disseminating the wisdom and world vision of the ancestral Maya culture, in a country where only two out of every 10 students are indigenous and where training around

strengthening the rights of indigenous peoples is non-existent. One new and interesting aspect is that the Councils of Maya elders will play a leading role in spearheading this academic proposal.

Active participation in world fora

Another breakthrough came with the indigenous organisations' efforts to gain the European Union's commitment to supporting implementation of the project "Combating exclusion in Guatemala", which aims to guarantee the inclusion of indigenous women in drafting public policies that could improve their living conditions and strengthen their organisations.

On an international level, the leading role played by indigenous organisations' representatives in various fora should be noted, particularly the place they have achieved within the UN Committee on the Elimination of Racial Discrimination, along with the Chair of the Working Group on the American Declaration on the Rights of Indigenous Peoples within the Organisation of American States. □

Note

- 1 See the Ministry's Web page: <http://www.marn.gob.gt/es/2-Direcciones/A-Politicasyb-UnidadPoliticasyMayas.htm>.

NICARAGUA

In terms of respect for their civil, political, economic, social, cultural and identity rights, the indigenous peoples and ethnic communities of the North Atlantic Autonomous Region (RAAN) and South Atlantic Autonomous Region (RAAS) rank among the lowest of the low in Nicaragua. This fact has a detrimental effect on the efforts being made to establish an autonomous system that will offer the necessary space in which to ensure protection of the regional population's rights. Not surprisingly, it is the indigenous that suffer most from this situation.

In addition to the serious economic difficulties that are affecting most of the population, the regions have no efficient health or education systems and, in most cases, the coverage of these basic services is extremely limited. The situation is similar in terms of the presence of other state service providers. The limited access to education in rural areas affects indigenous peoples first and foremost. In addition, although there has been progress in institutionalising the Regional Autonomous Education System, it is also clear that there is some way to go before this system measures up to the needs, characteristics, cultures and languages of the region's inhabitants.

It should be noted that the above points were considered and highlighted by the UN Special Rapporteur on Racism and Discrimination during a visit to the country in July 2004. In the same line of events, the issue of indigenous human rights violations was addressed at a conference organised by the State Ombudsman for Children and Youth in conjunction with the Indigenous Movement of Nicaragua (*Movimiento Indígena de Nicaragua* - MIN) in April 2004. This event highlighted the fact that it is the indigenous children of the Caribbean Coast who suffer the greatest lack of respect for their rights. Almost 85% of them do not even legally exist through failure to register them at the Registry of Births, Marriages and Deaths.



The regional autonomy process

One positive note to come out of 2004 was the 4th International Symposium on Autonomy for the Nicaraguan Caribbean Coast, organised by the two regional universities: the University of the Autonomous Regions of the Nicaraguan Caribbean Coast (URACCAN) and the Bluefields Indian and Caribbean University (BICU). This event was held in Managua on 9 and 10 September, the central issue being progress in and development of the process of autonomy. The speakers and discussions focused on the gains - in terms of governability, democracy and administration - that this form of autonomous regional government with identity has created. The first 14 years of regional autonomy have made possible the construction of a wide and innova-

tive legal framework for indigenous human rights; a new health system that recognises the region's cultural characteristics; a growing professionalisation of human resources with diverse identities and cultures; a more interactive system of regional, municipal and community government; and the preservation of the values, customs and languages of the different indigenous peoples of the Caribbean Coast. One of the event's recommendations called for unity amid national cultural diversity in order to strengthen and advance towards national and autonomous democracy, and for respect for the different institutional forms of government existing in the country.

Threats against the autonomy's integrity

Around the middle of the year, various attempts to diminish the territorial, administrative and governmental integrity of Caribbean Coast autonomy emerged. Politicians, interest groups and organised authorities from the centre of the country were trying to obtain the creation of a third Autonomous Region via a draft bill presented to the National Assembly. This new proposal caused serious disagreement between the different social sectors, indigenous and regional authorities of the Caribbean Coast, who categorically rejected this attempt.

The background to this political manoeuvre was a similar proposal that had been presented to the National Assembly in May 1996 promoting the creation of a Central Zelaya department. This first initiative was abandoned for two reasons: a) its cool reception in the rest of the RAAS, where it was interpreted as being of clear political motivation; and b) disagreement between the mayors of the Constitutional Liberal Party (*Partido Liberal Constitucionalista*) regarding the choice of the future departmental capital.

The sectors interested in creating a third Autonomous Region face a number of legislative measures preventing such an initiative. For its creation, the Statute of Autonomy of the Regions of the Nicaraguan Atlantic Coast (*Estatuto de Autonomía de las Regiones de la Costa Atlántica de Nicaragua*) (Law No. 28), in force since 1987, would need to be revised. This law establishes (in article 6) the existence of only two au-

onomous regions in Nicaragua. According to the new proposal, it is anticipated that the municipalities forming the third autonomous region would be carved out of the RAAS, for which reason it would also be necessary to repeal article 42 of the same Law No. 28, which establishes the municipal jurisdiction of the RAAS. In addition, article 181 of Nicaragua's Political Constitution establishes that any reform of the Statute of Autonomy requires the favourable vote of 60% of National Assembly deputies (57 deputies),¹ as is the case for changes to any law of constitutional level.

Subsequently, in October 2004, the National Assembly raised the status of Mulukukú territory to that of municipality. To do this it was carved off of the municipalities of Siuna and Paiwas, which have a largely *mestizo* population. Alongside this, a proposal to attach the new municipality to Matagalpa department arose once more, which was also rejected by the people of the Caribbean Coast, although the creation of the new municipality did enjoy the support of the two major groupings in the National Assembly. Mulukukú municipality is now the 153rd in the country, and the eighth in the North Atlantic Autonomous Region.

Social protest and indigenous political participation

During 2004, the various indigenous social organisations carried out actions and protests that highlighted the concerns, needs and demands of the country's different indigenous peoples and communities.

In May, for example, the Indigenous Movement of Nicaragua (MIN) and various community leaders from the Pacific and Centre of Nicaragua submitted a request to the National Assembly's Ethnic Affairs Committee regarding the need to approve the draft bill on the "*General Law on Indigenous Peoples*".² It should be noted that this document has neither been agreed nor discussed with indigenous communities in the macro-regions of the Atlantic, Pacific or Centre of Nicaragua. Another issue requested by the MIN and community leaders was ratification of ILO Convention 169. Nicaragua has already signed this Convention

although its ratification has been presented to the National Assembly on various occasions but later withdrawn.

Another important event was the General Assembly of the Council of Elders of the Nicaraguan Caribbean Coast (*Consejo de Ancianos de la Costa Caribe Nicaragüense*), which was held in Bilwi³ in June. Two of the main agreements signed related to a coordinating dialogue with the Presidency of the Republic and bringing a lawsuit before the International Court of Justice in The Hague for the more than 100 years of neglect to which these peoples have been subjected since the signing of the Moskitia Convention in 1894. The dialogue seeks to address the need to prioritise and devote sufficient resources to the titling of indigenous territories.

Coinciding with the celebration of the International Day of the World's Indigenous Peoples in August, Miskito representatives from Honduras and Nicaragua organised the Miskito festival "*Sihkru Tara*" in the town of Bilwi. At this event, Miskito leaders noted their concern regarding the different transculturization processes to which this indigenous people was being exposed due to severe changes and globalisation processes.

Finally, the Congress on Indigenous Peoples' Health was held in December, under the banner of "Achievements and Future Directions", organised by the Ministry of Health (MINSa) in Managua. Among the participants were members of the Association of Indigenous Peoples of Nicaragua (*Asociación de Pueblos Indígenas de Nicaragua*), and officials from MINSa and from the Pan-American Health Organization (PAHO). There was unanimous agreement with the statement made by PAHO's Service Delivery Manager that the main reason behind the lack of medical care for America's indigenous peoples continued to be discrimination.

Municipal elections with YATAMA's participation

Municipal elections were held throughout the country in November 2004 and, in the case of the Caribbean Coast, the regional political party of greatest impact was Yapti Tasba Masraka Nanih Asla Taranka

(YATAMA). It is interesting to note that this organisation was disqualified from participating in the previous municipal elections in 2000, and consequently brought a lawsuit against the Nicaraguan state through the Inter-American Commission on Human Rights.

YATAMA stood in 17 of the 19 municipalities in the Autonomous Regions, and was successful in Puerto Cabezas, Prinzapolka and Waspam, all RAAN municipalities with a largely Miskito population. It should be noted that this was the first time that an indigenous political organisation had won the mayorship of a regional capital such as Bilwi. It is also significant that a woman candidate, Nancy Elizabeth Henríquez James, was elected mayor of the municipality of Puerto Cabeza, thus becoming the first indigenous woman to be elected at a municipal election in the autonomous regions. YATAMA won the Bilwi mayorship with 38% of the vote, closely followed by the Sandinista (*Frente Sandinista de Liberación Nacional*) candidate, an Afro-Caribbean woman, with 36.84%.

Implementation of Law 445

The legalisation process for communal lands and territories promoted via *Law 445 on the Communal Property System of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of Nicaragua's Atlantic Coast and of the Bocay, Coco, Indio and Maíz Rivers* has made very slow progress. To date, no indigenous community has been titled through this law, which has been in force since January 2003. This is a product of the absence of any real political will on the part of the central government bodies. One example of this is the failure to comply with articles 55 and 62 of the law, which stipulate that the government must provide a budget line in the General Budget of the Republic to cover the administrative and operational costs of the work and negotiations that the demarcation and titling process entails.

The different operational bodies involved in the process of demarcating and titling the indigenous territories therefore received no direct budget from the Nicaraguan government in 2004. The limited operational budget of the National Demarcation and Titling Commission

(*Comisión Nacional de Demarcación y Titulación* - CONADETI) and the Intersectoral Demarcation and Titling Commissions (*Comisiones Intersectoriales de Demarcación y Titulación* - CIDTs) was obtained through negotiations with NGOs and, in some cases, state bodies that have a budget for collaborating on the titling process. Worthy of note in this regard are the Property Regularisation Project (*Proyecto de Ordenamiento de la Propiedad* - PRODEP) and the Emergency Social Investment Fund (*Fondo de Inversión Social de Emergencia* - FISE). In relation to the indigenous land legalisation process for 2004, for example, the financial allocation for PRODEP's operational costs in the autonomous regions thus came to a total of US\$3,196,860, of which US\$402,500⁴ had been recorded as being available for implementation as of September. Of these funds, the income received by the CIDTs has been minimal and insufficient and, moreover, there exists no public report on the actual amount implemented by PRODEP or its use.

The Intersectoral Demarcation and Titling Commission for the North Atlantic Autonomous Region (CIDT-RAAN) has no facilities and insufficient equipment to carry out its activities. Notwithstanding this, one of the main achievements of 2004 was its receipt of 21 requests for demarcation and titling of territories, of which five have already been sent to CONADETI. In addition, CONADETI is expected to issue at least the first two communal property titles in early 2005.

The Awás Tingni case

One of the cases that was received by the CIDT-RAAN in 2003 and sent in October 2004 to CONADETI is the request from the Awás Tingni community. Despite the ruling of the OAS Inter-American Court of Human Rights, however, and in spite of having made progress in the process established by *Law 445*, a future date for the titling of this community is still not in sight.

Although Awás Tingni has undertaken a number of negotiation processes with neighbouring communities with the aim of resolving the existing overlaps, these have not produced concrete or final results. This obstacle has been highlighted by CONADETI, emphasising unre-

solved disputes with the Miskito community Tasba Raya and the block of Ten Communities (*Diez Comunidades*), whose headquarters are in Bilwi. CONADETI's next step with regard to Awas Tingni has been in reference to *Law 445*, which establishes in articles 52 and 53 that the corresponding Regional Council should – within a three-month period - resolve all border conflicts not settled by the communities through friendly negotiation. The request for consideration of the case by the Regional Autonomous Council of the North Atlantic was rejected by this regional body, however, claiming a lack of budget to undertake the procedure required by the law. The demarcation and titling of the Awas Tingni territory thus remains pending for another year.

Conflicts over indigenous communal property

The initiation of the demarcation and titling process contributed to reducing the profile and media coverage of property conflicts in the indigenous territories of the Caribbean Coast during 2004. For the second consecutive year, the case of the Layasiksa Miskito community had the most impact when, at the start of February, more than 100 Miskito Indians violently evicted some forty migrant peasant families who had invaded their communal lands. This fierce clash occurred in the areas of the Rau, Wastingni, Wilwil and Winko Prukan mountains, in the municipalities of Prinzapolka and Rosita.

The situation of communal property in the rest of the country differs somewhat from that of the Caribbean Coast. The indigenous communities in the macro-regions of the Pacific and Centre of the country already hold titles proving their right to the land. And yet in many cases these titles are not respected. Many communities have thus been the victims of land expropriations, and recovery of this land now forms one of their main demands.

One important revindication took place in November 2004 when a Supreme Court of Justice ruling recognised the property rights of the indigenous community of Sébaco over the land where the town of that name is located. This land had been leased to the people of Sébaco

town through a contract signed between the community leaders and the town planning authorities.

Telpaneca and Totogalpa are two more communities that have had problems with the legal security of their right to ownership. They are both in the department of Madriz, in the north of Nicaragua. Here, protests were held against government provisions that threatened their ancestral right to lands titled in past centuries.

The community sphere and customary law

With the entry into force of *Law 445*, there now exists full official (state) recognition of the communal leaders and *wihtas* or community judges. In line with the law, both the judicial system and the different town halls and Regional Councils have proceeded to register and certify the different indigenous authorities. More than 40 traditional authorities were registered in the RAAN in 2004. The figure has been less in the RAAS, with only 12 traditional authorities registered.

Another related event was the holding of a training course on Customary and Criminal Law for a total of 30 *wihtas* from the Caribbean Coast, run by facilitators and trainers from the Organisation of American States and the Supreme Court of Justice in November. This represented an additional step forward in developing a model of autonomous justice in which traditional indigenous law and positive law form complements to each other.

As part of a pilot project, and in line with the above stated vision, the Supreme Court of Justice inaugurated the first two Service and Mediation Centres in the RAAN in December 2004, in the Miskito communities of Kururia, Waspán municipality, and Auhya Pihni, in Puerto Cabezas. This represents only the beginning, however, given that there are an estimated 600 *wihtas* of different origins and identities in the Caribbean Coast. It is therefore hoped that the training courses and establishment of Service and Mediation Centres will continue in 2005.

Laws and Decrees approved during 2004

The most important event of the year was the creation of the Secretariat of the Presidency for Atlantic Coast Affairs.⁵ Among its most important tasks is that of promoting and organising communication between central government, the regional governments and indigenous leaders. In addition, through this body, the central government also hopes to formulate actions aimed at strengthening the institutionality of the regional governments and promoting the development of the indigenous communities of the Nicaraguan Caribbean Coast.

The previous advisor to the Presidency of the Republic on Atlantic Coast affairs was appointed secretary to head this body. This official had, since March 2003, been delegated by the Presidency to monitor compliance with the ruling of the Inter-American Court of Human Rights in the case of the Mayangna community of Awás Tingni.

Final considerations

The increased prominence and involvement of the different political and civil organisations of the people of the Caribbean Coast in the work of the autonomous institutions is an indicator of the progress being made in terms of the democratic and representative nature of the regional autonomous bodies. The need to consolidate true political, economic, administrative and judicial autonomy is also increasingly clear, however, being a priority objective that is demanded by the autonomous regions.

The process of legalising indigenous lands, however, did not make progress as expected during the year. This has led to increased impatience and dissatisfaction on the part of future beneficiaries, as invasions by peasant and settler farmers continue to take place onto lands and territories claimed by the indigenous communities and ethnic communities of Afro-Caribbean descent. Despite the existence of a broad legal framework for the demarcation and titling of indigenous and ethnic lands in the Caribbean Coast, the institutions responsible

for this process do not have the necessary resources to be able to make significant progress. Central government shows no sign of any real desire to promote the legalisation of indigenous lands and has still not allocated the necessary budget established by the law for this process to be able to proceed. □

Notes and references

- 1 Political Constitution of Nicaragua. 2000: 63.
- 2 Interview. Aminadad Rodríguez. Coordinator of the Nicaraguan Indigenous Movement (MIN).
- 3 Bilwi (formerly Puerto Cabezas) is the main town in the municipality of Puerto Cabezas and the regional capital of RAAN. –Ed.
- 4 Intersectoral Commission for Demarcation and Titling-RAAN. Summary report. 2003-2004 period.
- 5 It was created by means of Presidential Decree No. 76-2004. *Diario Oficial La Gaceta*, No. 142, 22 July 2004.

La Prensa, 8 and 9 February, 2 March, 29 May, 14 September, 30 October, 26 November and 7 December 2004.

El Nuevo Diario, 18 March, 21 April, 15 June and 12 December 2004.

COSTA RICA

The indigenous population of Costa Rica totals some 68,000 people, or 2% of the national population (2000 national census). It comprises eight different peoples, living on 24 territories inaccurately known as “indigenous reserves”. They are the Bri bri, Cabécare, Brunca or Boruca, Ngöbe Buglé, Teribe, Maléku, Huetáre and Chorotega.

Territorial legislation

The 1939 *General Law on Wasteland* designated the lands occupied by indigenous peoples as inalienable. In 1943 and 1977, decrees were issued creating the “indigenous reserves”, guaranteeing the indigenous peoples a land space totalling 325,000 hectares.

Seven laws have been passed since then, some more general and some specific to the indigenous territories. Costa Rica has also ratified international agreements such as the Pátzcuaro Convention¹ and ILO Convention No.169 on Indigenous and Tribal Peoples. According to Costa Rica’s legal system, these have the same force as the Constitution.

The 1961 Law creating the Institute for Agrarian Development (*Instituto de Desarrollo Agrario – IDA*) directly affects the indigenous territories. The 1973 Law creating the National Indigenous Commission (*Comisión Nacional Indígena – CONAI*) was a step forward in its day but state interference in its work is now preventing it from carrying out its duties, to such an extent that it has become an obstacle to the indigenous peoples themselves. *The Indigenous Law*, passed in 1977, establishes that all lands within indigenous territories are their inalienable property and that, in the case of any sales that had already taken place before that date, the state will be responsible for ensuring the return of that land.

Territorial insecurity

Although the country enjoys a wealth of laws and decrees, their practical application is quite another matter. A study by the Ministry of National Planning shows that, of the territories that were declared indigenous reserves, only 38.3% are today in the hands of the indigenous. One of the most dramatic cases is that of the Térraba indigenous territory, in the municipality of Buenos Aires: of 9,350 hectares, only 10% are today, in accordance with the law, occupied by indigenous Teribe.

This official data reveals that the Costa Rican state, including its executive power and other official institutions, is aware of this illegal and alarming situation. However, no corrective action has been taken to guarantee the territorial security of indigenous peoples.

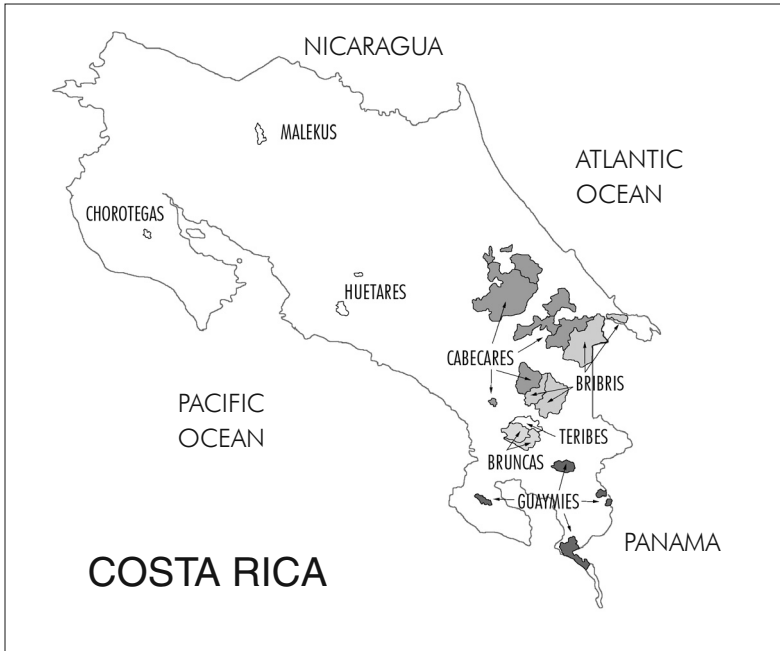
There are various reasons and threats behind this loss of territory, which is one of the greatest challenges currently facing indigenous peoples and organisations. Others are:

- The constant invasions of land by non-indigenous settlers
- Infrastructural works such as highways, national roads and hydro-electric projects
- Dishonest and illegal land sales and purchases.

The Boruca project

In the country's southern Pacific region, where the greatest number of indigenous peoples now live, the state is planning to build the largest hydro-electric project in Central America, the Boruca project, which would directly affect seven indigenous territories or reserves covering 20% of the total dam basin area.

According to the project, which has been on the table for 40 years, around 8,000 hectares of indigenous lands would be flooded, with the loss of sacred sites, archaeological deposits and important pre-Colombian settlements. A large number of families and villages would be forced to relocate, with all the socio-economic consequences ahead-



ysen in other parts of the world, not to mention the environmental disaster that would be caused.

Clouding the horizon yet more, we find that the “indigenous reserves” are registered in the name of a state institution – the Institute for Agrarian Development (IDA) – and so no indigenous community or person in Costa Rica, including those affected by the Boruca project, appears legally as the owner of their lands or ancestral territories but only as a “holder” or occupier. It should be added that this situation also prevents the communities from having a healthy economic development and, for instance, having access to bank credits.

The future challenge

Despite 30 years of demands from indigenous peoples, the state has failed to resolve the land situation in an appropriate or effective manner, despite

having ratified ILO Convention No. 169 in 1992. As the Costa Rican state and its institutions are the highest authority in the country, and given their obvious incompetence in the face of this situation, the challenge facing indigenous peoples is a huge one. This is why we are calling on international public opinion, sister indigenous organisations around the world, friendly governments, financial institutions and others to urge the Costa Rican government to provide a rapid and appropriate solution to the serious situation facing its indigenous peoples.

The importance of territorial security is such that it has current and future implications for our indigenous peoples. The land/territories and their resources are synonymous with their identity as peoples, their sense of belonging, their cultural and spiritual heritage. They provide their sustenance, the raw materials for their handicrafts and their health care.

Some positive aspects can be drawn from the above, such as the strengthening of local indigenous organisations that has occurred around this common threat. This has taken the form of training on issues such as hydro-electric projects, negotiating and lobbying. For example, one local indigenous organisation brought and won a lawsuit against the Costa Rican state, with the Constitutional Court requiring this latter to address all issues relating to the indigenous territories. The government response has been slow, in fact virtually non-existent, but a legal ruling is an important precedent for the future of the country's indigenous peoples.

The challenge continues and it will only be with a united front and clear proposals that we will be able to make progress towards preserving our territories and guaranteeing the survival of future generations. □

Note

- 1 This Convention, signed in Mexico in 1940, obliges governments to promote the development of indigenous peoples through, among other things, the creation of national indigenist institutes. —Ed.

BELIZE

2004 saw the continuation of an historic opposition between the indigenous peoples demanding their human rights on the one hand, and – on the other – the rest of the population, at the behest of the government, not comprehending the basis for these demands and, with a lofty sense of self-assurance, blaming the indigenous peoples for being ungrateful and inconsiderate. The issue of land rights brought matters to a head for the Maya. For the Garifuna, the rallying point was the need to respond to the challenges they face in their crime-ridden neighbourhoods of Belize City and to revitalize their culture. The responses of these two indigenous peoples therefore reflect the wider setting in which they find themselves. The Maya are predominantly rural and the Garifuna urban.¹

Although both the Maya and Garifuna pre-date Europeans within the wider Circum-Caribbean sub-region, they have not been accorded recognition within the constitution of Belize. Efforts to include such recognition during the Political Reform Commission exercise in 1994 were rejected by the majority of the Commissioners. At the root of the refusal was a denial, on the part of most Belizeans, of the special and historic needs of indigenous peoples, as sanctioned at international level by the International Decade of the World's Indigenous Populations from 1995 to 2004. During this Decade, the government of Belize made no statement complimenting the efforts of the UN on behalf of indigenous peoples everywhere and nor did it take the opportunity to formally commit its own indigenous peoples to participating in the UN activities that took place during the Decade.

IACHR report: Maya human rights violated

Belize received a strong jolt to its traditional response to the Maya in a report from the Inter-American Commission on Human Rights (IACHR)² in October 2003, which confirmed that the GoB (Government of Belize) had persisted in violating the human rights of the Maya in southern Belize by failing to protect their rights to property, equality before the law and a fair trial. The Commission's report stressed that under the American Declaration on the Rights and Duties of Man,³ the GoB had to take steps to (i) demarcate the boundaries of the lands that the Maya have used and lived on, working with the Maya in accordance with their customs; (ii) officially recognize the collective property rights of Maya communities and take appropriate measures to protect these rights; and (iii) obtain the informed consent of the Maya prior to taking any actions, including authorizing resource exploitation concessions that could affect their traditional lands. The spirit of this report, which was issued in October 2003, set the stage for relations between the Maya and the GoB in 2004.⁴

The IACHR recommendations came in response to a petition made by the Toledo Maya Cultural Council, with the help of the Indian Law Resource Center, in August 1998. In its response, the GoB had argued that:

- It was not clear whether the Maya actually had aboriginal rights to the lands under dispute.
- The GoB had taken steps to suspend, review and monitor logging licenses; the granting of oil exploration concessions had been halted since 1998.
- The Maya had not been denied their right to judicial protection but had chosen not to pursue domestic litigation to the full.

In its comments, the Indian Law Resource Center stated that the Commission's report expressed the clearest statement towards the protection of indigenous lands at both regional and international levels.⁵

Within Belize, the report's findings have had far-reaching effects in terms of raising awareness of the GoB's actions, which have been



deemed reprehensible by a regional forum. More particularly, the findings have highlighted the following:

- The networking by indigenous peoples with partners in the global indigenous peoples' movement, which can have an overwhelming impact on relations within the state;
- The need for the GoB – only 23 years after independence – to become more circumspect with regard to regional and international law in its relations with indigenous peoples, not to mention other sectors of the national population;
- The leverage now available to indigenous peoples and others to denounce land claims and other human rights abuses by the GoB at regional and international levels;
- The need for Belizeans – indigenous and non-indigenous – to arrive at an understanding of human rights as they are now globally accepted;
- Additional issues the GoB must adopt in terms of policy towards indigenous peoples and other minority peoples.

In short, we see the long arm of globalization exerting an influence over all Belizeans - and, by extension, the government - in terms of their awareness of indigenous peoples' issues.

Cultural revitalization – an answer to social breakdown

The Maya land claims drew the greatest amount of public attention on the indigenous front in 2004. The Garifuna, on the other hand, were focusing on another area of human rights that does not usually draw media headlines, namely the amalgam of social pressures lowering the quality of life within poorer urban neighbourhoods. There are hundreds of first and second generation Garifuna immigrants in Belize City coming from rural communities in southern Belize, Guatemala and Honduras. They concentrate in poorer neighbourhoods heavily afflicted by drug trafficking, a lack of drainage and solid and human waste disposal facilities, communicable diseases including HIV/AIDS, police victimization and teenage parents. The two other towns of Garifuna concentration - Dangriga and Punta Gorda - suffer from similar problems.

While these problems also afflict other Belizeans, the effect on the Garifuna transcends day-to-day survival and erodes the cultural traits and values that have offered them stability over the past 200 years since their arrival in Central America from the Eastern Caribbean island of St. Vincent. These cultural traits include language, food, healing systems, spirituality and the ability to fend off deeply held racial stereotypes. The response of the Garifuna has been to focus on deliberate efforts to revitalize their culture even when participating in development projects instigated by the government, municipal authorities or NGOs.

Under the aegis of the National Garifuna Council (NGC), in 2004 a youth group was set up as a forum for discussion, peer counseling, income generation and cultural revival. The catalyst for this was the suicide in 2004 of a promising young Garifuna woman who had been a youth leader.

Related efforts of the NGC included the drafting of a syllabus for language teaching, collaboration with a Danish-funded project for institutional strengthening and income generation through the Inter-American Development Bank, and providing leadership to regional cultural revival efforts that include Garifuna from Guatemala, Honduras and Nicaragua. □

Notes and references

- 1 The Maya make up almost 11% of Belize's population of 233,000 and include the K'ekchi (12,366), the Mopan (8,980) and the Yucatec (3,155). The Garifuna number 14,061 or 6% of the national population. Their ancestors are the Carib and Arawak peoples that came from South America and migrated during Pre-Columbian times to the Lesser Antilles where they mixed with escaped African slaves and gradually took over the larger part of the island of St. Vincent. From St. Vincent, the British exiled them to Central America in 1797 and they are today found along the north-east coast of Central America. See *The Indigenous World 2002-2003*: 102-106.
- 2 Report No. 96/03 Case No. 12.053 Maya Indigenous Communities of the Toledo District Oct 24, 2003 <http://www.cidh.oas.org/annual-rep/2004/eng/Belize.12053.htm>.
- 3 The American Declaration of the Rights and Duties of Man was first drafted and approved by the Ninth International Conference of the American States, Colombia 1948.
- 4 The author is indebted to Joanna Monk of the Toledo Development Corporation for her information and insight into the IACHR report.
- 5 See Indian Law Resource Center (ILRC). 2004. Maya Indians of Belize. <http://www.indianlaw.org/belize.html>.

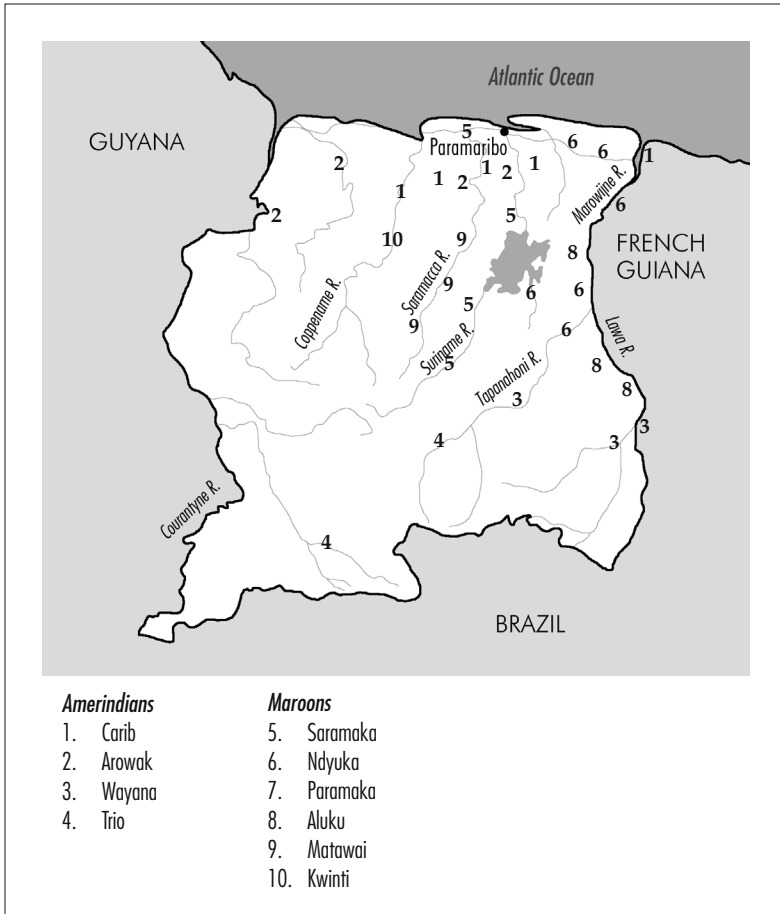
SURINAME

The indigenous Amerindian and tribal Maroon people of the dense rainforest region of Suriname's interior are facing the most destructive period in their history. The Amerindian people are descendants of some of the original inhabitants of the Amazon. Maroons are descendants of Africans who were sold into slavery, fought a war of liberation and today live in the interior. These indigenous and tribal people reside along the main rivers and are affected by artisanal gold mining and pollution from mercury, which is now found in fish, a primary source of protein. The impacts on public health, child development and community life from the growing and relentless extractive exploitation of gold, the successive waves of immigrant miners and the construction of roads and landing strips are signs that the indigenous and tribal people in Suriname are endangered.

The mining issue

Suriname's interior region covers an area of approximately 24,000 km². This region constitutes about 80% of the Surinamese land area and is home to a population of approximately 50,000 people, indigenous and tribal, representing 8% of the total population.¹ Six culturally distinct groups of Maroons (Ndyuka or Aukaner, Saramaka, Paramaka, Aluku or Boni, Kwinti and Matawai) and four Amerindian groups (Wayana, Carib, Arowaks and Trio) live in more than 50 riverside villages. They are not recognized by the government as having a legal claim to their traditional territories.

Many of these people have been displaced from their lands due to mining concessions. One example is the village of Kawenhakan, which is being relocated from the Suriname side of the Lawa River to the French Guiana side because of pollution of their traditional water



source by gold-mining activities. In June 2004, residents of Nieuw Koffie Kamp clashed with Cambior, the international gold mining giant from Canada, resulting in road barricades, police interaction, tear gas and the siege of a local police station. Meanwhile, the Saramaka people are awaiting a final decision from the Inter-American Court on Human Rights, which could issue a judicial order requiring the Surinamese government to annul concessions in Saramaka territory.

Most mining operations, however, are small (involving from 1 to 10 individuals), informal and illegal, including those owned by govern-

ment officials. It is estimated that between 30 and 60 thousand *garimpeiros* (informal, individual Brazilian miners) have migrated to Suriname's interior. They represent an overwhelming number relative to the region's indigenous and tribal population, which is at risk of being displaced by them.

It is difficult to make generalizations as to the relative importance of subsistence and cash economies in the interior villages. However, villages closer to the capital tend to be more integrated into the cash economy.² Economic integration is creating a greater dependence on imported goods, making the need for employment a necessity. Since the 1990s there has been an explosive increase in gold mining, and this sustains many indigenous and tribal families in forest villages, allows for the existence of stores, finances motorized transport to town or the nearest doctor and pays for electricity.³

The harmful impacts of mining

But mining also has many negative effects. It is estimated that between 30 and 60 metric tons of mercury are released into the environment annually by miners.⁴ Mercury pollution is causing irreversible damage to the environment and to the health of both miners and the general population living in the region where mining occurs.

Alongside the increase in gold mining activities there has been large-scale physical destruction of forests, creeks and rivers, an invasion of immigrant miners, the spread of HIV/AIDS and other sexually transmitted diseases, and an increased risk of malaria, which was virtually absent prior to the increase in gold mining activities. Now, malaria is rising due to the increasing number of abandoned mines with open pits that hold standing water and serve as a habitat for disease-carrying mosquitoes.

Male migrant labor, commercial sex workers and an infrequent use of condoms in mining camps combine to create a high-risk environment for HIV/AIDS and STD transmission. Modern small-scale mining also changes the social relations between those who benefit from

the mining economy (young men) and those who are excluded (elderly and women).

Many of these negative impacts are irreversible and it will be impossible to restore the original terrestrial and aquatic ecosystems that have been destroyed by mining activities. New interventions will consequently be required to prevent or minimize future health hazards caused by the consumption of fish from affected waters. A workshop to develop an action plan for conservation of the Guianan ecoregion complex attracted over seventy representatives from Guyana, French Guiana and Suriname to Paramaribo on March 2-3, 2004. Participants unanimously voiced concern over the effects of mercury contamination from gold mines. Scientists generally believe, however, that there is a lack of comprehensive and reliable information on the actual situation and therefore no solid data on which to base interventions to rectify the problem.

What kind of intervention is needed?

At the workshop, scientists, conservation professionals and representatives of government (GO) and non-government (NGO) organizations discussed the science-based approach to carrying out risk assessments and postponed intervention due to scientific uncertainty. The science-based policy model held by the scientific community is (1) that mercury pollution from gold mining is a science-based problem, (2) that GOs and NGOs are funding scientists to conduct research and collect data to demonstrate conclusively that mercury from gold mining is a threat to public and environmental health, (3) that scientists deliver comprehensive and reliable data to government and non-government organizations, (4) that the appropriate laws or decisions are made by GOs and NGOs on the basis of the results of scientific research, and (5) that the administration of laws and programs will solve the problem.

There are at least three reasons as to why this model is failing. First, government and non-government organizations continue to repeat risk assessment studies in order to meet their own internal goals without actually addressing the needs of affected individuals or communi-

ties in terms of reducing their exposure. Second, the problem of mercury contamination is more complex than the studies designed by scientists suggest, and the social, economic and health impacts of gold mining are not easily isolated. There are few direct relations between gold mining and its impacts that can be proven because multiple causes interact and contribute to these impacts. Third, the indigenous and tribal residents of Suriname's interior region are marginalized by the current process and given no opportunity to participate in the design, execution and analysis phases of projects that ultimately impact on their communities.

It is clear that there is a need for a more holistic view of the situation. A new research model is needed to integrate the entire range of social, cultural, economic, health and policy-related factors on the basis of community participation. To this end, it is essential to establish an effective system for an ethical review of the research. This includes the establishment and maintenance of a research ethics committee or institutional review board (IRB) independent of government and research sponsors. An IRB should include indigenous and tribal teams to guide the research. □

Notes and references

- 1 Suriname has a total population of 431,300 (2000). Other main ethnic groups are the "East Indians" whose ancestors emigrated from northern India (37%), Creole (mixed white and black) 31%, and Javanese 15%. Suriname is a former Dutch colony. —Ed.
- 2 **OAS. 1997.** *Natural Resources, Foreign Concessions and Land Rights: A Report on the Village of Nieuw Koffie Kamp.* Paramaribo, Suriname: Organization of American States.
- 3 **Heemskerck, M., M. Oliviera. 2004.** *Maroon perceptions of small-scale gold mining impacts, II: a survey in mining camps and affected communities in Suriname and French Guiana.* Paramaribo, Suriname: World Wildlife Fund-Guianas.
- 4 **Pollack, H., J. de Kom, J. Quik, L. Zuilen. 1998.** *Introducing Retorts for Abatement of Mercury Pollution In Suriname.* Paramaribo, Suriname: Organization of American States. **Gray, J.E., V.F.Labson, J.N. Weaver and D.P. Krabbenhoft. 2002.** Mercury and methyl mercury contamination related to artisanal gold mining, Suriname. *Geophysical Research Letters* 29:21-25.

FRENCH GUIANA

Indigenous issues in Guiana can be considered on a number of different levels: on a regional level, by looking at the extent to which these issues are included in reflections on the institutional future of the department (*département*);¹ on a national level, by analysing the French attitude towards the presence of indigenous peoples on its territory; and, finally, on an international level, by assessing the active involvement of France's indigenous peoples in the different international debates on recognition of the rights of the world's indigenous peoples.

Here we will focus more particularly on the institutional future of the department.

Indigenous peoples and institutional change

Nowadays, the indigenous peoples of Guiana² see themselves as an integral part of the Guianese population and see their future as being built jointly with the department's different communities. They reject their more common image of inward-looking people, subject to the influence of other communities and with no active involvement in the social, political or economic life of the territory. They now want to be considered real players in the construction of what the Forum of indigenous representatives of Guiana has called a "shared Guianese destiny"³ and in building Guianese society in line with a model of integration.

It would seem that the Draft Agreement on the future of Guiana (2000) clearly concurs with this when it recalls "the multicultural identity of Guianese society", the "right to express this identity" and the "right to produce management and administration rules in line with its economic, social and cultural realities". The indigenous peoples also welcome the establishment of a council of traditional authorities

within the context of the new Guianese institutions but regret the fact that it has no more than a consultative status. Moreover, they are concerned that the government is taking a clear step backwards with regard to recognising indigenous peoples in the context of the institutional changes in the department.

A political struggle

Guianese indigenous action for recognition of their rights is nowadays based above all around a clearly political will. As Collomb⁴ very rightly states, the focus of the department's indigenous leaders "has moved towards a new political arena [...]. From now on the Amerindians intend to be recognised as legitimate players in the process of developing a national "Guianese" identity."

This led them in 2001 to appoint representatives authorised to negotiate the institutional future of the department with the signatories of the draft Agreement on the future of Guiana and to be closely involved in writing the final text. This political will can be seen in the increased number of councillors representing Guiana's indigenous peoples within the department's municipal and regional authorities, along with the people's increased involvement in the department's various political events. In fact, there were a large number of indigenous candidates running in the regional and district elections of 2004, and their presence can no longer be considered merely a symbolic one. Amerindian candidates featured high on a number of lists for these elections. One example is Jean-Paul Ferreira, mayor of Awala-Yalimapo, who - following the victory of the Guianese Socialist Party (*Parti Socialiste Guyanais*) and due to the place he had managed to obtain on their list - now holds the position of vice-president of the Regional Council. And then there is also Laurent Yawalou, who represented the UMP (*Union pour un Mouvement Populaire/Union for a Popular Movement*) in the Camopi elections, and Brigitte Wyngaarde, customary chief of Lokono de Balaté village, who topped the Green Party's regional list. All in all, Amerindian representation⁵ may seem inconsequential in terms of the number of people appearing on the lists as a whole but its

significance becomes clear when you compare it to the past, when indigenous involvement in the local political scene seemed unimaginable or was merely the effect of specific political, or politicking, strategies. Collomb (ibid.) concludes that “through access to new responsibilities in local and regional bodies, a new generation of Amerindian leaders now seems ready to join together in expressing a reaffirmed indigenous identity and to participate in building the future Guiana, even though this has opened up the possibility of their status being redefined.”

A legal struggle

Indigenous claims for recognition of their rights can be legally substantiated at a regional, national and international level. At a regional level we can mention the rider to the guidance document on a development pact for Guiana, adopted by a joint committee on 26 January 1999 and approved by regional and general councillors in a general assembly on 27 February 1999, which states: “That the main claim made by the traditional authorities with regard to recognition of the tribal and indigenous peoples is justified”, and “that the guidance document unambiguously asserts, on page 8, the existence of indigenous peoples, first peoples.” There is also, as already mentioned, the Draft Agreement on the future of Guiana, approved by Guiana’s regional and general councillors. At national level, we can mention article D34 of the *Law of State Domain (Code du domaine de l’Etat)*, decree no.86-467 of 14 April 1987 and article 33 of the general *Framework Act (Loi d’orientation)* no. 2000-1207 of 13 December 2000, which stipulates that “the state and local authorities should encourage respect for, protection and maintenance of the innovative knowledge and practices of indigenous and local communities based on their traditional ways of life and which contribute to environmental conservation and to the sustainable use of the biodiversity.” And finally, at international level, we can mention the UN Convention on Biological Diversity, signed by France on 13 June 1992 and ratified by means of *Law no. 94-477* on 10 June 1994. The

indigenous peoples of Guiana regret the fact that, 10 years on, this has still not been truly implemented.

The indigenous peoples of Guiana are saddened by the fact that these different texts are not being taken into sufficient consideration in the resolution of ongoing disputes with the state and communal authorities, regarding territorial management in particular. They are therefore demanding that popular consultation should be a way of seriously taking their aspirations into account rather than merely a channel for making their voices heard. They are proposing a reconsideration of the relationship between the state, the local authorities and indigenous peoples, and that these latter should be recognised as indigenous communities with real decision-making power in order to ensure their effective economic, social and cultural development. They want these indigenous communities to be a recognised body within the Guianese local organization. This is a necessary condition if indigenous involvement in the negotiation process on the statutory changes to the Guianese department, or in any process that involves them in one way or another, is to be officially recognised.

As an indigenous authority, they thus want their existence as peoples to be recognised, along with their social, political and economic organisations, their cultures, customs and traditions, their languages, their religions, their habitat and their right to land and to their traditionally occupied territories, which are essential to their survival and the development of their ways of life. This right to land implies a right to collective ownership and requires a clear demarcation of their territories as well as recognition of the fact that the territories thus demarcated are indivisible, inalienable and non-transferable. The use of the natural resources on these lands must in no way prejudice their cultural, social or economic integrity and must be subject to their prior free and informed consent. Finally, their right to intellectual property with regard to their knowledge, technology, innovations and practices must be guaranteed and protected, as well as their right to a bilingual education in accordance with their values. □

Notes and reference

- 1 French Guyana is a non-sovereign, overseas department of France. As an integral part of France, French Guiana is part of the European Union. —Ed.
- 2 The Amerindians (the Lokono, Pahikwench, Teko, Kali'na, Wayampi and Wayana) and the four Maroon tribes (Alukus, Ndyukas, Paramakas, and Saramakas) number about 4,500 – 5,000 out of a total population of 191,300 (2004 est.) Other ethnic groups are Creoles and Asians. —Ed.
- 3 Declaration of the 2nd Forum of indigenous representatives of Guiana, Cayenne, Maison des Maires, adopted on 19 December 2001.
- 4 **Collomb, G.** (Forthcoming). De la “revendication” à l’entrée en politique (1984 – 2004). In *Ethnies*.
- 5 Around twenty representatives.



COLOMBIA

Two central themes run through this year's article for *The Indigenous World*. First, we try to explain the logic behind the economic and societal model being constructed in a number of Colombia's regions and which, if successful, will have serious consequences for peasant farmers, indigenous and black people. Second, we give an overview of an event that was significant in helping the country and the world to understand the difficult situation being experienced by Colombia's indigenous peoples: the visit of the UN Special Rapporteur, Rodolfo Stavenhagen, to this country.

Uribe's whims and his economic and societal model

The root of all violence and armed conflict in Colombia, from colonial times to the present day, has lain in ownership of the land. Land is currently one of the most popular Colombian sectors for capital accumulation. And this is also the reason why it is the main theatre for the country's internal war. Juan Camilo Restrepo, a well-known economist and noted Conservative Party leader, raised the alarm by asking if the likely outcome of the government's negotiations with the paramilitaries would be "a kind of property pardon and amnesty aimed at regularising the most horrifying agrarian counter-reform the country has ever witnessed". Here Restrepo was referring to a University of the Andes study requisitioned by the World Bank which states that, "Displacement may be creating an 'agrarian counter-reform' in terms of a large-scale reconcentration of the land..." and that "the land abandoned by the displaced over the last few years totals four million hectares, a figure almost three times that of the land distributed over more than four decades of agrarian reform". He was also referring to draft



Senate Law 230 of 2004, which delegatizes legal ownership procedures (the issue passes from the judges to the public registry officials) and lowers the requirements for adverse possession (“squatters’ rights”). This could in a short space of time lead to the paramilitaries obtaining legal title to lands they have appropriated by violent means.¹

This policy of legalising dispossession finds its corollary in President Uribe's proposal to confiscate lands used by drug traffickers. But as researcher Álvaro Camacho Guizado notes, Uribe is referring to lands sown with illicit crops, which are in settlement areas where property titles do not exist and which are lands "occupied by settlers evicted from other regions". Although there are no concrete figures, a good number of these families had to abandon their own lands because of paramilitary violence. Hence Camacho deduces that this is a highly regressive policy, which will lead to an increase in the holdings of large landowners, who will acquire the land at auction once the settlers have been expropriated by the state. Hundreds of thousands of hectares abandoned by the displaced are now being used to grow illicit crops by the armed groups that caused their displacement. Freeing up the aforementioned territories under the pretext of combating drug trafficking and then regularising them via local methods of legalisation would be the most expeditious way of preventing thousands of displaced families from obtaining the right to integral reparation. Camacho concludes that, if Uribe is intending to "...come up with an anti-drugs policy that is democratic and redistributive," the president should do the complete opposite and "emphasise the expropriation of those large areas of land obtained by brute force. Those displaced by the violence should be among the recipients".²

In its 26 September 2004 edition, *El Tiempo* - the country's most prestigious daily newspaper - devoted its editorial and an extensive report to the growth and boom of paramilitarism in Colombia and made no bones about stating that, "The self-defence groups now display an influence that is not only military but political, social and economic in nature. It is of such depth and breadth that many no longer consider it exaggerated to talk of a gradual paramilitarisation of Colombia".³ This statement was based on the fact that, in 382 of the country's 1,098 municipalities, the 49 paramilitary fronts have progressed from military control to political and social control.

Paramilitarism has now begun to dress respectably and visit the houses of local dignitaries: "*Long live Astrea, paramilitary land!*" cries the well-known singer Poncho Zuleta in one of his songs. Gone, or at least reduced, are the noisy massacres of gallows, knives and chain-

saws in favour of more selective assassinations of leaders who get in their way.⁴ And they are embarking on the “long path to control of the local and regional institutions of law and order”, creating an image of security⁵ and progress among the occupied populations, co-opting local dignitaries, “legally”⁶ buying land and promoting socio-economic development programmes,⁷ which are implemented at great speed, as confirmed by an expert on the issue:

In less than five years they have managed to get real initiatives up and running. This seduces many needy people, all the more so when they see that on the guerrilla side revolutionary projects are being planned over 40 to 50 years.

Legitimising territorial control

The deepening military power of the self-defence groups and their expansion throughout virtually the whole country began with their national unification in 1997. Their growth was decisive in this, although their funding came from drugs money. By the turn of the century, their membership had risen from a little less than 3,000 in 1992 to around 14,000, according to official sources. In some regions of the country, however, particularly those that have not suffered a paramilitary “pacification”, their control is still exerted by means of terror. In many regions, their armed presence has come to play a secondary role, with the formation of production cooperatives and collective solutions to health and education problems appearing. The population cares little that these paramilitary structures establish rigid controls over their rights, so long as they guarantee their lives and their economic security (the paramilitaries impose their own laws in the areas under their control: they decide the length of skirt young girls can wear, and the length of the young men’s hair, they inflict punishments and shave the heads of women accused of infidelity. They put the gossips to work sweeping the streets).

But it was only when Álvaro Uribe Vélez’s government opened the door to negotiation with the paramilitary groups that it became plau-

sible that this clandestine control might come out into the open and be legitimised. And the fact is that in regions where they have a clear presence, such as Magdalena Medio, Córdoba or Urabá, their domination is socially accepted. The *El Tiempo* editorial mentioned above even went so far as to state that the self-defence groups are turning into the most serious governability problem for Uribe. A senior state official summarised the situation thus, putting his finger on the problem:

The paramilitaries' political project is more dangerous than their military one. Sooner or later, the guerrillas will negotiate as they no longer have the wind in their sails and have lost a large proportion of their social base. The paramilitaries, however, are gaining ground with a dressed up political project of democratic participation.

This would seem to be how Uribe himself saw it, when in Montería (capital of Córdoba) he referred to "the circumstances [for many years this region of the country was in the grip of the guerrillas] led to a solution as damaging as the problem itself: paramilitarism." And he stated that there was a need "...to create awareness and move towards full, effective and transparent territorial control on the part of the state." This would also appear to be how the US ambassador understood it, when he called together a select group of politicians, public authorities and media representatives to talk about the paramilitaries. Not about their massacres and human rights violations, as these have never been of concern to them, but rather about their social, political and economic expression, which is penetrating from local and regional level up to the national sphere. The idea that their monster wants to create a para-state terrifies them. It terrifies them that these rough people, taught to do their dirty work, used to getting what they want through blood and guns, are now building their own project without them. The bottom line is that it terrifies them that their Frankenstein may not want to return to the laboratory.

Capital for the new model

Natural resources are a favourite target of the new model as they enable extraordinary profits to be extracted in a short period of time. Just as gold and silver were important for original capital accumulation, so the logging industry is being set the task of providing the resources with which to set in motion the new model. "It's really very simple....", explains an expert in rural development, who after a tour of NGOs ended up advising on the model:

...capital is invested in land and cattle and it has to remain there because retaining ownership of the land is part of the model. However, significant investment will be needed in agroindustry to be able to absorb sufficient labour to employ the future demobilised fighters. We are realistic and despite the fact that the process interests Uribe, we do not believe that the government is going to provide the resources... and money from international cooperation will be slow in coming given the propaganda there has been in Europe against this process..... [negotiations with the paramilitaries]... So far, palm oil has been the product that fulfils these characteristics, a lot like bananas in Urabá. Logging provides the resources for investment. However, sooner or later it will be necessary to convert extensive livestock rearing into large agroindustrial companies. If we don't do it ourselves, transnational capital –keen to come and exploit the wealth of badly or under used forests – will come and do it for us".

Other analysts also consider logging to be the spearhead of the new model in the Darien region: "In practice, the process of substituting the already depleted forests of Darien with palm oil and ceiba tolúa (*Bombacopsis quinata*) trees is underway ... Palm oil is the new model crop par excellence".⁸

A new model for indigenous and black collective territories

In texts on the economic agenda of indigenous peoples, the largest organisations talk of the need for control over their territories and all

economic activities, as these have to respond to principles of *environmental sustainability* (economic projects that destroy nature cannot exist on their territories), *social sustainability* (there must be a fair distribution of profits within their territories), *economic sustainability* (economic projects on their territories must be efficient in the long-term and respond to the real needs of the communities) and *political sustainability* (not affecting governability).

These indigenous strategies differ significantly from the role allocated to the indigenous territories of contributing initial capital – by means of the commercialisation of timber – for the functioning of the economic model that is to be established over vast swathes of the country. This is not only because of its lack of environmental and cultural viability but also its lack of economic viability because, once their role has been fulfilled, these territories – plundered of their forest resources – will be abandoned. It is, from the very start, an economy that responds to the needs of an external economic process and not the needs of the communities; this is how the virtues of its high profitability can be extolled. This profitability is short-term and creates no ensuing development process. In economic terms it is thus “bad business”, here and in Capernaum. The biggest problem is that it is a model that will change the territoriality and economy of the indigenous peoples, affect their governability, to say nothing of their autonomy, breaking up local forms of organisation and transforming regional economic dynamics.

By supporting this type of project, the state is handing over Colombia’s economic and natural heritage to selfish economic interests and permitting the destruction of the indigenous territories, the fundamental basis for these peoples’ biological and cultural reproduction.⁹

The indigenous territories in the Pacific, in Córdoba (Alto Sinu and Alto San Jorge), in Urabá Antioqueño (Abibe Mountains) and in the Amazon are endowed with a great forest wealth that complies with the conditions for achieving the new model. Pressure on these territories and organisations will certainly go hand in hand with blackmail, although some analysts sense that the indigenous peoples, plagued by fear and seduced by immediate gain, will simply agree to become part of the new model. The indigenous must not overlook the fact that economic processes aimed at achieving this model will lead to a loss of

control over their spaces, as this model will restructure and organise their areas such that predatory companies will be able to use the natural resources and even indigenous labour for other purposes. But the indigenous must above all not forget that this model is being cobbled together on the back of the deaths and displacement of peasant farmers and blacks.

The situation of indigenous peoples as seen by the UN

Rodolfo Stavenhagen, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, paid an official visit to Colombia in March at the invitation of the Colombian government. He submitted his report at the end of the year. Widely publicized in the Colombian press, it presented a harsh critique of events, demonstrating the distressing situation of indigenous peoples. This report has turned into one of the most overwhelming denunciations of the Colombian state, constitutionally responsible for protecting its indigenous peoples.

After analysing the legal framework of indigenous rights, the report demonstrates the way in which the internal armed conflict is affecting the indigenous population and territories, the environmental impact of megaprojects, including illegal crops, and the consequences of crop spraying for the communities. Above all, it illustrates the enormous gap between Colombian indigenous legislation (among the most progressive in the world) and the state's failure to guarantee these rights in practice.

The picture Stavenhagen paints of the situation of indigenous peoples due to the internal armed conflict is horrifying: massacres, selective murders, forced disappearances, torture, threats, displacement of communities, recruitment of children and youths of both sexes and rapes of women. These acts are being committed by paramilitary and guerrilla groups alike. The report shows the state's lack of willingness to enforce the Political Constitution of Colombia and indicates how, on a number of occasions, the Armed Forces have militarised indigenous

territories and accused the communities of supplying food and medicines or of providing logistical support to one of the two sides.

Stavenhagen's report raised the alarm with regard to what was going on among indigenous groups with few members, who find themselves on the verge of extinction due to the severity of the armed conflict and other closely related processes:

Of particular concern is the threat of extinction of various communities in Colombia. It should be noted that at least twelve small indigenous peoples in the Amazon are on the point of extinction due to the effects of these different processes (armed conflict, economic) and their repercussions on the populations' subsistence conditions (forced displacements, selective assassinations of leaders, destruction of the subsistence economy, deterioration in health, disintegration of the communities' social fabric and own cultural identity). 40% of Amazonian indigenous peoples are at high risk or very high risk.

But he also specifically mentions the tragedy of the Kankuamo people, who live on the eastern slopes of the Sierra Nevada de Santa Marta. Over the last decade, this ethnic group has witnessed the murder of almost 200 of its leaders.

The report makes recommendations to the national government, to all armed players and to the international community in its conclusions. Many of these recommendations relate to indigenous organisations' demands that have not been addressed by the Colombian government:

- While the armed conflict persists, "indigenous peace zones" must be created under international supervision, free from any armed military presence.
- The displaced indigenous population must receive priority attention from the state and international organisations. Women and children must be particularly prioritised. For this, and for reconstruction plans, the state must mobilise international aid for the formulation of emergency programmes.

- Both the state and the armed groups have an obligation to comply with international humanitarian law and respect human rights at all times. For effective monitoring and application of these rights, the report suggests establishing a wide and independent commission. The report particularly advises the state that it must cancel the informer network, “peasant soldier” and “soldier for a day” programmes for children and youths, all features of the Democratic Security policy of Álvaro Uribe Vélez’s government.
- Bills of law or constitutional reforms that affect the rights of indigenous peoples or threaten biological and cultural diversity must not be allowed to proceed. The Congress of the Republic is asked not to approve laws restricting the autonomy and freedom of non-governmental, social and human rights organisations.
- In economic terms, the report recommends not encouraging investment, infrastructure, natural resource extraction or exploitation projects “without prior, extensive and legitimate consultation and participation” of the communities as Stavenhagen notes that he found some economic development programmes, including mining and oil exploitation, to have negative effects on the living conditions of the indigenous. In this regard, he states his concern at the harassment being suffered by the Embera Katío people of the Alto Sinú, who are suffering disappearances, murders and displacement in the context of their resistance to the construction of the Urrá hydroelectric dam on their territory. The report notes that the precautionary measures demanded by the Inter-American Commission on Human Rights in their favour have not been fulfilled.
- Effective mechanisms must be put into practice to protect the rights of indigenous women, to prevent violations of their fundamental rights and to encourage their active participation in decisions that affect their lives and development.

- The armed players are urged by the Rapporteur to abandon the practice of recruiting under-age youths. Those recruited must be immediately returned to their homes. The state and its institutions have an obligation to provide them with appropriate and specialised assistance.

In many of the communities' meetings with the Rapporteur (and this does not appear explicitly in the recommendations), indigenous peoples were urged to be more active in demanding government respect for their rights and their cultures and languages. And it would seem that this appeal has been taken up by the indigenous of Cauca, as we shall see below.

But the report did explicitly recommend to the justice administration system that under no circumstances should indigenous involved in "legitimate resistance activities" have anti-terrorist laws applied to them and that no member of such community should be detained by the Armed Forces without the existence of a prior arrest warrant issued by a competent judicial authority.

Indigenous resistance

The plural, modern and participatory sector of the country is opposing the authoritarian project being imposed in many regions. Some organisations, in particular, refuse to passively accept that the social and economic conquests gained over the last 30 years should now be snatched from under their noses. Nothing is more alien to cultural diversity than a highly hierarchical and heavily militarist society that deprives the communities of the recognition, value and respect for their identity that they have been receiving from Colombian society.

Although the paramilitary map is extensive, and they hold absolute control in some regions, this does not mean that everything has been decided in favour of the political project and societal model they wish to impose. Because although we may find ourselves in an unfavourable climate in which force and coercion threaten to snatch hard-earned social, economic and political opportunities away from the

communities, attempts to resist this subjugation have also arisen. The most important of these in Colombia for a number of years was the indigenous march that took place from 12 to 16 September 2004: 60,000 indigenous from Cauca, accompanied by indigenous Nasa from Valle, Embera from Caldas, Antioquia, Risaralda and Alto Sinú, Eperara, Nasa and Afro-Colombians from Naya region, by indigenous delegations from Putumayo and Nariño descended on Cali, the largest town in the Colombian south-west shouting: "This country is ours and now we are reclaiming it". "We want neither guerrillas, paramilitaries nor soldiers on our territories".

Through this march, the indigenous peoples showed the country that it is precisely the most excluded that are forming the bastion of democracy in Colombia. The official call to action stated the following:

What the country and our territories are experiencing is serious, there is no time to be lost, we must act rapidly. The critical situation that we excluded people are experiencing is due to a lack of respect for our rights, in order to smooth the path to neoliberalism and globalisation, in which our economies – supportive and respectful of nature – are an obstacle. Now it is no longer just our rights that are in danger. Life itself is at risk. For this reason, now more than ever we must call for unity, solidarity and dignity to defend what is ours.

Notes and references

- 1 *El Tiempo*, Bogota, September 22, 2004.
- 2 *El Espectador* (weekly magazine), Bogota, September 18, 2004.
- 3 Editorial. *El Tiempo*. Bogota, September 26, 2004
- 4 A source in the district attorney's office stated that, without having the statistics to hand, he could say "that in virtually all investigated murders of unionists, journalists and human rights defenders, the paramilitaries were responsible".
- 5 President Uribe has taken personal responsibility for encouraging this image: "As the misnamed paramilitary groups have withdrawn, guerrilla groups have re-emerged to carry out kidnappings". And he recalled something that had happened days previously in Santander de

partment: "The ELN entered an area that the self-defence groups had left and kidnapped a palm grower".

- 6 Carlos Castaño himself explains the procedure: "The land is bought on the cheap, when there are still guerrillas in the area. The land is worth nothing then and the cattle farms have been abandoned. Then we go in and wipe out the guerrillas..."
- 7 Fidel Castaño, the disappeared founder of the ACCUs and elder brother of Carlos Castaño, created the Córdoba Peace Foundation, FUNPAZCOR, with the aim of distributing land and livestock and creating micro-businesses for demobilised guerrillas. Carlos Castaño created the Alto Sinú and Urabá Association for Settlers and Peasant Farmers, ACOLSIBA. Comandante Miguel Arroyave, murdered by his men at the end of 2004, was found to be encouraging palm oil plantation projects in the departments of Meta and Vichada and Salvatore Mancuso mentioned the creation of a cooperative for crop substitution with more than 3,000 families.
- 8 Alfredo Molano Bravo, "Avenida de las Palmas", *El Espectador*, 6 November 2004.
- 9 With the issuing of the new *Mining Code*, the procedure being applied to the *Organic Law on Territorial Regulation* and the failure to respect the indigenous right to consultation on economic laws and projects that affect their interests, the state is creating the legal bases for the expropriation and plundering of indigenous territories.

VENEZUELA

2004 was a year of political conflict for Venezuela. Elections were held on 15 August with more international observers than the country had ever seen before. 59% of the population voted President Hugo Chávez back in for a further term in office but the opposition refused to accept defeat, claiming electoral fraud despite the approval of the international observers.

While the indigenous communities were not directly affected or involved in the political crisis, the largest organisations did express their support for President Chávez and the “Bolivarian Process”, considering that the possibility of the opposition taking power would be in contradiction to the rights and interests of Venezuela’s indigenous peoples.

The indigenous organisations demonstrated their support for Chávez by means of various public demonstrations and they also held a meeting entitled “2nd International Meeting of Resistance and Solidarity with Venezuela’s Indigenous and Peasant Communities”. This took place in Caracas during September, with the participation of indigenous and peasant organisations from various countries.

Implementing indigenous rights

With the approval of the Venezuelan Constitution in 1999, the rights of indigenous peoples became firmly enshrined in national legislation.

And yet many of these rights have not been implemented in practice, in part due to a lack of training on the part of state officials but also due to the indigenous movement’s failure to produce concrete proposals or comment on government proposals.

The collective ownership of indigenous territories, along with the rights to health, education and physical and cultural integrity, have all been issues of particular concern.

The indigenous territories

Although the right to the collective ownership of indigenous lands and habitats is established in the Constitution, and in the subsequent regulatory law, it has still proved impossible to obtain the first collective property title for indigenous peoples. The body responsible for this, the Ministry for the Environment and Natural Resources (MARN), argues that it has insufficient funds to be able to take the technical process forward.

But this is not the only obstacle. The National Commission for Demarcation (*Comisión Nacional de Demarcación* – CND) has failed to reach an agreement on the regulatory text governing the demarcation process. It should be noted in this respect that the indigenous organisations, and particularly the Regional Organisation of Indigenous Peoples of the Amazon (*Organización Regional de los Pueblos Indígenas de Amazonas* - ORPIA), have been working intensively throughout 2004 to produce and negotiate a draft regulation governing the Demarcation Law. The proposal was initially debated and amended with representatives from the national organisation, the National Indian Council of Venezuela (*Consejo Nacional Indio de Venezuela* - CONIVE), so that it could be discussed at a workshop/meeting held with other indigenous representatives and the government at the end of May 2004 in Puerto La Cruz (Anzoátegui state). Unfortunately, the indigenous organisations were unable to come to an agreement on the text. There was also disagreement between the government representatives and the CND.

Nevertheless, on 16 September the National Commission for Demarcation produced a list of preliminary requirements necessary for commencement of the formal demarcation process. This achievement enabled the indigenous communities, peoples and organisations to finally be able to proceed with their self-demarcation plans.



Representatives of the official technical commission have asked that the organisations themselves proceed with the production of maps and socio-anthropological files throughout the whole country.

There are different self-demarkation projects, some of which were produced even prior to approval of the Constitution in 1999. These self-demarkation processes have been implemented by indigenous communities and regional organisations with the support of national NGOs and universities and without the direct involvement of the MARN. It should be noted in particular that, in Amazonas state, where

the indigenous population is in the majority, ORPIA has completed the self-demarcation process in four of the municipalities, intending to submit a demand for approximately 90,000 km². The plans will be formally presented to the Regional Demarcation Commission for Amazonas state in March 2005.

Even with the plans in such an advanced state, however, it is clear that the organisations do not have the official cartography required by the Demarcation Law for the technical stage of the formal demarcation process. Such documents exist in the "Simón Bolívar" National Cartography Institute (*Instituto de Cartografía Nacional "Simón Bolívar"*), an institute attached to the MARN, but can only be obtained by purchasing them. For Amazonas state this would entail an outlay of US\$30,000. The National Commission for Demarcation is currently negotiating the provision of these maps free of charge.

Right to their own education

Education for indigenous peoples in Venezuela is becoming ever more distanced from a training process that results in the necessary tools for building a dignified life with identity. The frustration is beginning to show, in indigenous children and youth as well as their parents, with the feeling that the model being imposed on them fails to respect the rights enshrined in the Constitution.

Their own education, along with a bilingual intercultural education system, is a constitutional right that has not been achieved in practice. Although the Ministry of Education, Culture and Sport's planning includes a special education system entitled "Bilingual Intercultural Education System", it continues to receive insufficient funding.

A further error can be seen in the implementation of the "Bolivarian School" model in indigenous communities. This model, aimed at the needs of urban popular sectors, has a school day that extends from morning to afternoon. Its implementation in indigenous communities has meant that children and youths have been completely sidelined from traditional activities.

The situation is the same for the emergency programmes known as “Missions”, which have been implemented for more than two years now. The education “Mission” has established a huge programme of literacy and incorporation into formal education that runs parallel to the school system. The agreement between the indigenous representatives and the government guaranteed that the literacy process would be a bilingual one. Nonetheless, various complaints from across the country indicate that this has not been the case.¹

Yet again, the root of the problem seems to lie in an absence of specialist knowledge on the part of the state’s technical and political staff.

Right to health

The right to health is not yet a reality for Venezuela’s indigenous peoples, even though the government has been making a number of public policy efforts in this area.

Integrated health also implies a clean environment which, in the case of indigenous peoples, additionally means guaranteeing their food supply and their physical survival. However, in regions with an indigenous population, the state continues to overestimate the importance of undertaking oil or mining activities, arguing that both are a priority for the majority of the population. Of particular concern is the state’s involvement in mining activities on indigenous territories that are, additionally, protected by environmental laws. Representatives from different indigenous communities have expressed their concern at government plans to proceed with mining activities in areas under the special administration system (*áreas bajo régimen de administración especial* - ABRAE), such as the Imataca Reserve. The MARN has attempted to improve the situation here by proposing a reduction in the area to be included. Whilst this would improve the situation somewhat, it would not resolve it.²

The Annual Ombudsman’s Report (2003) indicated in this regard that “...there are no significant instances of improvement in measures for the control and monitoring of extraction activities on their territo-

ries. Such activities are, in many cases, the main threat to their living environment and, consequently, to the full exercise of their rights and their survival as peoples.”³

The situation of the Warao people is particularly serious. Forced off their land more than 10 years ago by oil exploitation in the Delta Amacuro territory, they can now be found destitute in towns and cities throughout Venezuela, particularly Caracas.

In addition, the mortality rate among the indigenous population remains a cause for concern, there having been serious epidemics of malaria in the states of Amazonas, Bolívar and Sucre which, as of August 2004, had not been brought under control.

The main causes of death continue to be perfectly controllable illness such as influenza, malaria and diarrhoea. In this regard, the absence of health staff and lack of appropriate training, along with the insufficient budget allocation, must be highlighted.

Various attempts have been made to design public policies that are in line with indigenous rights. One such attempt was the misguided proposal of the former minister of Health (in post until the end of November 2004) to create a parallel health care office for the Upper Orinoco run by Yanomami shamans, despite the disapproval of local experts and indigenous leaders. Fortunately, the proposal never got off the ground.

While this same minister was in office, a Coordinating Body for Intercultural Health with Indigenous Peoples (*Coordinación de Salud Intercultural con Pueblos Indígenas*) was created within the Ministry of Health,⁴ responsible for implementing various integrated health projects for indigenous people around the country with a budget of approximately US\$750,000. It was also responsible for implementing the Yanomami Health Plan, with a similar level of budget having been allocated to the plan since 2002. As of writing, neither of the budgets has been implemented and no valid explanation has been proffered.

The Coordinating Body for Intercultural Health with Indigenous Peoples now has a new director, a Wayuu doctor with wide experience of indigenous public health, and involved in the national indigenous movement.

Since the establishment of this Coordinating Body, a work group has been set up comprising professionals from different disciplines with the aim of designing policies from an integrated and cross-disciplinary perspective.

The revitalisation of the Regional Health Council in Amazonas state is worthy of particular note, given the importance of pushing ahead with the Yanomami Health Programme, PSY, after four years of waiting. Similarly, the new Wayuu director of the Coordinating Body, Nohli Pocaterra, has embarked on a strategy of raising additional funds for the PSY from state-owned companies such as *Petróleos de Venezuela*. Such companies generally have funds set aside for social investment projects. This strategy is a significant step in the right direction, not only for the PSY but for public policies in general.

National policies and legislative developments

The Department for Indigenous Affairs of the Ministry for Education, Culture and Sport is the public body formally responsible for public policies related to indigenous peoples and communities. However, 2004 came and went with no integrated plan for support of or attention to the country's indigenous peoples having been designed or implemented. The Department claims it has insufficient funding.

Statements from indigenous representatives indicate that the Guaicaipuro Mission (special programme created in 2003 to address the general needs of indigenous peoples) has not produced its much anticipated results. Nelson Mavio, ORPIA's general coordinator, commented that, "... all that came of the Guaicaipuro Mission was baseball caps and T-shirts...", lamenting the absence of an integrated strategy for the care and strengthening of indigenous peoples.⁵ In terms of legislative developments, the implementation of regulations governing indigenous identification must be seen as positive, as this makes the requirements for obtaining identity documents more flexible and includes the design of bilingual identity documents.⁶

On another note, the *Organic Law on Indigenous Peoples and Communities*, LOPCI, has still not been approved. This governs the indigenous rights established in the Constitution. The latest reason for its delay has been the lack of agreement between indigenous deputies on the concept of "living environment and lands" as opposed to the single concept of "lands". This issue was widely discussed during the drafting of the Constitution, and the impossibility of separating the concept of living environment from lands was finally accepted. As of December 2004, the indigenous deputies had not reached an agreement. This being the only point of contention, it is hoped that the LOPCI will be approved in the first half of 2005.

On the indigenous organisations

In 2004, both the regional and national indigenous organisations focused almost exclusively on moving forward with the demarcation of indigenous living environments and lands. This work, as previously noted, revolved around the production of proposals and the debate on the regulations governing demarcation.

In addition, work was undertaken on various electoral issues throughout the year. Apart from the presidential elections, regional and municipal elections were also held, resulting in new indigenous mayors and deputies throughout the country.

In Amazonas state, the "United Multi-ethnic Peoples of Amazonas (*Pueblos Unidos Multiétnicos de Amazonas* - PUAMA) has been the fastest growing political movement in the last two years.

The activities implemented with the aim of guaranteeing indigenous political involvement in national and regional decision-making have forced the indigenous movement and its allies to reflect on the role the indigenous organisations play in a country where all rights are recognised and in the process of being implemented. Such reflections will undoubtedly take up a large part of 2005, attempting to redefine and adapt existing proposals and organisational structures. □

Notes and references

- 1 **Programa Venezolano de Educación – Acción en Derechos Humanos (PROVEA). 2004.** *Situación de los Derechos Humanos en Venezuela. Informe Anual Octubre 2003 – Septiembre 2004.* (Venezuelan Programme for Education – Action in Human Rights (PROVEA). The Human Rights situation in Venezuela. Annual Report October 2003 – September 2004). Caracas: PROVEA.
- 2 Idem.
- 3 **Defensoría del Pueblo. 2004.** *Anuario 2003. Derechos Humanos en Venezuela* (The Ombudsman Office. Yearbook 2003. Human Rights in Venezuela). Caracas: Bolivarian Republic of Venezuela, Ombudsman.
- 4 See **Coordinación de Salud Intercultural con Pueblos Indígenas del Ministerio de Salud y Desarrollo Social. 2004.** *Evaluación del Decenio Internacional de los Pueblos Indígenas.* (Coordinating Body for Intercultural Health with Indigenous Peoples. 2004. Evaluation of the International Decade for Indigenous Peoples Caracas: Ministerio de Salud y Desarrollo Social.
- 5 *Últimas Noticias.* 2004. See also Misión Guaicaipuro: www.misionguaicaipuro.gov.ve.
- 6 **Defensoría del Pueblo. 2004.** Op.cit.

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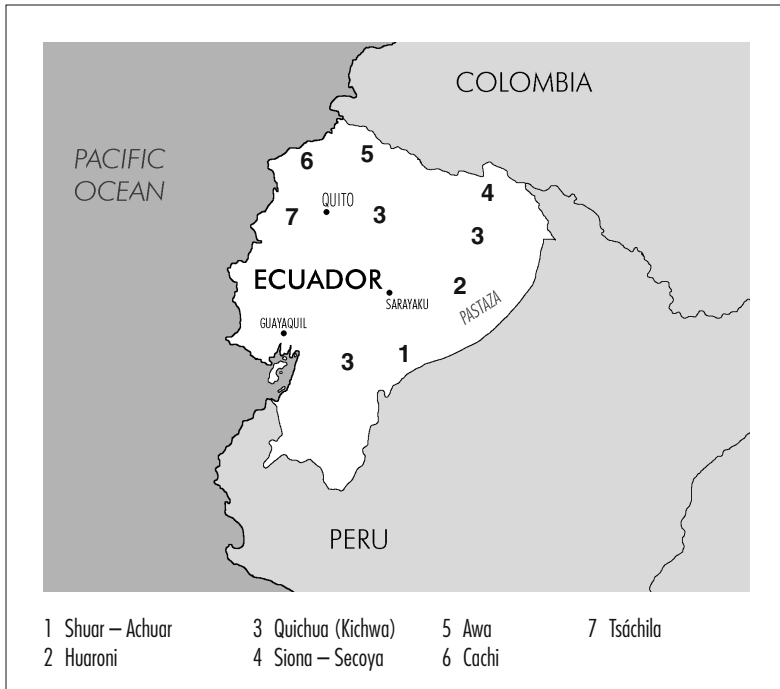
ECUADOR

Despite the fact that the Ecuadorian Constitution protects the indigenous peoples and nationalities, pressure from international financial institutions such as the World Bank, International Monetary Fund and Inter-American Development Bank has meant that recent state practices have ridden roughshod over the collective rights of Ecuador's indigenous peoples. Pressure from the multilaterals to privatise the country's natural resources is creating a violent process aimed at forcing the indigenous off their territories. Such is the case in the recent aggression by Ecuadorian soldiers against the Awa people's territories on the border with Colombia; the attacks of paramilitary groups on the Chachi people, who are resisting logging on their territories; and the persecution of the Sara-Yaku community and its leaders in the Ecuadorian Amazon, on the part of both the CGC oil company and the Ecuadorian state itself.

In addition, the government of Col. Lucio Gutiérrez continues to support the so-called Andean Regional Initiative, which is a politico-military effort on the part of the US government to extend the boundaries of the Colombian conflict to involve Ecuador, Peru and Venezuela in this war. This strategy also serves as a cover by which to achieve the expulsion of indigenous communities from territories of strategic importance for multinational corporations, particularly North American ones. Once the communities have been evicted, the state deploys extensive military defence operations under cover of which these corporations commence their operations.

Participation in the political system

Since its was established in 1986, the Confederation of Indigenous Nationalities of Ecuador (*Confederación de Nacionalidades Indígenas del Ec-*



cuador – CONAIE) has made integral agrarian reform one of its key demands and has organised numerous “uprisings” to get this issue included in its proposal for reforming the nation state into a plurinational one. It was during the 1990s that the indigenous movement began to make its political presence known and began to take shape as a political player.

In 2003, the indigenous movement joined forces with a party led by Ecuadorian soldiers who had supported the removal of Jamil Mahuad’s government in 2000. In the local sphere, however, indigenous electoral participation (with candidates and authorities in municipalities and provincial councils)¹ dates back to 1996 with the formation of the Pachakutik Movement. This electoral alliance was not established on the basis of concrete government programmes that would put the indigenous movement’s political project, and particularly their proposal for a plurinational state, into practice. It was be-

cause of this that - scarcely eight months after taking power - the indigenous movement decided to withdraw from the current government of Col. Lucio Gutiérrez and transfer over to the opposition.

Following the breakdown in this electoral alliance, the government began to develop clear strategies by which to weaken the indigenous movement, with manoeuvres aimed at destroying its political, organisational and mobilising capacity. In addition, it began to implement a clientelistic and paternalistic policy. It made a series of visits to indigenous communities in which it handed out food supplies and tools such as picks and poles, etc. These actions were intended to demonstrate the government's policy towards indigenous peoples, offering public opinion a perspective of the indigenous as "poor, ignorant and abandoned".

In addition, the government maintained a policy of divide and rule among the structures, leadership and representation of the nationalities and peoples, and among CONAIE's member organisations. This contributed to the virtual break-up of the historic CONFENIAE² and of the recently created CONAICE.³ Despite this, the coordination of efforts between CONAIE itself, its inter-Andean regional body Ecuarrunari⁴ and some longstanding leaders of the indigenous movement is creating new processes of unity.

The globalisation of goods and services: a new challenge

On an international level, the rules of free trade, the transnationalisation of economies and financial speculation have become the centrepiece of all negotiations. They also set the future for environmental regulations, even those referring to environmental protection. Various trends towards viewing nature and conservation as a potentially economic exercise have led to the formation of a global market for what are known as environmental or ecological goods and services. Ecuador has the fourth greatest biological diversity in the world⁵ and has signed the Convention on Biological Diversity.⁶

The Ecuadorian agrarian reform of the 1960s and 70s has been criticised as being incomplete by the indigenous communities, peoples and nationalities. However, it did have the consequence of legalising and establishing many of them, particularly in the region of the Inter-Andean Mountains. This area is inhabited mostly by communities of Kichwa origin, whose community lands are located at over 3,400 m. above sea level, in the so-called *páramos* or plateaux, with their outstanding water sources.

These highlands are becoming strategic in terms of providing freshwater sources for the inhabitants of the lowlands. In many cases, the Kichwa communities of the Inter-Andean region have devised management systems that have enabled these fragile ecosystems to be preserved and regenerated, forming clean environments. But now different strategies of appropriation and use are being pursued in their territories. Under the name of "Payment for Environmental Services", the conservation transnationals and their national allies are seeking ways of penetrating these territories. The communities, faced with worsening standards of living, are often highly vulnerable to the offers of development and production projects that are made by these players who, at the same time, are planning to control the *paramos* and other water sources, for the profitable business of supplying drinking water to the urban centres.

The situation that the lands and territories of the indigenous nationalities and peoples are in would now appear to be both their potential and their greatest vulnerability. They are ecologically attractive lands that form part of the geopolitics of the conservation transnationals and the exchange of goods and services. The policies and proposals that have been created for indigenous peoples living in regions of strategic conservation importance have included "consultations", resources for economic development projects, monetary gifts and even the possibility of militarising the area.

At the end of 2002, a draft *Law on Conservation and Sustainable Management of Biodiversity* was submitted for discussion and consideration by the Ecuadorian National Congress.⁷ Around the start of 2004, CONAIE critically analysed these regulations and found that they combined the interests of a conservation trend towards

privatising the protected areas and the trade in ecological goods and services. In the face of this draft law, CONAIE reacted by producing its own proposal for a Biodiversity Law, published by the organisation at the end of 2004.

For the indigenous nationalities and peoples, the reconstruction of their ethnic and political identities is at odds with the interests of “politically correct” conservationist thought, linked to the transnational market for environmental goods and services.

Free Trade Agreement with the US: defining geopolitics

Multilateral and bilateral free trade agreements are increasingly becoming the visible face of the global economy. Ecuador is currently involved in negotiating a Free Trade Agreement (FTA) with the United States, in the context of the Andean negotiations. Similar negotiations are taking place with Colombia and Peru.

These FTA negotiations with the US include safeguard and confidentiality clauses. The negotiators – appointed by the current Ecuadorian government – are thus negotiating behind the backs of Ecuadorian society. The United States has negotiated various similar treaties with other countries and Ecuador has observed with concern the conditions imposed on Mexico via the NAFTA (North American Free Trade Agreement) and on Central American countries via the CAFTA (Central American Free Trade Agreement), which give a taste of what could be in store for Ecuador.

The indigenous communities grow crops for subsistence purposes or immediate sale. It is assumed that this production system constitutes the fundamental basis for the food self-reliance of all Ecuadorians. The regulations included in the FTA with the United States would promote the free entry of all kinds of agricultural and livestock products under the protection of and with subsidies from the US. This reality is at odds with the Ecuadorian situation, in which the state provides no subsidies or support to indigenous producers.

In addition, one chapter of particular interest to the US negotiators is that which refers to intellectual property. In terms of genetic resources, this boils down to an interest in patenting micro-organisms and plants and, in terms of ancestral knowledge, in promoting a method of appropriating this knowledge by means of a profit sharing formula.

One issue of concern is that the negotiations have progressed despite criticism from CONAIE, which continues its campaign to collect signatures for a petition in favour of a popular consultation on the relevance of the FTA. Moreover, the premise of the negotiations is that they are carried out *en bloc*, and the US will cede no ground on any issue, supposedly waiting for the final discussions.

Another component that is harmful to Ecuador's indigenous nationalities and peoples is the inclusion of environmental goods and services in the Agreement's clauses. Although there is no chapter dealing with this market, they could well form part of the package under the general headings of investment and services. In addition, the issue of drinking water does not appear to be specified but is also likely to be included in this same way.

Plan Colombia

Some of the indigenous nationalities in the northern part of the country live along the border with Colombia. Some of them even migrate seasonally across this border.

Implementation of the so-called Andean Regional Initiative, as part of the Plan Colombia, forms part of the US and Colombian governments' strategy to militarily defeat the insurgents, resolving a political conflict by military means, and irreversibly affecting the indigenous territories on both sides of the border.

In the latter months of 2004, members of the Awa communities, whose territory lies in the provinces of Esmeraldas and Carchi on the Ecuadorian side of the border, were the object of constant harassment from Ecuadorian and Colombian soldiers. CONAIE has received complaints of human rights violations against the Awa,

along with eviction from their lands and theft of their agricultural produce.

The lives of the indigenous communities in the northern zone has generally deteriorated because of a large influx of Colombian peasants displaced by the war, along with the entry of military advance positions on the part of the Ecuadorian and Colombian armies.

Oil and indigenous nationalities

The Amazonian map is currently completely covered with oil fields under exploration and exploitation activity or in the process of being contracted out. The government's economic policy, in line with the demands for repayment of Ecuador's external debt and commitments to the International Monetary Fund, foresees the need to increase the area devoted to oil activity.

Resistance to oil exploitation in the Amazon has been fundamentally indigenous. The Cofán, Huaorani, Siona, Secoya, Achuar and Shuar nationalities have all resisted, sometimes successfully, the invasions of transnational oil companies and the state company, Petroecuador.

Throughout 2004, the government continued to grant concessions over new fields, and pass legal reforms that would enable an aggressive oil policy. One interesting aspect is the involvement of the China National Petroleum Company, the CNPC, in bidding for Ecuadorian contracts.

Oil activity causes irreversible damage to the health of indigenous women, children and men. Various studies demonstrate that communities living in proximity to oil activities suffer from a 43% rate of child malnutrition,⁸ as opposed to an average of 21.45% in other communities. Infant mortality increases to 143 per 1000 live births and women have a 146% greater likelihood of miscarriage. Mortality in general has doubled due to violence, accidents and cancer.⁹ Skin diseases, respiratory intoxication, digestive disorders, articular disorders and neurological problems all show an increase

in communities affected by oil activities. Moreover, 49% of families have suffered some type of accident that has compromised their health and that is directly related to oil activity such as: falls into oil ponds, burns from oil products, contact with chemicals, well explosions, pipeline breaches or the consumption of contaminated foods. Miscarriages and cancer present significantly higher levels in communities exposed to oil activities, in direct proportion to their distance from those activities.

In addition, around 75% of the water consumed is contaminated by the oil being extracted, more than 80% of inhabitants have lost large quantities of crops and farm animals, and hence their possibility for survival outside of the government's - and in some cases oil companies' - policies of providing hand-outs.¹⁰

The entry of the oil companies from 1998 on is conditional upon the indigenous people's right to prior consultation. The Ministry responsible for oil issued a regulation governing consultation, giving NGOs, universities and private consultants the responsibility for organising consultations around oil activity on indigenous territories. But the consultations are conducted in a clientelist manner towards individuals or communities, isolating them from the organisational spheres of the nationalities and peoples, and the consultation for the tender for blocks 21 and 24, conducted by the Salesian Polytechnic University, has been questioned by all local players.

The official policy of dividing CONAIE and its regional organisations has proved strategic for the entry of transnational companies and of those NGOs who, via the rhetoric of collective rights or development projects, enable oil companies to access indigenous territories.

Oil activity has also become a threat to the living environment of the peoples in voluntary isolation, such as the Huaorani Tagaeri and the Taromenane. Both these peoples live in the Yasuní National Park, straddling the provinces of Orellana and Pastaza. Oil companies are requesting the construction of a highway through this territory which, alongside the seismic tests and oil extraction, would threaten to wipe out both indigenous peoples. One conflict in the

making in this context relates to external agents. Here it relates to the environmentalist organisations that have used technical arguments to “authorize” the entry of oil companies onto these territories of ecological importance, on the fringes of the life of the indigenous nationalities.

In the centre of Pastaza province, the Kichwa community of Sarayaku has for almost a decade sustained a process of resistance in the face of the advancing oil companies. The CGC oil company has made all kinds of attempts to approach leaders, encouraging them to act individually, outside their obligation to collective responsibility. They have co-opted some organisational spaces, corrupted others, and have undertaken smear campaigns against the community and its legitimate representatives and spokespersons. However, to date the oil company has been unable to enter this territorial space of more than 100,000 hectares, a territory in which the indigenous have strengthened their own forms of production, exchange, education, government and health, creating a practical model of indigenous autonomy.

The Sarayaku community has also commenced various legal proceedings in an effort to defend their territory, sovereignty and legitimate right to live their life as a people. The Inter-American Court of Human Rights has issued precautionary measures and remains alert to a possible entry by the oil company or actions that might violate the territorial decisions of the Kichwa community. □

Notes and references

- 1 Ecuador is organised into Parish Governments (*Juntas Parroquiales*), Municipalities and Provincial Councils. The Political Constitution recognises the Indigenous Territorial Constituencies but, since 1998, the secondary legislation enabling these to be put into practice has not been passed. Ecuador also comprises four clearly identified natural zones: *the Amazon, the Inter-Andean Mountains, Coast and Island Region – Galapagos Archipelago*.
- 2 Confederation of Indigenous Nationalities of the Ecuadorian Amazon/*Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana*.

- 3 Confederation of Indigenous Nationalities of the Ecuadorian Coast/*Confederación de Nacionalidades Indígenas de la Costa Ecuatoriana*.
- 4 *Ecuador Runacunapac Riccharimui*, now renamed the Confederation of Peoples of the Kichwa Nationality of Ecuador/*Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador*.
- 5 <http://www.ambiente.gov.ec>.
- 6 Ratification promulgated in Official Registry Nos. 109 of 18 January 1993 and 146 of 16 March 1993.
- 7 <http://www.ambiente.gov.ec>.
- 8 **Maldonado, Adolfo. 2005.** *Petróleo vs. Salud*, Powerpoint presentation at the Confederation of Indigenous Nationalities of Ecuador, CONAIE.
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- 10 Idem.

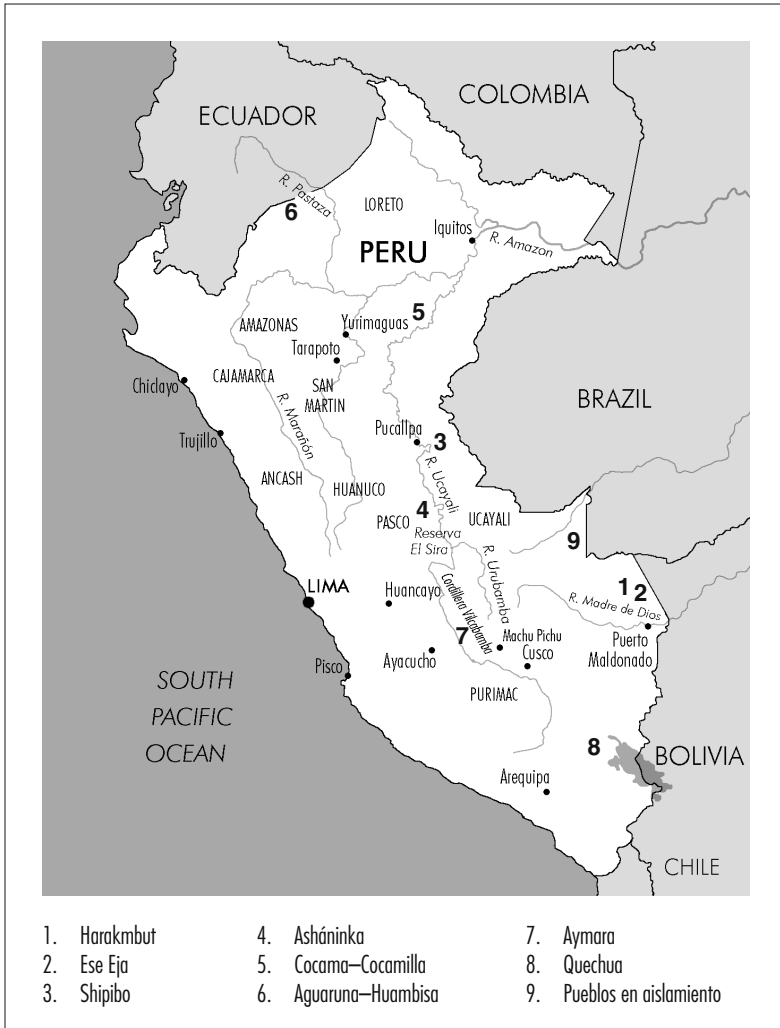
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The final report of the Truth and Reconciliation Commission (*Comisión de la Verdad y la Reconciliación*) aroused great expectations among the people and, in February, the government set up a Multisectoral Commission to monitor state actions and policies with regard to peace, collective reparation and national reconciliation.¹ Despite its promising start, the results have been minimal, due to a lack of resources and the low priority on the public agenda of issues related to the Commission's recommendations. Its Secretary, Jaime Urrutia, believes there is a lack of interest among local and regional governments in the areas affected by the armed conflict, and that civil society's efforts "are limited both by the dispersion of the many organisations of people affected, and by the lack of dialogue between these organisations and the state".

In addition, the Congress of the Republic thwarted attempts to establish a cross-party committee to monitor the Commission's recommendations, due to opposition from the National Unity (*Unidad Nacional*) and the Peruvian Aprist (*Partido Aprista Peruano*) parties. This situation led to a context of latent social conflict. A report from the Ombudsman warned of a proliferation of conflicts in 17 of the country's 24 departments.

From CONAPA to INDEPA

As has been noted in previous reports for *The Indigenous World*, the weak institutional design of the National Commission for Andean, Amazonian and Afro-Peruvian Peoples (*Comisión Nacional de Pueblos Andinos, Amazónicos y Afroperuanos* - CONAPA) finally led to its collapse. After three years of insistent demands from one sector of the



indigenous movement for the establishment of a public decentralized body, President Alejandro Toledo decided in July to send a bill to the Congress of the Republic by which to create the National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples

(*Instituto Nacional de Desarrollo de los Pueblos Andinos, Amazónicos y Afroperuanos* - INDEPA).

On 16 December, Congress approved INDEPA's creation as an autonomous ministerial-level body attached to the Presidency of the Council of Ministers, with its own budget. INDEPA will be functionally, technically, financially and administratively independent. As the guiding body for national policy on indigenous peoples, it is responsible for coordinating implementation of projects and programmes aimed at promoting, defending, researching and affirming the rights and development with identity of Andean, Amazonian and Afro-Peruvian peoples.

INDEPA is undoubtedly different to CONAPA in a number of important respects and has a superior institutional design. The mere fact of having been created by law guarantees it greater stability. Nonetheless, this does not prevent concern over a possible divorce between management and beneficiaries if the error of appointing inappropriate people to positions of responsibility is repeated.

The national indigenous movement

Consultation on territories

One important event during the year was the National Consultation on Territories, held on 28 and 29 May by the Permanent Work Group on Indigenous Peoples set up by the National Human Rights Coordinating Body (*Coordinadora Nacional de Derechos Humanos* - CNDDHH). One of the concluding agreements of this event was that they should prevent all attempts to change the laws ruling the *comunidades* until the 1993 Political Constitution has been amended and the imprescriptible, inalienable and unattachable nature of the communal territories contained in the 1979 Constitution re-established. The event noted that regulations detrimental to the communities had been promulgated by the Fujimori constitution and that these needed to be repealed as a priority. These include *Land Law No. 26505*, the *Law on Mining Access No. 26570* and the *Law on Individual Titling of Coastal Communities No.*

28845. Their review, or the publishing of new regulations, without prior modification of the C on detrimental to the rights won prior to the 1993 Constitution.

COPPIP's macro-regional assemblies

The Permanent Coordinating Body of Indigenous Peoples of Peru (*Coordinadora Permanente de los Pueblos Indígenas del Perú* - COPPIP) remained the reference point throughout 2004 in terms of providing coordination between the country's indigenous organisations. It organised four macro-regional assemblies during the year, in Contamana, Satipo, Moquegua and Ayavaca.

The importance of this lies in the fact that it enabled decentralized arenas to be established at which the peoples' and communities' problems could be debated from an indigenous perspective.

The Huancavelica indigenous summit

The First Summit of Indigenous Peoples of Peru was held in Huancavelica from 3 to 5 December and brought together around 88 indigenous delegates from all over the country to sign the Huancavelica Declaration. The Summit was the culmination of a prior process of dissemination and consideration of an indigenous agenda via regional preparatory assemblies. The Summit's themes were: a) Territory, natural resources, water and the Free Trade Agreement, b) Identity, culture and education, c) Development, economic solidarity and the Free Trade Agreement, d) Rights, autonomy and self-determination and e) National and international policy. A recurrent theme in a number of the workshops was the signing of a Free Trade Agreement with the United States, which was rejected.

The Summit also involved the active participation of the Amazonian peoples, via the Inter-ethnic Association for Development of the Peruvian Forest (*Asociación Interétnica de Desarrollo de la Selva Peruana* - AIDSESP), which mobilised a large and representative delegation. In

terms of the Andean coastal region, there was a significant presence of delegates from the National Coordinating Body of Communities affected by Mining (*Coordinadora Nacional de Comunidades Afectadas por la Minería* - CONACAMI).

The Amazonian indigenous movement

Complaints against the IMPA project and INRENA

One of the main complaints raised by the Amazonian movement involved the PIMA (Indigenous Participation in the Management of Protected Natural Areas) Project being run by the National Institute for Natural Resources (INRENA). Despite the fact that the project was designed and promoted by AIDSESEP, within the context of consultations conducted by the World Bank in 1998, it was then handed over to INRENA to manage, with this latter introducing amendments to the project's nature and focus.

On 14 July, AIDSESEP lodged a complaint against INRENA and the STCP consortium. The complaint states that the project is guided by an "exclusive and failed conservationism, as opposed to an inclusive, participatory and productive conservationism" and that it "invalidates the consultation process with indigenous communities by implementing it in line with its own interests".² It questions the lack of respect for indigenous territorial rights and its influence in getting the organisations to change their communal reserve proposals into national parks that would be located on areas of ancestral use and even where peoples in isolation are living. Such is the case of the Alto Purús Reserved Zone, where there is a proposal to establish the Alto Purús National Park, superimposed on top of the Territorial Reserve for the Mashco Piro ethnic group, established in 1997.

On 17 December, AIDSESEP managed to get an agreement to halt the PIMA project for a 60-day period to enable its restructuring with the effective participation of indigenous peoples, and to enable effective co-management of the project. For this, it is asking that the PIMA management team should be replaced, that representatives of environ-

mental institutions should participate with a voice but no vote, that officials against whom complaints have been made should be removed from office, that the communities' decisions regarding the classifications should be respected and that the special system of communal reserves should be approved by supreme decree. INRENA has also come under AIDSESEP's scrutiny, and the dismissal of the heads of the administrative divisions for Protected Natural and Forestry Areas has been requested.

This year-long tense and conflictive situation has made AIDSESEP determined to produce a Special System of Communal Reserves as the starting point for a new System of Indigenous Territorial Conservation and Biodiversity Areas. This would be considered an in situ conservation system "coming from an approach of autonomy and territoriality, and offering an alternative to that of the National System of Protected Natural Areas in Peru (SINANPE)".³

This position is in response to the need to ensure that the communal reserves are not restricted by the Regulation governing the *Law on Natural Protected Areas*, which has aspects that need to be amended in order to bring it more into line with indigenous management. Management "must be conducted directly by the peoples and communities in harmony with traditional law, maintaining their unity as a people".⁴

The Camisea gas pipeline

Elsewhere, in the Urubamba, the indigenous communities continue to denounce the errors and impacts of the Camisea gas pipeline. On 22 December, a spillage of liquid condensates at kilometre 8.8 of the pipeline affected the Kemariato stream, a tributary of the Urubamba, causing massive numbers of fish to be killed. Instead of warning the communities, the company focused its efforts on covering up the evidence. This situation has triggered even greater determination to oppose exploitation of Plot 56, known as Camisea Dos, until the causes of the accident have been clarified and effective control measures put in place. The Machiguenga Council of the Urubamba River (*Consejo Machiguenga del Río Urubamba - COMARU*), the Organisation of

Machiguenga Native Communities (*Central de Comunidades Nativas Machiguengas* - CECONAMA) and peasant farmer associations are united in this struggle.

COMARU maintains that the Camisea consortium companies were violating the rights of the communities from the start. "In recent months, our communities have reported collapses on the whole length of the pipeline but TGP denies this and is trying to deceive public opinion by stating that there are no problems". What is particularly serious is that the company denies any contamination has occurred and that the government is showing a complete lack of interest in dealing with the just demands of the population, insisting on organising Public Hearings to discuss Plot 56's Environmental Impact Study, something in which the communities refuse to participate until their demands are addressed.

The Achuar confront the OXY oil company

Elsewhere, the Achuar people of the Pastaza basin, represented by their organisations ATI and ORACH, are fighting a battle against the OXY oil company, which is trying to exploit Plot 64 and implement a divisive plan. This has had some success since seven communities now accept its intervention and the organisations are now in places divided. It is interesting to observe that ARCO was initially one of OXY's partners (from 1996-2000) and then Burlington and Repsol, who decided to withdraw from the venture in 2003 due to local opposition. But in 2004 OXY gained new partners in Amerada Hess (US) and Talisman (Canada), with whom it is attempting to drill four wells.

AIDSESEP

With regard to the indigenous people living in isolation, the Lima Supreme Court of Justice issued a ruling on 30 September stating that the class action suit brought by AIDSESEP was admissible and consequently declaring article 6 of Supreme Decree 028-2003-AG unconstitutional. This article gives CONAPA responsibility for "acting as provisional

guardian representing the Kugapakori, Nahua, Nanti and other indigenous peoples or ethnic groups in voluntary isolation and initial contact”.

AIDSESP proposes that peoples in isolation should be represented by neighbouring and national indigenous organisations.

Finally, the revival of AIDSESP’s Indigenous Women’s Programme is noteworthy and, there are plans to replicate the workshop held in November entitled “Indigenous Woman: Leader and Promoter”. This will strengthen the programme and enable it to reach out to the grass-roots.

The movement in the Andes

Indigenous opposition to the exploration of Cerro Quilish

2004 offered a very important lesson in terms of conflicts between communities and mining companies. The image of Yanacocha, the leading gold mine in Latin America and one of the symbols of “new mining” due to its supposed social and environmental responsibility, was seriously diminished and its intention to explore Cerro Quilish failed overwhelmingly in the face of fierce opposition from the Cajamarca communities and population, who reacted overwhelmingly to the company’s arrogance, manipulation and lies.

In October 2000, the Cajamarca provincial municipality declared the Cerro Quilish and micro basins of the Quilish, Porcón and Grande rivers a protected area, establishing that violation of this order would be punished in accordance with the Environmental Code. This did not, however, prevent the company from obtaining the backing of the Ministry of Energy and Mines for exploratory work.

It must be recalled that, in addition to providing drinking water for the communities, the Quilish has a rich and diverse wildlife, including animals in danger of extinction.

The company countered initial opposition with an aggressive campaign against peasant leaders. The struggle reached unprecedented levels, however, involving all sectors of Cajamarca’s population, who

physically prevented Yanacocha from proceeding. What was being challenged here was not private investment nor even mining but the social and environmental irresponsibility of the actions, in the light of the mercury spillage that occurred in the areas of San Juan, Choropampa and Magdalena (June 2000).

In summary, the experience showed that a strategy of overlooking the peasant farmers, manipulating the media and buying allies with money is not sufficient to win a social licence from the population. The company itself was finally forced to request suspension of its application to explore the Quilish.

Similar errors were seen in the Las Bambas project in Apurímac department, under the responsibility of Pro Inversión, a body that failed to even make contact with the communities that owned the land on which the mineral deposit was located.

The organisations participating in the First Provincial Meeting of Peasant Communities of Cotabambas, held in August, unanimously agreed to reject plans to grant mineral deposits to monopolies that failed to take into consideration the opinion of the legitimate owners: "the native and ancestral peasant communities that inhabit these territories", in the words of the statement issued by the event.

Analysing the consequences of mining activities

The Macro-Regional Assembly of the South was held from 9 to 11 September in Moquegua, with the participation of the indigenous organisation of Madre de Dios, FENAMAD, the Kana Nation's organisation and the Moquega Agrarian Front, to name but a few. The event enabled various problems and conflicts being caused by mining activity and affecting the communities and peoples in different regions of the south to be analysed. The list of complaints given in the declaration is a very long one but the main concern is the further expansion of the Southern Peru Copper Corporation. The accumulated 50-year impact of this company's activities has affected local ecosystems, in particular the water sources of various regions, where traditional subsistence activities such as livestock farming and agriculture are being put at risk.

There was special concern for the situation of the Torata and Moquegua rivers and the impact in Candarave, Tacna. Activities at

Quisqui, an open cut mine under the responsibility of the Sauder company, and the dispossession of communal lands, were also denounced. The Aruntani mining company was called to account for the deceit and abuse that took place in the Aruntaya y Titire peasant community, where the basin supplied by the Margaritani River, along with the Titire, Coralaque and Tambo rivers (which flow into the Pacific Ocean), have all been contaminated. Warning was also given of the Mantas Blancas mining company's plans, which threaten to destroy the Tala, Pocata, Carcase and Tumilaca communities and contaminate the Asana – Tumilaca and Moquegua rivers, as well as exploit the Chilota-Chincune-Moquegua underground waters.

The event affirmed its solidarity with 10 indigenous people of the upper Andes, unjustly reported for defending the natural resources and underground waters of Chilota-Huachunta. If these dry up or are contaminated, they will affect thousands of farmers in the Moquegua and Tambo catchment basins.

In Apurímac, information was made public on the contamination of the Chalhuanca river by a subsidiary of the Hoeschild Group, and on the government's manoeuvring with regard the Las Bambas mega-project.

Elsewhere, in the Cusco region, the Single Defence Front of Espinar Province (*Frente Unico de Defensa de la Provincia de Espinar*) denounced the Billiton Tintaya company for attempting to destabilise grassroots social organisations who were confronted by serious contamination of their lands, air and water. A number of peasant communities have been decimated and the company is now attempting to do more of the same in Anta Pacay and Corocoahuayco, without providing any benefits or promoting any progress for the communities. A review, reformulation and monitoring of the Framework Agreement between the company and Espinar provincial municipality was demanded.

In Puno, regional delegates from the Regional Coordinating Body of Communities Affected by Mining (*Coordinadora Regional de Comunidades Afectadas por la Minería*) and the Rumi Maki Departmental Agrarian Federation (*Federación Agraria Departamental Rumi Maki*) requested monitoring of and a halt to the gold mining being carried out by informal workers in Ananea district, Sandia province. Their activity is con-

taminating the whole course of the Crucero River, affecting the districts of Crucero in Carabaya province and the districts of Potoni, San Antón, Asillo along with Progreso settlement, situated in Azángaro province. This activity is also affecting Lake Titicaca.

An assembly was held from 24 to 26 September in Ayavaca, Piura, with the participation of important organisations from the north of the country, including the Tambogrande Defence Front (*Frente de Defensa de Tambogrande*), the Coordinating Body of Peasant and Indigenous Communities of Peru (*Coordinadora de Comunidades Campesinas e Indígenas del Peru*) and the Regional Organisation of Indigenous Peoples of the Amazonian North (*Organización Regional de los Pueblos Indígenas de la Amazonía Norte*). The Ayavaca Declaration was signed at this assembly, denouncing a project of the mining company Río Blanco Cooper Limited for endangering the subsistence of thousands of the region's farmers by affecting activities such as agriculture and tourism.

The Ayavaca Environment, Life and Agriculture Defence Front (*Frente de Defensa del Medio Ambiente, La Vida y el Agro de Ayavaca*) states that the project is being implemented in the southern Andean region, in an area where the Andean plateaux perform essential hydrological functions. The organisation is calling for solidarity in the face of the Río Blanco threat, which will affect the biodiversity, natural resources and precious pristine water sources on which the lives of local mountain communities depend. □

Notes

- 1 See *The Indigenous World 2004*.
- 2 *Voz Indígena* n° 26 (2004):13. Lima: AIDSESP.
- 3 *Idem*: 21.
- 4 *Idem*.

BOLIVIA

On 17 October 2003, following the “gas war”,¹ President Carlos Mesa took power declaring a transitional government and taking up the so-called “October agenda”.² Popular support for the new head of state has been remarkable, with opinion polls giving him an 80% confidence rating.

During the course of his term in office, however, the country has once more been immersed in a deep crisis, the immediate consequences of which have been the failure of the socio-economic model³ and that of the political system supporting it.

The country’s situation

One assessment worthy of note is the Country Assistance Strategy (CAS) prepared by the World Bank.⁴ According to this, the Bolivian crisis is an integral one, in other words, it affects all three economic, political and social spheres.⁵

In economic terms, the crisis is manifested in a lack of poverty reduction, high levels of inequality, the economy’s vulnerability to external shocks and an unstable fiscal situation. In political terms, it is expressed through political clientelism and tolerance of - or support for - corruption on the part of the traditional political parties, along with the exclusion of a multicultural perspective that would incorporate poor and indigenous peoples. In social terms, the crisis can be seen in inequities, particularly in terms of land distribution, the population’s perception of the scant benefits they are receiving from natural resource exploitation (silver, tin) and high levels of inequality.

This assessment anticipates that the crisis will continue for some years to come and that any solution will be dependent upon the take-

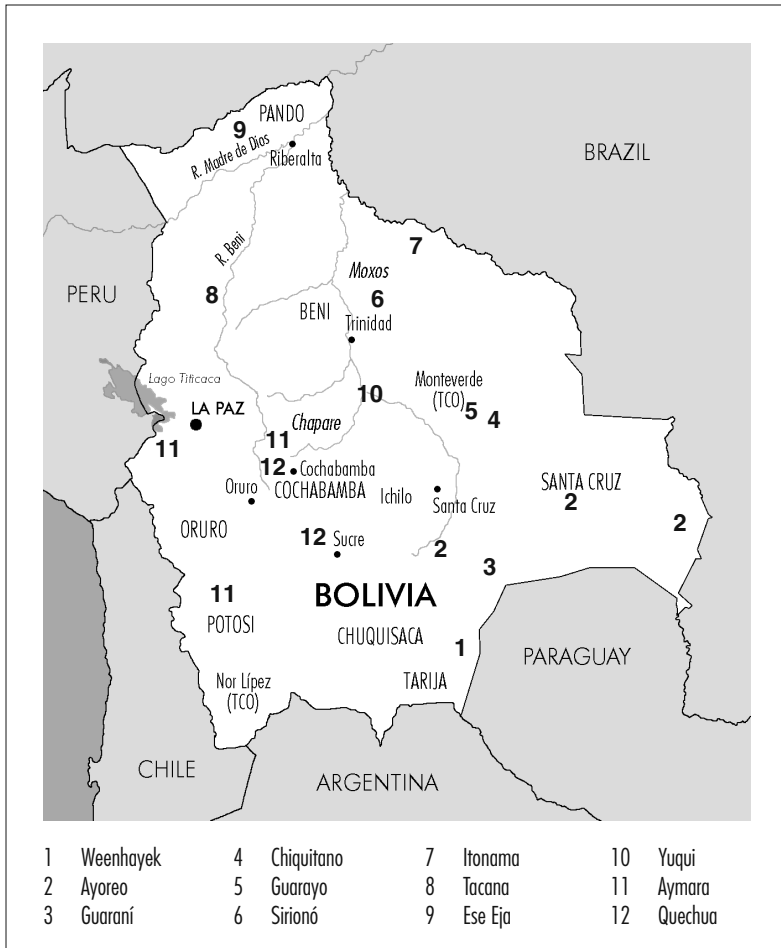
off of the Brazilian and Argentinian economies and a recovery in Bolivian exports. Poverty currently manifests itself via a number of polarisations: inequality between urban and rural sectors; between the highlands (*altiplano*) and the plains; between indigenous and non-indigenous.

The causes of the crisis are many: the decline in Bolivian exports to Brazil and Argentina (devaluations in the two countries making Bolivian products uncompetitive); the fall in remittances from the 700,000 Bolivians living in Argentina; the 70% decline in coca crops (between 1998 and 2002) and the high cost of reforms, particularly pension reforms.

The impacts of this shock have resulted in a strain on the banking sector because of the contraction of credit and credit default; accelerated currency depreciation due to the Brazilian and Argentinian devaluations, which have had an impact on public debt given that loans are in dollars; and a slowdown in economic growth along with a fall in GDP.

Aside from the undisputable technical validity of this analysis, it omits one important aspect. The income gap created by the organic incorporation of strategic sectors of the national economy into transnational capital is not considered. According to a study by the Social Movement Support Group (*Grupo de Apoyo a los Movimientos Sociales – GAMS*), the income obtained when the main economic budget lines were state-run enabled 70% of state expenditure to be covered whereas now that these sectors are in the hands of transnational companies, it covers only 12% (2004: 122). To reduce this gap, the state has resorted to increasing the taxes levied on the population, increasing internal and external public debt and creating greater dependency on international donors.

The permanent recourse to credits granted by multilateral organisations has in turn increased the country's political dependence, particularly in relation to state bodies (Ministries and Superintendences) whose operations and actions depend on funding and technical assistance from these organisations. Hence the country is currently at a moment of socio-historical development marked by high economic and political vulnerability.



Living conditions in the country

The Bolivian population has one of the highest poverty rates in the region. According to the 2001 census, 62% of the population live below the poverty line. Of this, 34% live on less than two dollars a day while 14% survive on less than one dollar a day. It is estimated that average per capita income is no more than around six dollars a day. The situa-

tion of the rural population is even more dramatic, with 90% living in poverty and 60% in extreme poverty.⁶

The country's economically active population numbers 3 million, of whom 83% work in the service sector, while 13.9% (over 300,000 people) are unemployed.

In addition, infant mortality is 60 per 1,000 live births, while 390 out of every 100,000 pregnant women die in labour. From a human development index point of view (health, education and per capita income), Bolivia lies 114th out of 175 countries.

The above data paints a picture of a profound economic crisis that is impacting on all areas of national life. It also reflects the enormous imbalances and inequities existing within Bolivian society.

Bolivia, an indigenous country

From a demographic point of view, Bolivia has two main features: its largely indigenous population and its high ethnic diversity. According to the 2001 census, 62% of those over 15 years old identified themselves as indigenous and ethnic diversity was reflected in the existence of 36 native/indigenous peoples. The greatest diversity is to be found in the lowlands,⁷ with 30 indigenous peoples, the most noteworthy being the Guaraníes, Chiquitanos, Guarayos, Mojeños, Movimas, Tacanas, Itonamas Ayoreodes, Chácobos, Araonas and Sirionós. In the highlands,⁸ in addition to the Aymaras and Quechua there are 10 native nationalities in the process of reconstruction. These include the Jach`a Karangas, Jatun Killakas, Soras, Chichas, Lípez, Charcas, Chuwis and Kallawayá.

The indigenous peoples' main problem lies in their lack of recognition and effective articulation with the state via a process that respects their status of collective subjects and the integral nature of their rights: territorial, cultural and self-determination. The basis of indigenous rights lies in formal recognition of and effective access to their native territories. Bolivian agrarian legislation has taken up as a state mandate the titling of the so-called Native Community Lands (*Tierras Comunitarias de Origen* - TCOs) in favour of indigenous peoples. This

requires a prior procedure for regularising the lands or clarifying the agrarian rights. This process must be completed within ten years of the date of promulgation of the law, 18 October 1996.

The rural lands subject to regularisation cover 107 million hectares. Eight years (80%) of the implementation period have already passed and only 14 million ha have been regularised, with another 37 million underway; 6.9 million have been titled and/or certified, 3.2 million have a final regularisation resolution and 3.8 million have been declared state lands. The indigenous peoples have submitted 216 TCO requests, 54 in the lowlands and 162 in the highlands. The area requested in the lowlands totals 24.2 million ha, of which only 5.4 million have been titled. In the highlands, the area requested totals approximately 12 million ha, of which so far only 188,103 ha have been titled.⁹

In recent years, the widespread crisis and growing indigenous involvement in the management of public affairs has forced indigenous people to transcend their sectoral demands and produce national responses. The strategic issues of national interest are expressed in the so-called "October agenda", which the conservative forces – grouped together in the Santa Cruz Civic Committee (*Comité Cívico de Santa Cruz*) - are trying to counteract. Their demand for departmental autonomy conceals their attempt to defend the privileges of the elite, particularly landowners with links to oil companies.

The October agenda: progress and difficulties

In terms of the commitments President Carlos Mesa made to the country, the most important in the past year has been the organisation of a binding referendum on energy policy, held on 18 July last. Not only did this bring about a national consultation and vision but it also enabled a momentary depolarisation of the country and the constant rumours of a coup to be dismissed. In addition, a high level of popular participation was achieved, with 2,678,518 people or 60% of the electorate coming out to vote. However, the most important issue to arise from this was the Bolivian people's clear desire to recover ownership

and control of the gas and oil reserves in Boca de Pozo: question 2, which was on this issue, gained 1,788,694 positive responses as opposed to only 275,742 negative, according to data from the National Electoral Court.

In political terms, the reform of the State Political Constitution in February is noteworthy. This included mechanisms for direct popular participation such as the Constituent Assembly for a total reform of the Constitution, the Referendum and the people's legislative initiative (for which regulations are not yet established). In addition, a break with the political party system has been established by recognising civic and indigenous people's groups as bodies for representation of the popular will.

In September, following long days of protest, a "Unity Pact" was formed, a coordinating body that includes more than 40 national-level indigenous, peasant and native organisations. In October, it presented its proposal for the formation of a Constituent Assembly, highlighting its nature as a national-level, inclusive and participatory depository of popular sovereignty. It proposed that 258 assembly members should be elected in local, departmental and special constituencies, these latter being for the indigenous peoples of the lowlands, given their dispersion and electoral disadvantage.

It also submitted its proposals for the Hydrocarbons Law. The Chamber of Deputies' Economic Development Committee, under pressure from social protest, took up a large number of the demands, producing a draft Hydrocarbons Law with the following noteworthy content: state ownership of the gas and oil reserves in Boca de Pozo; forced migration of oil company contracts over to the new system; re-establishment of *Yacimientos Petrolíferos Fiscales Bolivianos* to intervene in the production process; increased state participation in the profits; an obligation to encourage the country's industrialization on the basis of its energy matrix, and priority to be given to value added exports. To these general provisions was added the heading of Indigenous Rights: an obligation to prior and appropriate consultation, in good faith and out of respect for the organisations' autonomy, plus indigenous participation in the profits, for which an Indigenous Fund was to be created, co-managed by the state and indigenous peoples. In addi-

tion it introduced a system of compensation for intangible damages and indemnification of tangible damages, a ban on the granting of exploitation rights in protected areas, social involvement in environmental monitoring, clarification of the expropriations procedure, and the safeguarding of indigenous rights.

Finally there was now the possibility, approved via a parliamentary vote of 126 to 31, of impeaching (*juicio de responsabilidades*) ex-President Sánchez de Lozada and his ministers for the tragic events of February and October 2003 in which hundreds of people were killed, injured or unlawfully detained as a result of the harsh repression ordered by his government.

The indigenous increase their access to public management

On a political level, the holding of municipal elections on 5 December with new rules of play is also worthy of note. Unlike previous elections, there were two qualitative differences. On the one hand, men and women were able to stand on equal terms (50% female participation on the lists of candidates). On the other, candidates were for the first time not required to stand for election via party political lists, although the indigenous peoples and civic groups competed under disadvantageous conditions given that they did not have the electoral apparatus or financial resources of the political parties and, in addition, had only three months to organise. Nonetheless, we are finally moving towards a democratisation of the political system. Out of a total of 13,385 candidates, 77% of councillors elected came from political parties (1,386) and 23% from civic groups and indigenous peoples (418). If we take indigenous peoples alone, they won 105 council seats, or 6% of the total. However, indigenous councillors actually form a much higher percentage if we bear in mind the fact that the Movement to Socialism (*Movimiento al Socialismo - MAS*), headed by Evo Morales and which coordinates the majority of rural social organisations, came out in front in the voting, winning 452 council seats.

Notes and references

- 1 This is the name given to the popular uprising that brought the population and army into opposition, particularly indigenous Aymaras living in El Alto, who were protesting at the appropriation of natural gas by oil companies (Bolivia owns 42% of South America's natural gas reserves) and at the attempts to export, via Chile to the US, under unfavourable conditions for the country. As a result of the conflict, almost one hundred people were shot dead in the military repression ordered by the government, and it was this that forced President Sánchez de Lozada to submit his resignation and leave the country.
- 2 The October Agenda comprises three strategic issues of national interest: the holding of a binding referendum on energy policy, the approval of a new hydrocarbons law for the recovery of ownership of these resources and the organising of a Constituent Assembly to completely reorganise the country.
- 3 In Bolivia, the neoliberal model has been assiduously applied, organically incorporating strategic sectors of the economy into transnational capital and preventing the state from having any control over the surplus, hence the country's increased economic and political dependence on multilateral organisations.
- 4 The CAS was published by the World Bank and circulated in August 2004.
- 5 The analysis in this section is taken from an article on this strategy by the author published in the Santa Cruz newspaper *El Nuevo Día* on 30 August 2004.
- 6 This data has been taken from: INE (www.ine.gov.bo), 2003 and 2004 Yearbooks of the newspaper *El Deber*, (December 2003 and December 2004 respectively), and the 2004 Yearbook of the newspaper *Los Tiempos* (December 2004).
- 7 This is what the regions corresponding to the Oriente, Chaco and Amazonian areas of the country are called.
- 8 This is what the regions corresponding to the Andean area of the country are called.
- 9 See INRA: www.inra.gov.bo

PARAGUAY

According to data from the Second National Indigenous Census 2002,¹ the recorded indigenous population in Paraguay totals 87,099 people, representing 1.7% of the country's total population. A little over half of this total (44,135) live in the Eastern region and the rest (42,964) in the Western region.

Population pyramids for the country's indigenous population maintain the distinctive shape of an eminently young population structure. In percentage terms, 47.1% of the population covered by the census are under 14 years of age, while 25.6% are aged between 15 and 29. The youth category comprises a total of 63,368 people, or around 70% of the population. This must be viewed in parallel with the high mortality rate observed among indigenous adults, which is way above the national average.

The census also shows alarming figures with regard to the social situation of indigenous groups, such as the high rate of illiteracy, affecting 51% of the indigenous population. Indigenous people aged 10 and over enjoy an average of 2.2 years of schooling, in contrast to a national average of 7 years among the non-indigenous population. The problem is worse in rural areas (53.3%) than in urban ones (29.2%).

In terms of the right to land, the census notes that the indigenous peoples' situation of extreme poverty reflects their lack of land. The census results indicate that, of the 412 indigenous communities in Paraguay, 185 still do not have legal and definitive guarantees as established in the National Constitution.

Current legal framework

Positive law on the human rights of Paraguay's indigenous peoples is largely established in the National Constitution (Chapter V), *Law 904/81 "Statute on Indigenous Communities"*, *Law 234/93 "Ratifying Inter-*

national Labour Organisation Convention 169", Law 253/93 "Ratifying the Convention on Biological Diversity", Law 1,863/02 "Establishing the Agrarian Statute" and relevant criminal legislation.

Paraguay is also a state party to the American Convention on Human Rights and recognises the contentious jurisdiction of the Inter-American Court of Human Rights. In this respect, it is important to note that there are currently four complaints from indigenous communities against the government of Paraguay going through the Inter-American Human Rights system established by the Convention, related fundamentally to a denial of their rights to ownership and possession of their ancestral lands. They are the Yakye Axa community (case before the Inter-American Court) and the Sawhoyamaya, Xakmok Kásek and Kelyenmagatema communities.

Indigenous organisations' complaints

During the 2nd Plenary Session of the Commission for the Self-Determination of Indigenous Peoples (*Comisión por la Autodeterminación de los Pueblos Indígenas* – CAPI),² held from 10 to 12 October 2004 in Asunción, leaders and representatives of indigenous organisations discussed the different problems affecting them and highlighted their central demands. These were publicised by means of various public actions.

The following situations, affecting indigenous peoples as a whole, are worthy of note:

- a) Numerous cases of land claims that have been pending for more than a decade, in violation of the right to legal protection and judicial guarantees.
- b) Communities with insufficient lands that do not satisfy the legal minimum requirement, consequently leading to violations of other rights (forests and wildlife being lost, the impossibility of guaranteeing sufficient food through farming and an absence of technical support for production). This in turn has created food insecurity which, added to the environmental degrada-



tion, forces people to move to urban areas, where both adults and children suffer violations of the rights to life and safety and to personal integrity.

- c) Loss of traditional medicine and traditional subsistence practices with no viable consumption or marketing alternatives (technology) that incorporate traditional components.

- d) Absence of state policies for the redress of environmental and territorial damage.
- e) Discriminatory practices against the indigenous, expressed through attempts at religious and political assimilation, through the way in which resources for land purchases are distributed (for example, differential funding for peasant and indigenous lands) or through the preferential sale of land to multinational companies, among other things.
- f) Lack of respect, protection and guarantees for indigenous lands (for example, invasions, clearance) involving a denial of justice and judicial guarantees (for example, failure to respect legal rulings in favour of the indigenous).
- g) In a context of territorial insecurity, violations of the communities' cultural heritage are also occurring (alien languages, religions and cultures being introduced into them).
- h) Absence of public services in terms of health, education, clean water in communities with and without lands, both under the jurisdiction of central government and that of the provincial governments and municipalities.
- i) Exclusion of the indigenous from participation in different levels of state management and in the formulation of public policies.
- f) Corruption.

Other concerns that arose during the meeting were related to the Free Trade Area of the Americas (FTAA), its design, negotiation and effect on the rights of indigenous peoples all being considered negatively, as well as the cases of forced evictions of communities from their homes, and of indigenous being murdered whilst claiming lands that have yet to be clarified legally.

Enjoying human rights

Almost a decade after the first Report on the Situation of Human Rights in Paraguay (*Informe sobre Situación de los Derechos Humanos en Paraguay*, 1994) - with its accompanying chapter on indigenous peoples - was published, it has to be said that far from being on the path to overcoming the fundamental deterioration in rights that is leading to the idea of a structural denial,³ the situation has been gradually worsening and, to date, there are no signs of improvement or even of containing this deterioration. Evidence of this can be seen in the presence over the last few years – and this year has been no exception – of violations not traditionally denounced but which have recently acquired an unavoidable significance.

This is not the place for an exhaustive consideration of the causes of, or reasons that could explain, the aforementioned situation. Suffice to say that one of the more robust theories in this regard would appear to be the increasing expansion of the universe of indigenous rights violations and also a higher level of protest, in organisational and revindictive terms, on the part of indigenous voices and national and international human rights organisations.

In this respect, the multiple cases of indigenous rights violations noted during 2004 demonstrate not only the persistence of a framework of structural denial as already noted but also an ever more rapid decline, in qualitative and quantitative terms, in the minimum standards of protection for the rights, freedoms and guarantees that are universally recognised by the Universal Declaration of Human Rights.

This multiplication of cases has not passed by the local human rights protection system, comprised primarily of the national courts and administrative offices with jurisdiction over indigenous affairs. Over the period 2003-2004, this system received demands for state protection and compensation from indigenous communities in both regions of the country but, given the collapse of official indigenism and the deficiencies of the justice administration system, the current situation is characterized – to paraphrase the Colombian Constitutional Court – by an *Unconstitutional State of Affairs*.

The reason for mentioning this jurisprudential concept is that it has been possible to note a constant or continuing situation in the country over the last few years. This is, on the one hand, a structural situation and consequently amounts to a permanent diminishment of human dignity and yet, on the other, it has a quality perhaps not often mentioned, and that is the resulting *erga omnes* consequences for the indigenous communities deriving from the state's failure to respect legal demands to remedy this situation, whether coming from judicial, administrative or legislative bodies.

The fact is that, faced with these demands, the state has not only failed to provide redress for individual unlawful situations, such as land deprivation, but has also continued to take actions or commit omissions detrimental to constitutional rights, such as not allocating funds for land returns, or even evictions and forced displacements.

For this reason, it can be stated that violations of the constitutional rights of Paraguay's indigenous peoples, such as land, cultural identity, life and personal integrity, have reached such levels that it is no longer the result of one single state act or omission but a whole series of inter-related acts or omissions which, in addition to infringing the constitutional right of the person petitioning the authority, violates or threatens the rights of third parties (individuals or communities), who remain in the same situation indefinitely. □

Notes

- 1 Census carried out by the General Department for Surveys, Statistics and Census (DGEEC).
- 2 CAPI brings together the country's indigenous representatives and communities around a programme to defend their consultation and participation rights as established in ILO Convention 169.
- 3 A structural denial of rights involves the idea that certain human rights violations assume the presence of others, of greater or lesser importance in terms of the legal interest protected but not necessarily of lesser significance or frequency, such that they are mutually self-supporting and establish a continual impairment of human dignity.

BRAZIL

With the first two years of Luis Inácio Lula da Silva's presidential mandate over, the majority of the country's indigenous organisations, including the Coordinating Body of Indigenous Organisations of the Brazilian Amazon (COIAB), continue to level serious criticism at the Workers Party (PT) government.

Lack of dialogue and the ineffectiveness of Lula's government

These organisations argue a lack of dialogue, a lack of bodies that would enable indigenous peoples to participate in decision-making on issues of interest to them and the ineffectiveness of public authorities in areas of health, education and land regularisation.

The indigenous organisations also criticise the lack of coordination between public bodies that should be acting in line with the rights and interests of indigenous peoples but which undertake their activities in a most disorganised manner, competing for resources amongst themselves.

Had they been adopted, the government proposals (enshrined in a document entitled "Commitments to Indigenous Peoples") would have been the answer to indigenous demands. But this was not to be and it once more became clear that Brazil's politicians never had any real intention of implementing a policy focused on the interests of indigenous peoples.

A plan to strengthen the indigenous peoples never truly existed within the PT. The PT leaders never showed any interest in strengthening indigenous peoples and leaders so that they could become the protagonists of their own future.

This situation became clear as the senior positions within public bodies began to be appointed. Lula invited bankers, business people and sectors of the popular movement to participate in his government but excluded the indigenous. In fact, no commitment was ever made to Brazil's indigenous peoples.

The indigenous organisations complained that the government was giving priority to alliances with sectors opposed to indigenous rights in order to ensure a majority in the National Congress, without adopting any measures favourable to indigenous peoples.

The government argued that the indigenous problems had accumulated over the course of a number of governments and could not be resolved all in one go. It also stated that it had to maintain a wide base within the National Congress in order to guarantee governability and to ensure that it governed on behalf of the whole country.

Frustrated with Lula's government, the indigenous organisations have been reflecting on how best to organise in order to continue to defend indigenous rights and work within the country's new political climate. It is clear that alliances between indigenous peoples must be strengthened if they are to fight for their autonomy. It is only through struggle that conquests can be achieved and this should therefore be the main breakthrough in indigenous rights in the country.

Raposa Serra do Sol indigenous land

An end to the process of demarcating the Raposa Serra do Sol indigenous land is still not in sight. For the demarcation to be concluded, Lula's government has to sign a decree ratifying it but the Roraima Indigenous Council maintains that the government has no intention of signing such a decree because it has given in to pressure from Roraima state politicians, who are against the demarcation.

The lack of clarity over the demarcation is leading to growing conflict between the indigenous and non-indigenous occupiers of these lands. In addition, divisions are growing between the indigenous themselves.



The majority of the 15,000 indigenous inhabitants of Raposa Serra do Sol demand that the demarcation should cover 1.7 million hectares, arguing the rights recognised them by the Federal Constitution and by Ministry of Justice resolution 820/98, which establishes the boundaries of their lands.

The indigenous communities that are siding with the state government and rice producers, however, are asking that the capital of Uiramutã municipality, five indigenous and non-indigenous hamlets, the

highways and rice growing areas be excluded from the demarcation. This would reduce the area demanded by the indigenous by 200,000 ha. The case is currently before the Supreme Federal Court, which is the highest judicial body in the land.

On 29 March, the lawyers representing the Roraima Indigenous Council presented a formal complaint to the Inter-American Commission on Human Rights of the Organisations of American States (OAS) in the face of the government's intention to demarcate the Raposa Serra do Sol land in fragments, preserving the urban zones created by the invasion of *garimpeiros* (illegal and informal prospectors) and the areas illegally occupied by the rice producers.

The indigenous lawyer Joenia Batista Carvalho Wapichana stated before the OAS that, "If the President of the Republic authorises the fragmented demarcation of the Raposa land not only will he be in violation of the Constitution but he will be damaging indigenous rights as a whole as well as the future process of indigenous land demarcation".

Conflict between Cinta - Larga and *garimpeiros*

In April, following a series of conflicts, members of the Cinta-Larga indigenous people killed 29 *garimpeiros* in an action that was to have national and international repercussions. And yet most of the media offered a one-sided view of events, to the detriment of the indigenous.

To understand what happened, we have to understand the history of invasions of the Cinta-Larga lands, which are situated in the Amazonian states of Rondonia and Mato Grosso del Norte.

Their first contact with the state took place in the mid-1960s and, since then, their lands have been coveted and invaded due to the wealth of forest and mineral resources to be found there.

In 1999, a diamond-rich deposit was discovered, thus causing the invasions to intensify. The indigenous, however, with the support of the Federal Police and the National Indian Foundation (FUNAI), undertook various actions to remove the invaders.

Pressure on the Cinta-Larga resources was constant. A report of the parliamentary Human Rights Committee, presented at a public hearing in October 2003, denounced the involvement of the state governor in promoting illegal mining on Cinta-Larga lands.

Police inquiries focused on the broader issues of the international diamond trade and diamond smuggling, which involve the mining sectors of such countries as Israel, Belgium and Canada. The results of these inquiries suggested that police officers, the National Indian Foundation and IBAMA (the Brazilian Environmental Institute) were all involved.

Under such intense pressure, Cinta-Larga leaders also became involved in illegal diamond mining. But the profits from this activity - for both indigenous and *garimpeiros* alike - were in actual fact limited as there was huge exploitation on the part of the mining companies.

The indigenous decided they would negotiate with the *garimpeiros* no more and nor would they accept the continuing invasions of their lands. They repeatedly asked the federal government for protection of their lands.

The government did not take adequate measures and the *garimpeiros* - believing that the indigenous would take no action - continued with their invasions until the beleaguered indigenous finally reacted, resulting in the tragedy noted above. □

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ARGENTINA

2004 marked the end of a decade of constitutional recognition of the ethnic and cultural pre-existence of indigenous peoples and of the rights associated with this identity. It is perhaps a good moment, then, to assess the implications of this recognition, firstly, for the indigenous peoples themselves and, secondly, for the nation as a whole.

The first point worth noting is that if what was being sought via the recognition of special rights for the indigenous peoples was a change in their relationship with the state then little has been achieved over the last 10 years. Unfortunately, the cultural difference that should form the basis for special treatment within state policies is not taken into account. The indigenous are still looked upon as a sector of society living in poverty and requiring social welfare, as if it were a question of dealing with the destitute. This was illustrated by the government's resistance towards effectively implementing a state policy of titling claimed territories. One consequence of this is the failure to provide the National Institute for Indigenous Affairs (*Instituto Nacional de Asuntos Indígenas* - INAI) with a budget in keeping with its role in applying indigenous rights. Year after year, *The Indigenous World* has denounced the delays in implementing the "National Plan for Regularisation of Indigenous Lands" (*Plan Nacional de Regularización de Tierras Indígenas*), which was established in 1996 for three of the 23 Argentine provinces. The only result has been the provision of three community property titles in Jujuy Province during 2004, where there are more than 15 Kolla and Guaraní communities awaiting government decisions in order to be able to exercise their territorial rights.



State proposals

The authorities argue that Argentina has been going through a deep socio-economic and political crisis, and one from which it is still struggling to extricate itself: to the high levels of poverty, destitution, unemployment and social exclusion must be added the pressure from international creditors. In this context, the overall goal of the social grassroots organisations has become the scope of constitutional rights and the real possibility of exercising them, while state intervention has been limited to social welfare provision via programmes focused on alleviating the effects of the crisis, with no consideration for cultural differences.

If we analyse the role of the three state powers in terms of indigenous rights, we can see that the constitutional mandate has thus far been scantily implemented. As of writing, there is no effective federal policy that enables the right to land or to its natural resources to be exercised, INAI is not reviewing its corresponding legal status, and the indigenous peoples lack involvement in the political system. Legislative efforts to reform the current legal framework are slow and insufficient. A number of bills submitted in 2004 run the risk of ending up as mere pipe dreams if they do not receive urgent attention. The judiciary seems open to indigenous demands on some occasions and yet exaggeratedly reactionary on others.

There are currently a number of draft bills going through parliament on the “emergence of indigenous community ownership”. The aim of these is to demarcate and title the indigenous territories over the coming years. While these initiatives are clearly positive, it will be impossible to repair the historic dispossession of lands to which the indigenous peoples have been subjected without a serious in-depth study being undertaken, and this with the prior consultation and participation of all communities affected.

Chaco courts beginning to do justice?

A recent ruling of the local courts admitting a class action (*amparo colectivo*) in defence of the environment, in the face of the dispossession

of natural resources in the Chaco, offers a ray of hope to the region's indigenous peoples. The ruling refers to the serious situation in which these peoples find themselves, the violation of their rights and the state's obligation to ensure their involvement in protecting, preserving and recovering the natural resources. It notes that the province's forestry law, approved in 2003, is not complying with the minimum necessary budgets to ensure sustainable environmental management and warns of the irreversible environmental impact that the felling and clearing of trees will have on the land and its resources. It thus declares the law unconstitutional and orders the government to conduct an evaluation into the environmental damage and implement a plan for the preservation, recovery and sustainability of the province's native forests.

Alternative report presented to CERD

In August 2004, the Buenos Aires-based Centre for Legal and Social Studies (*Centro de Estudios Legales y Sociales* - CELS) submitted an alternative report on compliance with the Convention against Racism to the UN Committee for the Elimination of Racial Discrimination (CERD). This summarized the situation with regard to indigenous peoples and provided an annex giving examples of violations of their rights. These included:

Association of Lhaka Honhat (Salta Province)

Despite being in the process of finding an amicable solution via the Inter-American Commission on Human Rights (IACHR) with regard to the title to the lands they have ancestrally occupied, the aboriginal communities of Salta are being subjected to the destruction of their natural resources. Third parties are clearing the bush, extracting timber and putting up fences with no effective state measures being adopted to prevent this. Whilst negotiations between the parties continue with the participation of the *criollo* population that is occupying the indigenous territory, the Salta government - the senior player in

terms of responsibilities - continues to offer individual titles to some of the indigenous with the sole aim of destroying the unity of the Lhaka Honhat Association. On 17 November, when the IACHR's Special Rapporteur for Argentina, Sr. Florentín Melendez, visited the country to check on progress of the case, he warned the Argentine state that if it did not produce a concrete proposal by March 2005, the IACHR would recommend referral of the case to the Inter-American Court of Human Rights.

Marifil Mapuche Community (Neuquén Province)

This community has ancestrally occupied its territory in the area of Picun Leufu. However, in the middle of the last century, a non indigenous individual by the name of Lapolla presented himself to the state authorities as the owner of the property. But, via a ruling of the Bahía Blanca Court of Appeal, the community managed to establish that the disputed rights belonged to the Marifil community. Yet, despite this favourable ruling, the community never received the title deeds. Worse, in 1992, the Province commenced executory proceedings for payment of taxes against the Lapolla family and, in this context, the property was put up for auction, without the community's occupation of the land being taken into account (it was stated as being "free from occupants") and without the community having been informed or invited to participate. The paradoxe is that the purchasers at the auction in turn sold their rights to a financial company, Coprocal, but, happily, this latter has still not been able to take possession of the property precisely because of its occupied status, although the uncertainty of what may happen in the future remains high.

Yriapú Community (Misiones Province)

Citing the need to produce a strategic plan for tourism development and service modernization, the Misiones provincial government is

attempting to dispossess the Yriapú community of the land it has ancestrally occupied. In March 2003, the Puerto Iguazú Town Council (*Consejo Deliberante*) lent its support to the Provincial Master Plan, which reserves only 62 hectares for the community out of the 600 they have been occupying since time immemorial. Faced with this injustice, the community has begun negotiations to obtain the titling of the 600 ha. On 17 December 2003, an agreement was signed between the Yriapú community and the Misiones provincial government whereby this latter undertook to grant a property title within 60 working days of the date of agreement and to recognise the Yriapú community its possession and ancestral ownership of 265 ha. As of July 2004, the Misiones provincial government had not complied with the agreement and had not titled the community's lands. As a consequence, the community has suffered attempts to evict them and even the burning of some of their houses. There are repeated reports of government's attempts to establish a 200-hectare tourist mega-complex on these very lands.

CERD's observations and recommendations

Having considered CELS' alternative report, the Committee made the following observations and recommendations to the Argentine government:

Given the lack of adequate protection of ancestral lands in Argentina, it recommends the adoption of measures leading to the effective implementation of ILO Convention 169; the adoption, in consultation with the indigenous peoples, of a general and effective policy to recognise property titles and demarcate ancestral territories; the adoption of measures to safeguard indigenous rights over ancestral land, particularly sacred sites, guarantee their access to justice and recognise the legal status of indigenous peoples and their communities in their traditional ways of life.

In turn, given the insufficient information provided by the state with regard to the representation of indigenous peoples in federal, provincial and municipal posts, it reminds the government of the recommendations

already made with regard to the need to establish a Coordinating Council of Indigenous Peoples (Consejo Coordinador de Pueblos Indígenas) within INAI and recommends that it adopt, in consultation with the indigenous peoples and their communities, the necessary measures to implement a programme of intercultural and bilingual education with full respect for their identities, cultures, languages and histories.

Responses to indigenous complaints

Police violence and torture do not constitute a crime

On 16 August 2002, around 100 police officers, most in civilian clothing and carrying firearms, entered the territory of the Nam Qom community of Formosa, beating and mistreating men, women and children. Eight people were arrested, held incommunicado at a police station and forced to sign statements under torture. The police procedure took place in the presence of Judge Héctor Ricardo Shur, the Attorney-General Dr. Carlos Ontiveros and senior police officers, who supported and covered up for the police action. The community lodged a criminal complaint but, the very next day, without providing for or undertaking any investigative measures, the public prosecutor's office ruled that the complaint against the magistrates should not be admitted. At the end of June 2004, the final dismissal of those accused was announced, it being given to understand that the actions denounced did not form a crime. Given this lack of justice, the community have taken their case to the Inter-American Commission on Human Rights and denounced the Argentine state for violation of their human rights.

The debt to the indigenous will have to wait its turn

"We thought this government was different because, last time, Minister Alicia Kirchner told us that the president wanted to work with us. She said that his word was equal to that of a *cacique*. But now we are disillusioned. We made the mistake of trusting them." This is the kind

of protection the Guaraní community of El Tabacal feel they are receiving in relation to their rights. They are claiming a 5,000-hectare territory of traditional use in Orán (Salta), known in the area as La Loma. These lands are formally titled in the name of the San Martín de El Tabacal sugar refinery although it has never used them for production purposes. The national government had undertaken to expropriate the lands and return them to the community but it later recognised that this historic debt “could not” be paid because there was an “enormous list of conflicts and debts to which resources needed to be devoted”. It is clear, then, that the indigenous do not figure on this list. As a solution, the state offered to cover the community’s legal costs in commencing proceedings for adverse possession (“squatters’ rights”) against the Seabord Corporation, owners of the sugar refinery. The response of this company, which is also in dispute with the Kolla communities of San Andrés and Río Blanco, both in Orán, was one of repression, under the protection of a local justice system that has ears only for businesspeople. For its part, Seabord began to militarise the area by means of check points and patrols in order to prevent the indigenous from accessing it.

Development versus expropriation

Demonstrating a complete lack of respect for the constitution and international treaties, the Formosa provincial government is seeking to expropriate the lands of the Pilagá people in the community of Campo del Cielo in Bañado La Estrella. In 1985, the community received the communal property title to their ancestral lands but, on 15 April 2004, the provincial parliament approved *Expropriation Law 1439* taking back these lands for reconstruction of Provincial Highway No. 28. Two weeks later, following resistance on the part of the communities and a number of judicial submissions, the Formosa government decided not to expropriate the lands but confirmed that the road would still be built, consequently flooding the Pilagá people’s territory.

The project, which is being undertaken with a loan from the Inter-American Development Bank, promises that it will leave 4,000 hec-

tares of Campo del Cielo in the hands of the Pilagá community but that 2,000 will be flooded, affecting a school, an aboriginal cemetery, three *criollo* villages and 10 further communities. The protection measure proposed for the work, which is likely to affect around 6,000 people, is the construction of a land embankment. With the backing of the Environment and Natural Resources Foundation (*Fundación Ambiente y Recursos Naturales*), the people affected will in June present an appeal for constitutional protection to the Supreme Court of Justice of the Nation. This appeal has already been declared admissible.

Old and new threats

Liviara Community (Jujuy Province)

In 2002, Jujuy Province granted a gold mining concession on the Orosmayo River to the Luis Losi S.A. company and César Daniel, without the consent of the community whose territory this lay within. Gold washing is carried out using cyanide, which is dumped untreated into the waters of the Orosmayo River, from which the community takes its water. The community asked the province to put a halt to the mining due to the serious environmental contamination that was occurring but the province claimed that the mining activity created jobs in the region and that, for reasons of economic development, it could therefore not terminate the mining concession. The Liviara community tried to lodge an appeal for constitutional protection in order to put a halt to the mining activity but it was declared inadmissible because the indigenous community lacked legal status. The community therefore obtained legal status and re-submitted the action in 2004, two years after the mining had started, with the territory now completely devastated and the Orosmayo River heavily contaminated.

Dams and dikes for the Corcovado river (Chubut)

During December, and in the context of the World Summit on Climate Change, the Mapuche community Pillán Mahuiza submitted a very seri-



Simón Pérez, cacique of the Wichí community Eben Ezer, which the Salta government put up for auction. Photo: Greenpeace Argentina

ous complaint. It related to the future construction of six dams and seven dikes along the Corcovado or Carrenleufú River on the part of the Santander business group. If this megaproject goes ahead, the community will be submerged 60 metres under the water and 11,000 hectares of forest will be lost. The national authorities justify it by referring to the country's energy crisis. In order to defend the river and both indigenous and non-indigenous inhabitants, the community has begun to build a united defence front involving various social and union organisations.

Natural reserve stripped of status and sold

In an area of transitional forest in Salta Province, the Wichí community of Eben Ezer is being harassed by the local government to abandon its ancestral lands. In March, the government, which had previously created the General Pizarro Nature Reserve on these lands, passed a law deciding that the lands should be stripped of their status and put up for public auction in order to incorporate them into the soya market. The auction took place on 24 June despite the protests of the indige-

nous, *criollo* settlers and environmentalists. And yet despite the encroaching clearance, the community is refusing to leave.

Organisation and resistance: indigenous responses

Women organising

On 23 April, the IV Meeting of Aboriginal Women of Tartagal (Salta) was held with the participation of Wichí, Chorote, Qom, Guaraní, Tapiete and Kolla women. The meeting consisted of a series of discussion workshops on land/territory, violence, education and health. The participants demonstrated their firm conviction to work alongside their communities' male leaders to make indigenous rights a reality and their strong desire to lead processes of struggle for their demands. But their goal is to develop their own organisation not only to face up to daily problems but also to give direction to their communities' futures.

Atilio Curiñanco and Rosa Nahuelquir against Benetton

According to news circulating in the international press, the Tierras Sud Argentino company of the Benetton family, which owns almost 900,000 hectares of Argentine Patagonia, offered to donate 2,500 ha to Nobel Peace Prize winner, Sr. Adolfo Pérez Esquivel, so that he could transfer them to Mr and Mrs Curiñanco-Nahuelquier, a Mapuche couple. In 2002, the couple were denounced as having usurped the land and were evicted from the plot by Benetton but, in 2004, the case was dismissed by the courts, although they failed to recognise the couple's ownership of the land, which was the main reason behind their claim. During November, the couple travelled to Rome where they met with Luciano Benetton but, before the meeting could take place, the news of the "generous" donation had already been made public in all the media. "They can't donate what isn't theirs," retorted the couple, who was accompanied by the Mapuche-Tehuelche organisation "*11 de Octubre*". □

CHILE

2004 was a year of transition in terms of Chile's indigenous policy, marked by the conflict over Mapuche territorial rights. The government, by means of repression, achieved its short-term objectives of limiting direct action over land claims, clearing a path for mega-projects and making the southern region of Chile relatively governable in the interests of a logging industry that increased its exports. On the indigenous side, progress was made in the processes of reorganising the social movement, affirming its discourse on territorial identity, consolidating its means of communication (newspapers, Web sites, radio), extending its repertoire of protests and strategies for defending indigenous rights, and turning round an adverse environment. From a long-term perspective, the balance is favourable to the indigenous movement, which has managed to draw the attention of the international human rights system to the Chilean state. The weakness in the Chilean democratic transition is clear: indigenous rights, assessed by an international standard that became established as the central yardstick in 2004. The Chilean state was thus specifically made more aware of the United Nations bodies.

The official "New Deal" policy

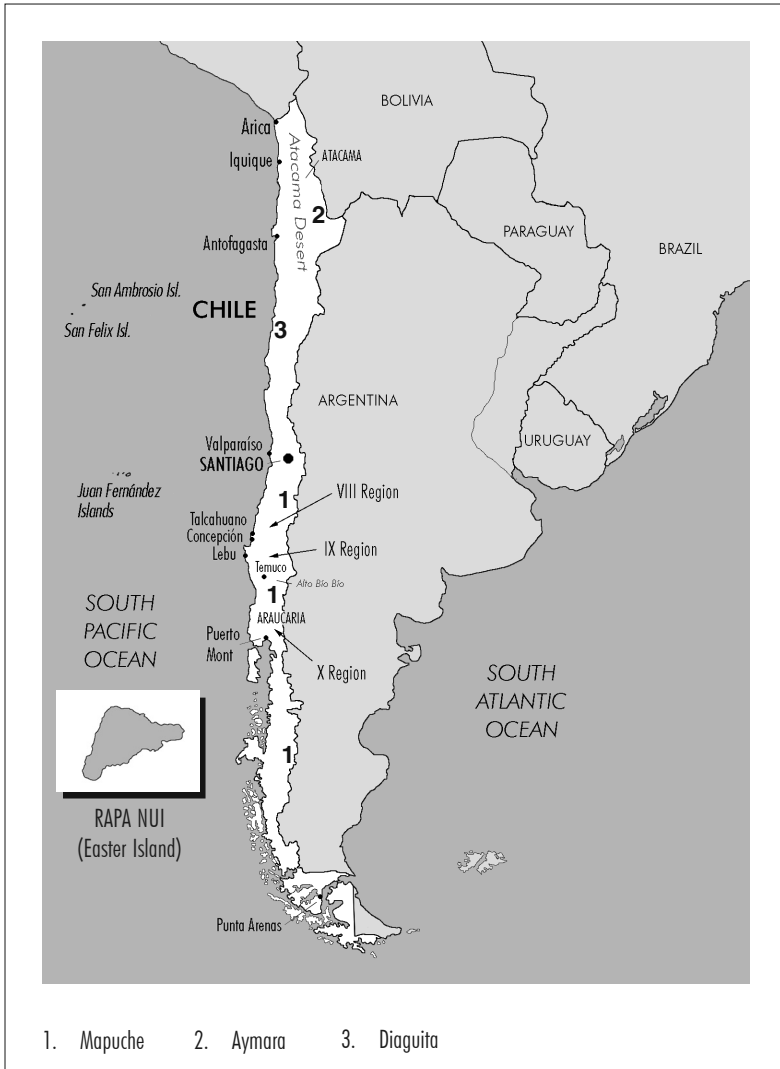
The year began with a "Coordinating Meeting on Public Policies for the Indigenous", chaired by Under-secretary for the Interior Jorge Correa Sutil, and attended by the public bodies involved in this issue. At the same time, the courts issued warrants for the arrest of two indigenous *Lonkos*, Pascual Pichún and Aniceto Norín,¹ in order to enforce the sentences passed under the anti-terrorist law, which has been described as a clear transgression of the guarantees of due process. To

this must be added the sentence passed on leader Víctor Ancaf and a press campaign of a racist slant. Alongside this, preparations were taking place for the trial of ten members of the Arauco Malleco Coordinating Body (*Coordinadora Arauco Malleco*), accused of “illegal terrorist association”.

In terms of its agenda, the government postponed until April the announcement of a “new policy” to replace the old one created at the start of the transition. To this end, an advisory commission was formed at the end of 2001 under the name of the “Commission for Historic Truth and a New Deal” (*Comisión de Verdad Histórica y Nuevo Trato*). This body, it should be noted, bore no resemblance to the internationally prestigious model of Truth Commissions, either in terms of its mandate, composition, processes or context of transitional justice. On the contrary, this commission lacked those essential attributes and operated in isolation from the contingent reality, during one of the periods of greatest human rights violations of indigenous peoples. The lack of authority and non-binding nature of the recommendations issued by this unusual Chilean commission, published in October 2003, showed up the government itself, which took longer than agreed to respond and, in the end, rejected the fundamental recommendations made by the Commission.

On 16 April 2004, the government presented its own version of the “*New Deal Policy*”. This notes three guiding principles: a) recognition of the rights of indigenous peoples, expressed via a promise to insist on ongoing constitutional reforms that establish the existence of indigenous peoples, and via the delayed ratification of ILO Convention 169; b) a poverty reduction policy entitled “development with identity”, as stated in the Inter-American Development Bank’s development programme (IDB-Orígenes) and the continuation of “land restitution” policies for the indigenous and c) the adaptation of the state to cultural diversity.

In practical terms, the *New Deal Policy* has generally been considered as “just more of the same”. Guiding principle a) on recognition of rights proposes an initiative for constitutional recognition that envisages no consultation and is empty of all content. Indeed, in practice, from April to December 2004, no effective steps were taken to proceed



either on the issue of constitutional reform or on that of ratifying ILO Convention 169. On the contrary, there was a phase of legislative back stepping, such as the attempt to repeal the status of protection governing indigenous lands. Guiding principle b) on development, for its

part, added nothing fundamentally new - either in terms of programmes or resources - to that which already existed (IDB programme and CONADI² funds). The policy also included a number of instructions to public institutions that have been very scantily applied, the old adage of "complying but not fulfilling" springing to mind. Such was the case of the instruction requiring consultation with the indigenous on investment processes. This is actually established in article 34 of the *Indigenous Law* and yet it continues to be systematically overlooked.

The announcement of the new policy was eclipsed, moreover, by events at the time of its launch. In addition to the above noted court cases was the president's snub to more than 5,000 Lafkenche who were supposed to meet him at Lake Budi for a previously arranged meeting (10.03.2004) at which they were to submit proposals for protection of their coastal rights. Weeks later in the Upper Bio Bio, the ENDESA company took a decision to press on with the filling of the Ralco Hydro-electric Plant dam, flooding the Quepuca Ralco cemetery before Pehuenche families could rescue the remains of their ancestors. The flooding of the Pehuenche cemetery and valley, in the face of the authorities' apathy and the state's failure to comply with obligations undertaken in the Agreement for a Friendly Solution signed before the Inter-American Commission on Human Rights (IACHR)³ in October 2003, bears the hallmark of ridicule in one of the symbolic cases of indigenous rights violations during the democratic transition. It is hardly surprising that the indigenous are asking themselves, "New Deal? What New Deal?"

Changed rhetoric on indigenous public policy

The innovative aspect of the "New Deal" policy lies in its rhetoric. It incorporates into official language the notions of *recognition* of the rights of indigenous peoples, *restitution* of lands and *reparation*, as principles of indigenous policy. This change in official discourse is no small thing. It must be recalled that, at the start of the democratic transition, talk of indigenous rights and autonomy was brutally suppressed, and the state's official indigenism opposed the alternative discourse of

“development with identity” in terms of overcoming poverty, and promoted a narrow definition of indigenous lands. Today at least both sides, state and indigenous peoples, are talking the same political language: the rights of indigenous peoples. This is an area that has its own rules of validity and its own standards for enforcement and fulfilment.

The indigenous movement has forced this change in language by challenging the state from an international human rights point of view.

The “Chile File”

In 2004, a large “Chile File” began to take shape, comprising a series of reports and recommendations from international bodies recounting serious violations committed against the rights and fundamental freedoms of indigenous people during the democratic transition, along with the systematic delays with which the “Chilean model” was fulfilling state obligations to recognise and safeguard indigenous rights.

In May 2004, the UN Special Rapporteur, Rodolfo Stavenhagen, presented a report on his July 2003 mission to Chile to the UN Commission on Human Rights.⁴ This provides a summary of the marginalisation and denial that indigenous peoples are suffering under Chilean sovereignty. He assessed the situation of indigenous rights in Chile by international standards and noted a lack of protection, particularly with regard to their rights to natural resources and territory. In his recommendations, in addition to insisting that Chile should fulfil its obligations to adapt internal legislation, he specifically states that “under no circumstances should legitimate activities of social protest or demand on the part of indigenous organisations and communities be criminalized or penalised.” He adds that, “accusations of crimes taken from other contexts (“terrorist threat”, “criminal association”) should not be applied to actions related to the social struggle for land and legitimate indigenous demands.”

In October 2004, Human Rights Watch presented the results of its investigations in Araucanía, establishing that the use of the anti-terror-

ist law to try the Mapuche accused of acts of violence was in violation of fundamental procedural guarantees. In the report entitled "Undue Process: Terrorism Trials, Criminal Courts and the Mapuche in Southern Chile", HRW documents cases of police abuse against the Mapuche in southern Chile. The case study is backed up by reports from other human rights organisations, such as the International Federation for Human Rights, the International Women's Human Rights Law Clinic,⁵ and even ministerial reports such as that produced by the Araucanía Norte Health Department in September 2004, which documents serious violations of the rights and dignity of children and elderly Mapuche in the José Guíñon community.⁶ The HRW report, embargoed in Chile, was widely distributed among international organisations as undeniable evidence.

In December 2004, the UN Committee on Economic, Social and Cultural Rights submitted its observations and recommendations for compliance to the Chilean state in relation to the International Covenant on Economic, Social and Cultural Rights (ESCR). Having analysed the background and listened to presentations from the government and Mapuche delegates, the Committee stated in its report that

We note with concern the lack of constitutional recognition of indigenous peoples in the State party and observe that these peoples, notwithstanding the existence of various programmes and policies aimed at improving their situation, remain in a disadvantaged situation in terms of enjoying the rights guaranteed by the Covenant. We also regret that the State party has not ratified ILO Convention 169 (1989) and that the outstanding claims for indigenous lands and natural resources continue to give rise to discrepancies and conflict.... the Committee recommends that the State party should not apply special laws such as the Law on State Security (Nº 12927) and the Anti-terrorist Law (Nº 18314) to actions related to social struggle for land and the legitimate demands of the indigenous.⁷

In this same line of turning to the international system, nine complaints were made to the IACHR during 2004 against the Chilean state, in addition to the cases submitted in 1996 and 2002. The IACHR also agreed to a special hearing during its 122nd period of sessions, in Washington,

so that a Mapuche delegation could give a general overview of the situation of human rights violations against Chile's indigenous population.

Faced with this escalation of international questioning, the government has had to give successive explanations, and moderate its policies of repression. However, it has taken no effective steps to comply with the recommendations made by the international human rights system. To date, the Chilean government has prioritised its obligations towards the system of international trade. It is this disjunction between systems and obligations that lies at the root of the issue.

Harsh structural context for natural resources

From an official point of view, 2004 was a splendid year, in both economic and commercial diplomacy terms. GDP grew by 5.7%, the highest rate for seven years and the Free Trade Agreement with the United States came into force, in addition to agreements with South Korea and the European Union. A summit of the Asia Pacific Economic Cooperation (APEC) forum took place in Chile in 2004, and the FTA with New Zealand and Singapore was negotiated behind closed doors. In short, the primary export model was intensified, behind a legal shield of treaties. This has grave implications for indigenous peoples, their spaces, and territorial and property rights. In this context of greater market liberalization, 2004 saw increased exports and expansion of the logging, mining and fishing industries, which by tragic coincidence all took place in regions of indigenous settlement.

The logging industry increased its exports by 33% in 2004 to more than US\$3 billion. Its projections for 2010 indicate that the sector could export up to US\$4.8 billion, with investment of around US\$3.2 billion. This implies a demand for new plantations of around 100,000 hectares per year and would lead to fierce pressure on Mapuche lands and their microbasins, along with a definitive regional redesign. This is the aim of the regional and inter-district plans, approved in 2004, which consolidate the reclassification of spaces in southern Chile that commenced

two decades ago, adapting spatial structures to the requirements of the logging and tourist industries.

To counter social resistance, the logging industry has lobbied fiercely for repressive policies towards the Mapuche to be maintained. At the same time, it has managed to defuse international campaigns whereby ecologists were holding up the Mapuche situation as justification. The main logging companies reached an agreement with a group of Chilean and North American environmental NGOs towards the end of 2003 to abandon their campaign in exchange for the promise of a moratorium on the felling of native forests, along with the application of forest certification. By the end of 2004, the environmentalists realized with astonishment that waste from their partners' new pulp mill in Valdivia had caused an environmental disaster of huge proportions in wetlands protected by the Ramsar Convention and the main refuge of black-necked swans in the Southern Cone. In order to save the wetlands and the swans, the company proposes diverting the waste pipe to the Mapuche-Lafkenche coastline.

Further potentially conflictive situations arose during 2004 in terms of reforms to the systems of natural resource ownership (lands, waters, coastlines, minerals) and intellectual property, as part of the contractual obligations of the FTA. Work began on a draft bill to deregulate and liberalize access to genetic resources and traditional knowledge. Its promoters (the Office of Agrarian Studies and Policies – ODEPA and the Ministry of Agriculture) have expressly ruled out the indigenous communities' right to free, prior and informed consent.

Rejection of article 17 reform and indigenous progress

For the indigenous, 2004 began with dozens of local territorial assemblies, restoring the institution of the *Trawun* or Parliament, the meeting at which news would be shared, debates held and agreements reached. Meaningful and noteworthy actions were the campaign against the APEC meetings in Pucon and Santiago and the Mapuche Social Forum, which challenged the ethno-centric Chilean Social Forum (November 2004), calling for plurality within the country.

In terms of the movement's social construction, the year was distinguished by a strengthening of networks and media, mixing tradition with modernity. Two landmarks symbolised this powerful internal process of collective self-affirmation: the Meeting of Mapuche Communicators of Wallmapu Chile-Argentina (*Encuentro de comunicadores mapuche del Wallmapu Chile-Argentina*, October 2004), which brought together more than 100 representatives from independent Mapuche media on both sides of the Andes, experts in all forms – press reports, poets, actors, muralists, webmasters, video makers, radio presenters etc.; and the First *Trawun* of Native Authorities in Ancestral Wisdom (*Primer Trawün de Autoridades Originarias en la Sabiduría Ancestral*), which brought together the repositories of ancestral *Machi*, *Longo*, *Ngenpin* and *Weipife* wisdom at Lake Budi (November 2004).

The skills and strengths of the indigenous movement were put to the test with the attempt to repeal the statute of protection governing indigenous lands by amending article 17 of *Law 19,253*. This government-backed bill was approved in principle by the Chamber of Deputies on 8 September 2004. When they heard of this serious situation, Mapuche organisations of all tendencies, both old and new generations, called a meeting in the same place as in 1978, the Temuco Retreat (*Casa de Ejercicios de Temuco*) - the birthplace of the contemporary Mapuche movement - and employed their full repertoire of protest actions with mass assemblies, marches, the storming of political offices, public letters, Internet campaigns, political advocacy, lobbying of authorities and parliamentarians, until they managed to achieve a realignment of the political parties, a government retraction and a halt to the legislative process. In passing, they precipitated the fall of the under-secretary for the Ministry of National Planning (MIDEPLAN) and new president of the Latin American Indigenous Fund, who had maintained that the plan to divide up the indigenous lands into minuscule plots of 500 m² each and lift the ban on their sale was not in violation of indigenous territorial rights.

2004 was also a year of municipal elections and, in line with the regional trend, indigenous people played a greater role in these elections via increased numbers of autonomous candidates standing for election. The results could hardly be called satisfactory for the inde-

pendent candidates, in an electoral system that favours party coalitions, although the overall number of indigenous councillors and mayors elected throughout the regions did increase.

In the north of Chile, the Atacameña community of Toconce won a long court case against the state company, ESSAN, in a ruling of the Supreme Court dated 22 March 2004. This established that ancestral indigenous ownership of the waters constituted full ownership and possession (*dominio pleno*), in accordance with *Law 19,253*. However, this achievement was overshadowed by the persistent failure of state bodies and private companies to respect these ancestral rights, as in the case of the Lauca National Park, where the Ministry of Public Works attempted to extract water that would affect the peat bogs (*bofedales*) of the Aymara communities. These latter prevented them from doing so.

And more than a century after they had been declared extinct, in 2004 the Chilean parliament recognised the legal existence of the Diaguita people.

Not guilty verdict in trial for illegal association

The year began with the imprisonment of Lonkos Pichun and Norín, sentenced for the crime of terrorist arson in a controversial double trial. In a further trial, this time for illegal association, they were absolved of the serious charges, in a notable ruling dated 9 November 2004 from the Temuco Court, which stated that:

With regard to the accused, Pascual Pichún and Aniceto Norín, all evidence agrees that they hold the position of “logko” of their respective “lof”, in other words, they are leaders, they are the authority within that unit known as a “lof” in the socio-political organisation of Mapuche society and which in its Spanish concept is identified as a community. Hence the ultimate aim of the conduct of these men in relation to their association would appear to be aimed at recovering the lands they consider to be their own given that their ancestors held them, ruling out in this regard any terrorist intention in their actions.⁸

For the first time, a Chilean court had indicated - as a given fact and quite clearly - something that was universally obvious: *that the indigenous consider the lands to be theirs given that their ancestors held them, and that their objective is to recover them.* This simple truth has taken more than a century to be admitted in Chile, at indescribable cost and effort on the part of the Mapuche. This ruling, along with the “Chile File”, brings to a close a period that commenced in Lumaco in 1997.⁹ The proverbial patience and obstinacy of the Mapuche shows signs of growing stronger yet. □

Notes

- 1 www.derechosindigenas.cl
- 2 CONADI: Corporación Nacional de Desarrollo Indígena (National Corporation for Indigenous Development). Ed.
- 3 IACHR, *Informe n° 30/04, Petición 4617/02 Solución Amistosa, Mercedes Julia Huenteao y Otras versus Chile*. 11 March 2004. www.cidh.org/annualrep/2004sp/Chile.4617.02.htm; and *Informe de estado de (in)cumplimiento de Acuerdo de solución amistosa*, 14 October 2004. www.mapuexpress.net/?act=publications&id=42
- 4 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, presented in accordance with resolution 2001/57 of the Commission. Mission to Chile. E/CN.4/2004/80/Add.3.
- 5 **Cintras, Instituto de la Mujer, La Morada, and IWHR, International Women’s Human Rights Law Clinic, 2004: State violence in Chile. An alternative report to the UN Committee Against Torture.** Chile.
- 6 Araucanía Norte Health Department, *Informe Diagnóstico y de Intervención Comunidad Cacique José Guiñon Ercilla*, Angol, September 2004.
- 7 “Examen de los informes presentados por los estados partes de conformidad con los artículos 16 y 17 del Pacto. Observaciones finales del Comité de Derechos Económicos, Sociales y Culturales. Chile” E/C.12/1/Add.105, 1 December 2004.
- 8 Ruling of the Oral Court in the Criminal Court of Temuco, 9 November 2004, R.U.C. 02 00 14 24 99 – 0; R.I.T. 080/2004.
- 9 www.mapuexpress.net ; www.derechosindigenas.cl ; www.mapuche-nation.org

See also: www.corma.cl ; www.emol.com ; www.mideplan.cl ; www.congreso.cl



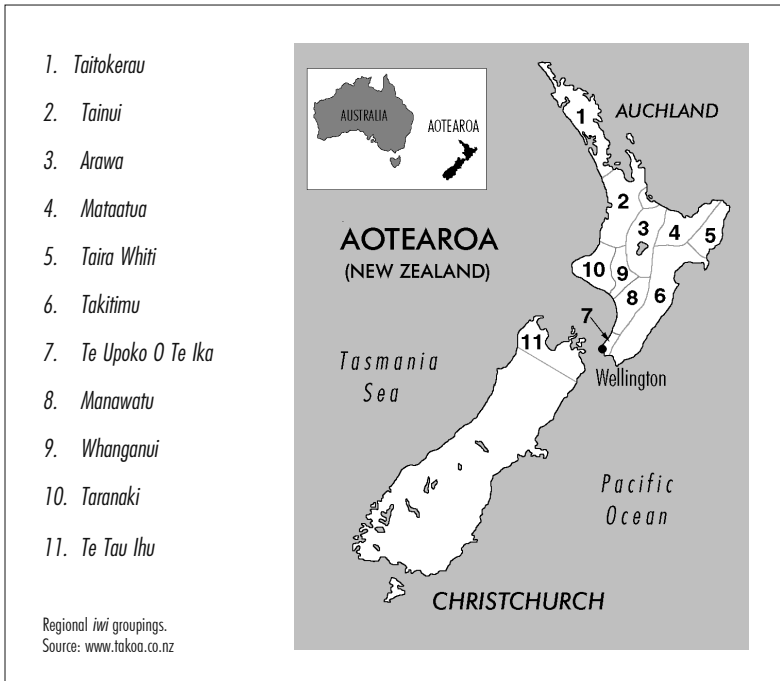
AOTEAROA - NEW ZEALAND

“Race relations” and the place of the Treaty of Waitangi as a blueprint for nation building were very much at the forefront of the national political agenda in 2004. The broad political consensus shared by both National and Labour-led governments in New Zealand over the past decade collapsed in the wake of the soaring political popularity of Don Brash, the new leader of the National Party, the main opposition political party in the New Zealand Parliament.

The legitimacy of policy initiatives and programmes that specifically target Māori in order to reduce the relative socio-economic disparities that exist between indigenous communities and other New Zealanders, and the role of the Treaty of Waitangi in managing contemporary relationships between indigenous communities and the Crown, have come under sustained attack.

The Treaty of Waitangi under threat

The underlying theme of Brash’s widely reported speech to the Orewa Rotary Club in January 2004 was the apparent “threat” that the Treaty of Waitangi settlement process represented for the future of the country. Throughout the speech he repeatedly emphasised what he claimed was “a dangerous drift to racial separatism” which undermined “the essential notion of one rule for all in a single nation state”. In a move clearly designed to tap into public resentment, Brash argued that the Treaty of Waitangi was an archaic relic of the past, and on that basis should possess no more than a symbolic role in New Zealand society. In rejecting notions of the Crown’s “partnership” with *iwi*, hapū and urban Māori communities, Brash has clearly signified that a return to



more traditional constitutional concerns is on the cards should the National Party be in a position to form a government at the next election:

We intend to remove divisive race-based features from legislation. The “principles of the Treaty” – never clearly defined yet ever expanding – are the thin end of a wedge leading to a racially divided state and we want no part of that. There can be no basis for special privileges for any race, no basis for government funding based on race, no basis for introducing Maori wards in local authority elections, and no obligation for local governments to consult Maori in preference to other New Zealanders. We will remove the anachronism of the Maori seats in Parliament. ... Having done all that, we really will be one people – as Hobson declared us to be in 1840.¹

Stung by the strong public support for Brash in recent opinion polls, the Labour-led government announced a series of abrupt U-turns,

hoping to placate the concerns of the wider electorate. In a concession to the publicity generated by Don Brash, Prime Minister Helen Clark is reported as saying that the government may have moved ahead of public opinion on Treaty issues. This follows the appointment of State Services Minister, Trevor Mallard, to a new role as "Co-ordinating Minister of Race Relations" to undertake a comprehensive review of policy initiatives and programmes that specifically target Māori, and an examination of legislative references to the principles of the Treaty of Waitangi. This has occurred amidst calls for an inquiry into constitutional arrangements, including the place of the Treaty of Waitangi.

References to the Treaty of Waitangi in state legislation represent a significant concession after years of concerted struggle by Māori to combat the racism that has underpinned New Zealand society and the discriminatory practices of state institutions. The ideological battle against the specific programmes and initiatives that target Māori communities as a symbol of this victory has been raging ever since – as opponents claim the mantle of the anti-racist movement in their battle against "reverse racism" towards Pākehā. Far from a "level playing field", as opponents of affirmative action claim, racism is a pervasive force in New Zealand society. Programmes that consciously address this racism are absolutely critical.

The impact of Brash's Orewa speech, however, has been to make the expression of the bigoted and racist ideas of some New Zealanders publicly respectable. Brash has provided them with a more acceptable political figure to hide behind, while the attacks on Māori, implicit in his public pronouncements, represent a tacit coded appeal to cruder racist attitudes. It is not simply coincidental that the fascist organization, the National Front, is seeking registration as a political party for next year's elections on the basis that the "public mood is right for its militarist and anti-immigrant stance".²

Foreshore and seabed

On 18 November 2004, one of the most contentious and draconian pieces of state legislation was passed by 66 votes to 53 in the New Zea-

land parliament. The *Foreshore and Seabed Act* was largely a response to the controversy that erupted over a Court of Appeal decision in June 2003 that challenged the Crown's long-held assertion that it owned the foreshore and seabed. The Court found that Māori may have customary interests in the foreshore, which could lead to the granting of private title by the Māori Land Court.

Against a background of growing public hysteria, fuelled in part by cynical political opportunism and sensationalised media reports that Māori would block off public access to the beaches, the government released its initial plans for the foreshore and seabed in December 2003. The policy entailed introducing new legislation that would effectively extinguish Māori customary rights in the coastal marine area. The government then embarked on a process of "consultation". Despite the fact that Māori overwhelmingly rejected the government's proposals, the government did not alter its proposed approach.

In January 2004, the Waitangi Tribunal's Report on the Crown's Seabed and Foreshore Policy condemned the government's policy as being in substantial breach of the Treaty of Waitangi:

*The policy clearly breaches the Treaty of Waitangi. But beyond the Treaty, the policy fails in terms of the wider norms of domestic and international law that underpin good government in a modern democratic state. These include the rule of law, and principles of fairness and non-discrimination.*³

Protest and the formation of the Māori Party

The lack of accountability and democracy in the negotiations over the foreshore and seabed legislation generated intense anger and resentment. On 5 May 2004, a protest *hiko*i (a walk or march) arrived in Wellington with up to 20,000 people who strongly opposed the government's plans. The *hiko*i, the largest protest since the land rights movement of the 1970s, had set off from the Far North of New Zealand's North Island thirteen days earlier, picking up thousands of supporters as it marched towards the nation's capital. The government's Māori MPs came in for heavy flak and many speakers reignited the call for a

Māori party to be established, saying it was the only vehicle for Māori political aspirations. The Prime Minister, Helen Clark, tried to marginalise the *hikoi*, describing the marchers as “haters and wreckers”.

The government’s proposals on ownership of the foreshore and seabed also exposed bitter internal divisions amongst the Māori members of the governing Labour Party itself. The Associate Maori Affairs Minister, Tariana Turia, announced her resignation from Parliament and the Labour Party over the issue. With growing dissatisfaction with the Labour government among Māori voters, Turia was critical in establishing a new Māori party to contest the next general parliamentary elections. As co-leader of the Māori party, Turia subsequently re-won her Te Tai Hauauru constituency (a Māori constituency stretching from Putaruru and Tokoroa in the north to Porirua in the south) in a by-election in July 2004, winning around 90 per cent of the votes cast.

Despite this, the Foreshore and Seabed Act will come into effect on 17 January 2005 and vests all parts of the foreshore and seabed not currently “subject to a specified freehold interest” in the Crown “as its absolute property”. The Act has radically changed the legal situation in New Zealand in relation to Māori customary rights and customary ownership of land characterised as foreshore and seabed. It prevents Māori from access to judicial recourse by removing existing legal routes for Māori to have their customary rights and ownership in the foreshore and seabed investigated and legally recognised. The government is actively disregarding the customary rights that were guaranteed under the Treaty of Waitangi and which are also recognised in international law. In this way, the legislation represents an unparalleled attack on the rights of *iwi*, hapū and urban Māori communities. □

References

- 1 Don Brash in a speech delivered in January 2004 at Orewa Rotary Club.
- 2 *Sunday Star-Times*, 7 March 2004.
- 3 Waitangi Tribunal’s Report on the Crown’s Seabed and Foreshore Policy 2004: xiv.

AUSTRALIA

In 2004, the national conservative government of Prime Minister John Howard both deepened and widened its attack on the identity, institutions and aspirations of Aboriginal peoples and Torres Strait Islanders.¹

Continental context

Australia is the flattest and driest of the world's continents, and its physical isolation has allowed the development of a unique natural and cultural history. Even today, there is a belief among many or most Australians that what goes on in the rest of the world need not concern them. The Torres Strait Islanders off Australia's northeastern tip, where an Ice Age land bridge was submerged leaving many small islands and coral formations inhabited by a Melanesian society, are proud of their unique marine-based identity and culture. Their regional and local administrative and semi-representative bodies are working towards some form of regional self-governance, although issues of Islander sea rights and ownership are still unresolved.²

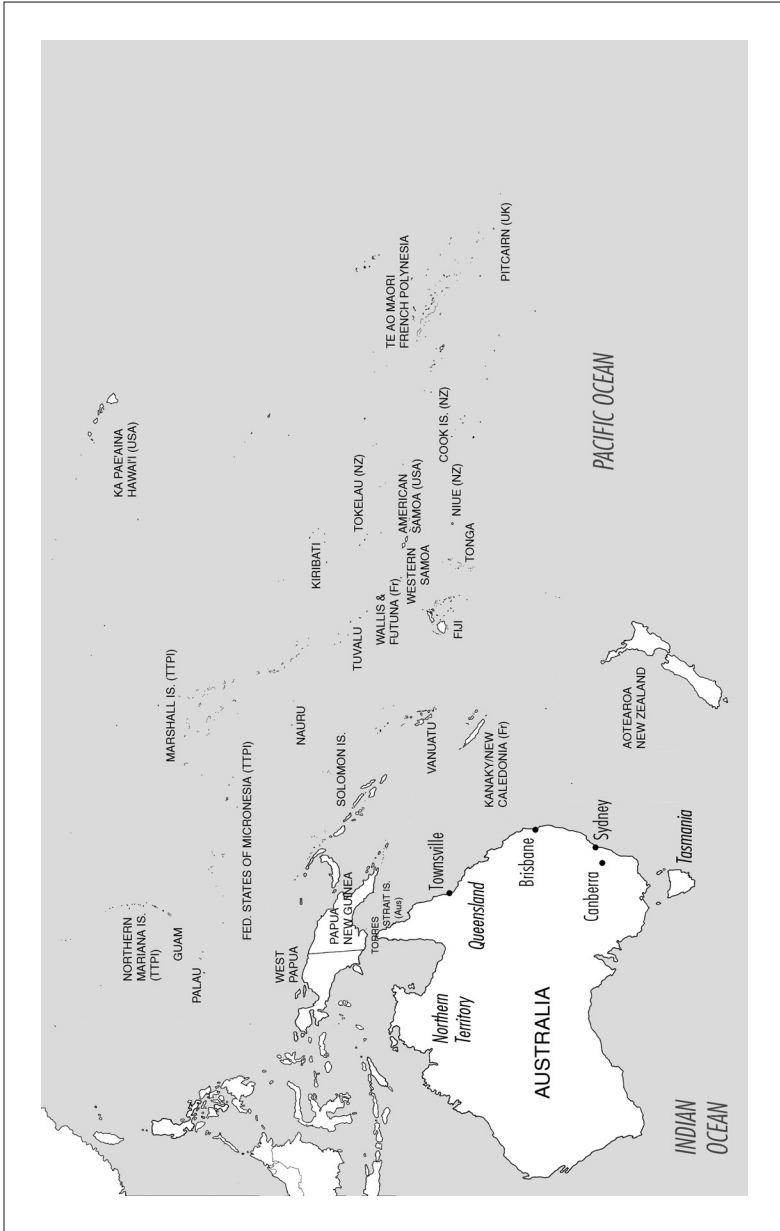
The rest of Australia and its adjacent islands is inhabited by Aboriginal peoples whose cultural and social diversity reflect their ancient habitats of Wet Tropics, hot deserts, chilly Antarctic (or southern) Ocean coasts, with highlands or low mountains in a few regions, as well as broad savannah lands and rich green lands in much of the south-east, where European farming has been practised. The story of the British conquest from 1788 onwards, long considered "peaceful" until recent historians such as Henry Reynolds set the record straight,³ and of black-white relations to the present day, is well surveyed by David Day,⁴ while the initial precedent setting relations between Brit-

ish officials and Sydney Aboriginal locals is miraculously retold in detail and bold relief by Inga Clendinnen.⁵ An even broader picture is only now coming into view, and as yet has only scraps of literature available: the adaptation and survival of indigenous peoples for at least 50,000 years in Australia through sometimes catastrophic and frequently dramatic climate change. This story speaks so urgently to our own era that further study is certain.

Human relations

Meanwhile, “caring for country”, whether land, freshwater or sea “country”, remains a defining issue in black-white relations. While settlers often regarded Aborigines as primitive and ignorant for not visibly tilling the soil or herding in the European way, it is now known that Aborigines did indeed modify the physical environment in planned and seasonal ways in order to maximise their harvest of various food species of flora and fauna. White displacement of Aboriginal populations has meant that the physical landscape has been changing, while the hard-hoofed animals brought by Europeans to virtually the entire continent have created a direct and indirect disaster in terms of land conservation and native species.

Furthermore, the pastoral frontier that covered almost all of remote or “Outback” Australia, even where vast spaces are required to sustain small herds in virtually unsustainable enterprises, has created a modern “traditional” way of life for many peoples not unlike the fur trade of Canada, a blending of new economic requirements with traditional subsistence cultures. This has allowed many people across the north, centre and west of the continent to remain on or near their traditional homelands and to continue traditional ceremonies and food-gathering, even at the price of miscegenation between white cowboys and indigenous women and the subsequent removal of many culturally and visibly Aboriginal children⁶ into a Dante-like circle of Hell in the white world where they are often unwanted, unaccepted and dysfunctional, despite a few courageous “success” stories.⁷



Another form of Hell is epitomised in Queensland's policies, said to be the "inspiration" for South Africa's *apartheid*. Queensland, the huge northeast state of Australia, began by shooting Aborigines along the settlement frontier and later incarcerating them in camps or reserves. These often formed concentration camps from which cheap forced labour was drawn. By systematically under-feeding and ignoring basic health needs, and with political leaders of all persuasions consciously breaking what few weak laws existed, Queensland created a sort of slow genocide in instalments. Only in recent decades have a few brave white individuals and some fortuitous economic factors broken this pattern.⁸ A similar pattern has, however, shaped the whole continent's indigenous-white relations.⁹

Social fallout

Not surprisingly, the social results of physical dislocation and dispossession, and of punitive colonialist policies virtually up to the present day, have created a residual indigenous society with disastrous social statistics and a rich oral tradition of bitterness. Unlike the other British settler dominions, in Australia there were no political-legal settlements with the indigenous peoples (despite some British attempts at such), no national framework for relations or policy, and indigenous peoples, lands, and well-being were left to the will of the settlers, exercised through their regional, and later state, legislatures. Consequently they were variously neglected or abused. Only in 1967 did a national referendum give the national government power to make indigenous laws and policies that overrode the states' powers, but this has been used only sparingly since then.

Reports in the media almost weekly highlight the fact that unlike New Zealand, USA, or Canada – not to mention Norway – indigenous peoples in many areas continue to suffer poverty and ill health at levels found only in the poorest and most desperate of "Third World" countries. The Howard government refuses to consider measures or standards developed abroad, and has proscribed talk of indigenous rights, political autonomy, negotiated policies, etc. With the abolition

of ATSI¹⁰ in early 2004, there is now little chance for any alternative perspective to be heard on indigenous issues. Howard made it clear that he had dissolved ATSI because it promoted “symbolic issues”, e.g., indigenous rights, self-government needs, political recognition, etc. and that he and his government “believe very strongly that the experiment in separate representation, elected representation, for indigenous people has been a failure.”

Now Howard has found and appointed a group of individually worthy indigenous persons as an advisory council with whom he and his minister will “consult” on selected public service delivery issues and, no doubt, have photos taken.¹¹

Howard’s model of indigenous need is apparently that blacks are poor because morally flawed and in need of stern lectures and punishment by a Great White Father. This “new policy” is a return to the early failed post-war policies aimed at indigenous minorities in Australia and all other “First World” countries.

Howard has not only taken practical steps to dismantle indigenous rights during his terms in office; he has presided over a profound shift in cultural values. Under the rubric of pragmatism and mainstreaming, attitudes towards indigenous issues have regressed to the era of assimilation and paternalism. This ground will have to be regained before the process of reconciliation can begin to move forward again.

Washing black faces

In October 2004, the Howard government was re-elected on a policy of *Choice* in public services. Non-indigenous Australians would be able to choose between private facilities and increasingly rundown public hospitals, schools, etc. Within weeks, Howard revealed his new policy for Aboriginal peoples and Torres Strait Islanders: these people, if living in rural or isolated areas, were to be able to obtain or keep basic public services available to all other Australians only if they met various personal requirements.

*A remote Aboriginal community will ensure its children wash their faces twice daily in return for getting taxpayer-funded petrol bowsers [ed. "gas station pumps"] – a deal hailed by the Federal Government but condemned by the Opposition. ... As part of the deal, the West Australian Government will also undertake to "monitor and review" the adequacy of health services in an area where trachoma rates are "arguably the worst in the world".*¹²

The Labor opposition party's indigenous affairs critic Kim Carr said that,

*[the] agreement showed the Federal Government's policy of shared responsibility was unfair, as the terms were unbalanced and one-sided. ... "Indigenous Australians must be able to reach genuine agreements with government, not be forced into coercive and patronising contracts."*¹³

Omens and portents

In February 2004, the Redfern district of inner Sydney exploded in fire and blood one hot summer night, a riot sparked by the Aboriginal response to the hideous fatal impalement of a local youth on a fence, allegedly caused by police harassment and pursuit. While the world news media correctly placed the event in the context of Australia's failed black-white relations, in Australia itself, political and official spokespersons talked of the hard lives of policemen, even of bulldozing the Redfern district to remove the problem, and the "shocking" fact that some parents did not firmly control their children. They failed to note that the district youth often had fathers in jail, or already dead from hard living, or so dysfunctional as to be unable to act as parents. The official response highlighted the inability of contemporary Australia to look its most serious social problem in the eye or to address it intelligently.

Palm Island is a "tropical paradise" of ca. 3,000 inhabitants off the coast near Townsville in North Queensland, established by state officials as a punishment camp to send "troublesome" blacks to through-

out the 20th century. In late November 2004, police seized a gentle Aborigine there; he was drunk, he struggled, and died in police hands. When the autopsy results were announced some days later, it seemed unbelievable to the local people that this death could have been caused by anything but police violence. A crowd of family, friends and other local people exploded in anger, attacking the police station and burning it and nearby public buildings to the ground while the police hid inside, fearful for their lives. While the police union appealed to Australians' tough "law and order" mentality, Murrandoo Yanner and other Aboriginal leaders demanded that the era of police violence and killing of blacks come to an end, and that Aborigines stand up for their basic human rights. Queensland's Premier Beattie tried to follow the intelligent course of recognizing the validity of basic Aboriginal injustices and the authenticity of Yanner and other black leaders, while demanding that public violence and destruction of basic public facilities was not the way to solve problems. But politicians have been too long afraid to tell the truth about indigenous needs, rights and aspirations, so Australia, unlike other "First World" countries, has yet to discuss such issues intelligently.

History and prospects

Since the early 1990s, a small but loud group of writers and polemicists have been attacking the stream – or trickle – of modern indigenous policies in Australia. Apart from a vigorous few years during the Hawke-Keating Labor government, which ended abruptly in 1996, Australia has made its indigenous policy reforms piecemeal and timidly in the face of often ferocious public, industry or state opposition.

One author, Keith Windschuttle, has especially focused on "the history wars", as they are now known. First in a series of articles in *Quadrant Magazine*, then in an extended book on Tasmanian colonial history, entitled *The Fabrication of Aboriginal History* (2002), he attacked established academic historians for propagating "mythologies designed to create an edifice of black victimhood and white guilt" (2002:10). He disputes the occurrence of massacres, illegitimate dispossessions and

cultural destruction, instead arguing that "the white settlement of Australia was one of the most peaceful in history."

In Australia, a great deal of media space has been devoted to Windschuttle. His ideas are regarded as a legitimate academic challenge to mainstream views. A major victory has been won by Howard and his supporters: Australians now seem to have a choice of legitimate historical narratives, and may choose the version that lets them feel "relaxed and comfortable", to use a Howard phrase. This has profound political implications and has shifted public debate. By rewriting the past and eliminating white guilt, revisionist historians have lent intellectual weight to Howard's refusal to apologise to Aborigines for massacres, the Stolen Children, etc. By undermining the idea that white settlers caused harm to the black population, they have shifted the burden of responsibility for current suffering onto the indigenous people themselves.

Whether Howard's way is sustainable in the longer term or a mere partisan expedient soon to be forgotten, the current phase will only embitter, radicalise and mobilise indigenous politics further. Australia is already dangerously insensitive to a deeper and more threatening mix of indigenous grievances than is found in any other "First World" country, although others have paid heed and sought to heal social division through policy and political reform processes.

"Anti-terrorism" is now a national Australian policy and spending priority, at times a political fetish and diversion. In November 2004, Howard affected to believe that political violence comes not from social circumstances but from outside agitators,¹⁴ although a glance at Aboriginal social and crime statistics would challenge that. Danger will apparently only come to Australia from abroad – speaking in foreign accents, in the service of alien beliefs. Nonetheless, intra-indigenous violence, which is an epidemic, and low-level black-on-white violence, which is "under-communicated" in reports (e.g., vandalism), could very quickly and easily turn into inter-racial violence. The wonder is that it has not done so already. □

Notes

- 1 The indigenous peoples of Australia number approximately 500,000 – 4% of the total population of 20 million. —Ed.
- 2 In 1992, the Torres Islanders won the landmark case of *Mabo And Others v. Queensland*, which recognises native title as part of Australian land law. —Ed.
- 3 **Reynolds, Henry. 1987.** *Frontier*, Sydney: Allen & Unwin; **Reynolds, Henry 1995.** *Fate of a Free People*, Ringwood: Penguin.
- 4 **Day, David. 1997.** *Claiming a Continent*, Australia: HarperCollins Publishers
- 5 **Clendinnen, Inga. 2003.** *Dancing with Strangers*, Melbourne: Text Publishing Company.
- 6 These abducted children are known as the “stolen generation”. —Ed.
- 7 See for example the moving autobiography *Yami* by Yami Lester, 1993. Northern Territory: Iad Press.
- 8 For the full story, see **Kidd Rosalind. 1997.** *The Way We Civilise*. Queensland: University of Queensland Press **2000.** *Black Lives, Government Lies*. South Wales: University of South Wales Press.
- 9 **Haebich, Anna. 2000.** *Broken Circles*. Australia: Freemantle Arts Centre Press.
- 10 ATSIC was set up in 1990 as Australia’s principal democratically elected indigenous organisation. Its vision was to include indigenous people in the processes of government affecting their lives. It worked at both regional level, through its elected Regional Councils, and national level through its elected Board, advocated indigenous issues nationally and internationally and monitored the performance of other government agencies in providing services to their indigenous citizens. —Ed.
- 11 See Jull comment, <http://eprint.uq.edu.au/archive/00001086>.
- 12 *Sydney Morning Herald*. 2004. Aborigines strike fuel for hygiene deal. 9 December.
- 13 *The Australian*, 2004. PM to meet new indigenous body. 9 December.
- 14 In press conference during APEC (Asian Pacific Economic Cooperation) meeting, Santiago, Chile, 20 November 2004.

THE ISLANDS OF THE PACIFIC

The Pacific is home to some 11.4 million people distributed within three main regions, Melanesia, Polynesia and Micronesia. There are 22 island countries in the Pacific. Fourteen have achieved political independence. The remainder are still under foreign control and seeking the right of self-determination.¹

This section on the Pacific Islands looks first at the general developments in the region as a whole, then at the developments in a few selected countries.

General developments

Australia's policy of intervention

One of the most significant developments for the South Pacific island countries in 2004 was the continuation and extension of Australia's policy of intervention. This policy is justified by Australia to curtail the threat of terrorism in the region, particularly in the so-called "failed states"², which Australia fears are weak links "open to terrorists". In February 2004, Australia created a new section within the Federal Police Force to deal with trouble spots in the Pacific region.

While the Regional Assistance Mission to the Solomon Islands (RAMSI) in 2003 was a joint operation (*Operation Helpem Fren*) between Australia and eight Pacific countries,³ the interventions in Papua New Guinea (PNG) and Nauru in 2004 were interventions by Australia alone.

In PNG, the request for Australian assistance to restore financial management, as well as the whole law and justice sector (judges, prosecutors, fraud, police, etc.), came from the government and resulted in the so-called Enhanced Cooperation Programme (ECP) treaty (June 2004) under which about 60 Australian police officers arrived in Port-Mo-

resby in November 2004 to patrol the capital and help fight crime and corruption. Numbers are expected to increase to 210 by March 2005.

One controversial aspect of the ECP was the issue of immunity of all Australian personnel from prosecution under PNG law. This issue met with strong resistance from Prime Minister Sir Michael Somare, who saw in this clause a violation of his country's sovereignty. After long negotiations the clause was slightly amended, but remained basically the same since the final draft provides that "if an Australian personnel is involved in a crime of any sort, the prosecution will be undertaken in Australia, within Australian jurisdiction, *but in close consultation with the PNG counterparts* [italics added]."

Concerns as to the ability of the programme to alleviate poverty and bring sustainable solutions to PNG's problems were raised. The Australian Prime Minister, John Howard, however declared that, "a new sense of regional partnership has changed the outlook of the South Pacific." In his opinion, RAMSI and Australia's deployment of police to Papua New Guinea has helped the region "turn the corner".

In April 2004, it was reported that **Nauru** was on the verge of bankruptcy. Nauru had tried to avoid the inevitable by agreeing to Australia's Pacific Solution Programme and setting up a detention camp for people seeking asylum in Australia in return for funding. But a political crisis was hampering efforts to revive the economy and, after talks with President Rene Harris, Australia agreed to help Nauru out of its financial crisis and deploy Australian officials to run Nauru's finance department and police force. Nauru will also receive another A\$22.5 million (US\$16.4 million) in development aid over the next two years in return for extending the life of the controversial Australian-funded refugee detention centre on the island.

Fight against terrorism and transnational crime

Regional security initiatives were high on the agenda of the Pacific Leaders' Meeting in April 2004. The Secretary-General of the Pacific Islands Forum Secretariat (PIFS), Greg Urwin, stressed that the region was "being targeted because of our lack of strong uniform legislation and inadequacies in human, financial and technical resources".

This prompted another Australian initiative - the provision of A\$500,000 (US\$352,100) to help Pacific nations, including PNG, develop and implement port security plans.

Fiji, PNG, Samoa, Tonga and Vanuatu have set up transnational crime units, and a Regional Transnational Crime Coordination Centre opened in Fiji in June with funding from Australia. The center co-ordinates the sharing of intelligence information around the Pacific. Furthermore, the Australian and New Zealand governments have both contributed A\$20 million (US\$11.2 million) towards a regional police network, the Pacific Regional Policing Initiative at Nasova, Fiji, established in August. This Academy trains officers from Pacific Island countries in counter-terrorism.

There is concern that the emphasis on terrorism will displace other concrete threats such as environmental threats, the HIV/AIDS pandemic, unemployment, health and education problems.

Trade

Over the last few years, distant water fishing nations (Europe and US) have shown increasing interest in expanding their fishing fleets in the Pacific and, in 2004, the Federated States of Micronesia and the Solomons signed bilateral fishing agreements with the European Union. A similar agreement was signed by Kiribati in 2002. Under these agreements, which are valid for an initial period of three years, European fishing vessels (including French, Spanish and Portuguese) are allowed to access the Exclusive Economic Zones (EEZ) of these three countries, i.e. the area within 200 miles of the shoreline, where the coastal states have exclusive fishing, undersea mining and other rights.

Development aid and foreign influence

Funding from outside is essential to the development of most Pacific island countries (PICs), even though some of them are politically independent.

Australia is one of the biggest development partners in the Pacific. In May, Australia announced that it had doubled its annual aid to the South Pacific for the next financial year beginning in July 2004. The lion's share of funding goes to PNG. Australia places much emphasis on good governance and in 2004 Canberra spent A\$6 millions on 25 projects, all of them promoting good governance within state institutions of the Pacific Island states (law departments, public service, preparation of elections, etc). Australia also launched an A\$5 million (US\$3.580m) scheme for a Pacific HIV / AIDS project.

New Zealand funds the territories with which it has a free association agreement: Niue, the Cook Islands and Tokelau. This year, a Memorandum of Understanding was signed with Niue by which funding is pledged for the next five years for private sector initiatives. This new funding is additional to New Zealand's contribution to Niue's annual budget and the funds allocated for recovery following Cyclone Heta in January 2004. New Zealand has also signed a Deed establishing an International Trust Fund for Tokelau, a country that is soon to become independent. The fund is designed to provide Tokelau with an independent source of revenue.

China is emerging as an economic power in the Pacific. Although the states of the Pacific are relatively small, they lie in the middle of important shipping lanes and valuable fishing grounds. This year, China not only sent relief funds for victims of natural disasters in several countries of the Pacific but also donated funds to regional bodies and governments. At the 35th annual meeting of the Pacific Islands Forum, China announced that it was granting US\$20 million to fund a regional study on poverty reduction.

Taiwan's presence and influence is also growing. Taiwan is assisting the Marshall Islands, the Solomon Islands, Tuvalu, Palau and Kiribati. In Kiribati, the opposition has this year strongly warned of foreign dictation and what it calls "Taiwan's strong grip", particularly on schools and churches.

China and Taiwan were this year involved in fierce competition over Vanuatu, whose Prime Minister Serge Vohor was ousted by a vote of no-confidence just one month after he signed a communiqué establishing diplomatic relations with Taiwan despite his country's existing

ties with Beijing. In Kiribati, similar rivalry led to China's withdrawal after the government reneged on its own China policy. Taiwan had to provide doctors to fill positions left vacant by Chinese personnel. Taiwan was also left to complete the US\$4.2 million sports stadium abandoned by China.

Japan has been making donations and is funding particular projects in Fiji, the Solomon Islands, Kiribati and Vanuatu. However, its aid to Tuvalu was under fire at the latest Whaling Commission Meeting in July 2004, as Tuvalu voted in line with Japan against a motion aimed at banning commercial whaling. Anti-whaling groups strongly condemned what they called "a decade of pressure by Japan, using its political and financial muscle to buy support for its position".

The United States has Compacts of Free Association with three Pacific countries: Palau, the Marshall Islands and the Federated States of Micronesia, which guarantee these countries funding assistance. The US also "supports" its territories Guahan (Guam), Ka Pae'Aina (Hawaii) and American Samoa. In January 2004, Fiji, a signatory to the International Criminal Court (ICC), signed a bilateral agreement with the US to exempt American citizens from being prosecuted by the ICC for crimes committed in Fiji. This created an uproar among non-government organizations who claimed that the US had bullied the agreement through by saying it would otherwise withhold humanitarian aid or military support and even block Fiji's sponsored membership of the North Atlantic Treaty Organization's (NATO) codification system, NCS.⁴

The **European Union** is also a major player as far as aid is concerned, a large part of its aid being allocated to the 14 member states of the ACP group⁵ and French Territories.

France mainly supports its three Pacific territories: Kanaky (New Caledonia), Te Ao Maohi (French Polynesia) and Wallis and Futuna but stated in 2003 that it was going to double its contribution to the Pacific Islands Cooperation Fund. **Britain**, on the other hand, announced its gradual withdrawal from the Pacific in 2004, due to other priorities and financial considerations.

The Pacific Islands Forum

The Pacific Islands Forum (PIF) comprises 16 independent and self-governing states.⁶ In January 2004, Secretary General Noel Levi from Papua New Guinea left the organization and was replaced by Greg Urwin from Australia.

Reform of the Forum

In April 2004, the Forum adopted a report recommending a plan of action - the "Pacific Plan" - to make the secretariat of the PIF a more effective regional body. Besides focusing on good governance, improved efficiency and response capacity, the key goals of the Pacific Plan include the creation of deeper and stronger relations between the countries of the region through sharing and integrating resources and alignment of policies.

A Task Force of 11 persons including two women will, from December 2004 through to March 2005, conduct a series of consultations at national and regional level, after which it will design and submit an Action Plan for the development of the Pacific Plan.

French Polynesia's observer status

The PIF allows a few countries to have observer status. French dependency Kanaky obtained observer status in 1999 and East Timor in 2002. In 2003, France expressed an interest in French Polynesia gaining observer status. Yet the Forum's criterion for admission as an observer was clear: "a Pacific Island territory on a clear path to achieving self-government or independence may be eligible for observer status at the Forum, subject to the approval of Forum leaders".

After Te Ao Maohi/French Polynesia was granted a new autonomy statute in early 2004, its request was back on the agenda of the Forum. At the special Forum Leaders meeting in Auckland, it was recommended that the Forum take an "open approach" towards non-independent Pacific territories as a "useful step to enhance regional inclusiveness and co-operation" and that the Forum should consider observer status for French and US Pacific territories.

Pacific leaders welcomed French Polynesia at the 35th annual Forum meeting in August 2004 in Apia, Samoa. They considered French Polynesia's new role as Forum observer to be an "important political and diplomatic step". Moreover, the Forum took a bold stand in supporting French Polynesia's newly elected president, pro-independence Oscar Temaru: the statement added that the Forum "supports the principle of French Polynesia's self-determination" and "encourages French Polynesia and France to seek a common approach on the manner of bringing about the right to self-determination for French Polynesia".

Corruption and good governance

In June 2004, a report by Transparency International painted a dim picture of the state of corruption in the Pacific. It named a number of key potential risks areas (e.g. the police and customs, land and titles administration, forestry and fisheries, trade in passports, Internet domain names, etc.) and revealed that there had been a major fraud in three Pacific countries' national provident funds this year (PNG, Fiji and Vanuatu). The report also said that churches and non-governmental organizations that often criticize governments for corruption are themselves also vulnerable. According to the study, Nauru's economic collapse was due to corruption and the World Bank has identified corruption as the single greatest obstacle to economic and social development in Papua New Guinea and other developing countries.

Several efforts are being made to tackle corruption. At their meeting in August 2004, Forum leaders invited members to consider signing and ratifying the UN Convention against Corruption as a means of strengthening good governance. There is also a multilateral approach to corruption within the Asia Pacific region (the ADB/OECD Asia/Pacific Anti-Corruption Initiative), which is supported by 23 countries (including seven Forum members) that have jointly developed an Anti-Corruption Action Plan and are working together on its implementation.

While most of the Pacific island countries have endorsed the Transparency International report, at least three governments, Fiji, PNG and Samoa have committed themselves to establishing anti-corruption mechanisms.

Economy

In January 2004, the Asian Development Bank (ADB) issued a report entitled "Swim together or sink". Pacific Islanders were warned to abandon old habits and traditional ways and make what the ADB termed "a jolting transition" to join the new global economy in order to survive. The report pointed out that the peoples who inhabit islands scattered over an area larger than Asia have distinctive economic challenges that include a limited resource base, small markets and high costs of trading over great distances. It revealed that the regional population had expanded at 3% annually for three decades, while gross national product has grown at less than 1% a year, which meant that living standards have declined for all "except for the urban elite".

Indeed, the need for reform was one of the major issues that was discussed at the 8th annual Forum Economic Ministers Meeting (FEMM) in New Zealand in June 2004. For the first time, there was input from the Pacific region's private sector as well as a report from Transparency International. The meeting agreed that a closer partnership had to be built with Pacific communities and their institutions to promote governance and accountability.

An important area of the economy for most Pacific Islands is tourism. According to the South Pacific Tourism Organization (SPTO), several Pacific Island countries and Fiji in particular have recorded strong growth in tourism this year. Visitors from China are also becoming increasingly interested and, in 2004, China was the first non-Pacific country to become a full member of the SPTO. It also extended the much sought-after Approved Tourist Destination (ATD) to the Cook Islands, Fiji and Vanuatu. These countries hope that ATD status will boost their tourism, as they are now able to host Chinese delegations for educational trips.

Since 2002, a ban imposed on kava (*piper methysticum*)⁷ by some European countries has crippled the economy of Pacific rural communities and contributed to major losses for producing and exporting countries such as Fiji, Vanuatu, Samoa and Tonga. The ban was imposed following allegations that kava causes liver problems. Many Pacific farmers and their families have been ruined, as kava, a “traditional cash crop”, was their sole means of earning an income.

In May 2003, a Europe-based consultant issued a report entitled “In-Depth Investigation into EU Market Restrictions on Kava Products”. This found no basis for the ban. In April 2004, representatives of Fiji, Samoa, Tonga and Vanuatu visited Brussels to lobby for a lifting of the ban.

Meanwhile, Pacific governments have been working to provide legislation to protect the kava industry. The first ever Kava Conference, held at the end of 2004 in Fiji, provided an international forum for discussion on the scientific and regulatory situation of kava. It is also aimed to create an improved quality control system for kava raw materials from the South Pacific. Experts from the kava industry think that these drastic measures could restore confidence and that exports could well reach their previous level by the end of 2005, as European countries, including Germany and Great Britain, are about to lift the ban.

Environment

Pollution has become an important issue in the Pacific, with the disposal of household waste and the rising quantities of hazardous waste being some of the major concerns. There is currently heightened awareness on the part of the public and various governments as to the fact that the steady littering and destruction of the environment could well undermine the livelihood of Pacific peoples, as well as tourism, a main source of income.

A Pacific Regional Center to combat increasing levels of waste in the Pacific began operations in Samoa in January 2004. The center targets training, technology transfer and awareness raising activities in 14 countries of the region. The opening of this center is a crucial develop-

ment in implementing the Waigani Convention,⁸ as well as the Basel Convention, which regulates the movement of hazardous waste and obliges its members⁹ to ensure that such waste products are managed and disposed of in an environmentally sound manner.

A new emerging issue that Pacific Island Countries have taken up for discussion under the Kyoto Protocol is emissions from so-called bunker fuels coming from aviation and shipping sources. Although a major source of greenhouse gas emissions in the Pacific, as well as globally, they are not covered by the Kyoto Protocol.

Debris from World War II, especially that of hundreds of sunken and rusting oil-laden warships, are littered across the region.¹⁰ The tankers present the greatest threat, as it is only a matter of time before they leak, and many of the developing Pacific nations do not have the resources or finances to clean up an oil spill on their shores. The issue was discussed by regional representatives at an Ocean Forum in Fiji in February. The South Pacific Regional Environment Programme (SPREP) has pushed for a regional mandate to engage the US and Japan to accept more responsibility in dealing with this problem.

Climate change and global warming

Coral bleaching,¹¹ the reduction in marine resources and the rising of the ocean level pose immediate threats to many low-lying atolls. There is still debate as to whether all the extreme events that are being witnessed are a result of natural phenomena or if it is a change induced by man - the greenhouse gas emissions.

At the 15th annual SPREP meeting in September 2004, Tuvalu's representative told the conference that his country was at risk from rising sea levels and Tuvalu's government believes it is a direct consequence of global warming. He also reiterated calls made earlier to other countries, asking them to allow Tuvaluans to migrate in the event of a significant sea level rise. He said the only country to have responded so far was New Zealand.

The lobbying of the two nations who have still not ratified the Kyoto Protocol - Australia and the US - intensified in 2004. In June, the

Commonwealth of the Northern Marianas (CNMI) and American Samoa joined a coalition of 11 states and territories and 14 environmental groups in the US challenging the Bush administration's continued failure to confront global warming. Palau, likewise, urged Australia to cut back its greenhouse gas emissions and sign up to the Kyoto Protocol. Palau fears that some low-lying islands could be devastated by climate change as the country is already being hit by unusually high tides that are destroying many crops. Fiji's Prime Minister has also called on Australia to think of the Pacific region's "common heritage" and ratify the Kyoto Protocol. He said the region could not afford to remain silent when a number of Pacific Island states are under a very real threat from rising sea levels.

The United Nations Environment Programme (UNEP) has painted a grim picture of the world's small island developing states (SIDS) ahead of the SIDS conference in Mauritius in January 2005. In reports written before the recent devastation caused by the tsunami in the Indian Ocean, UNEP warned that tidal waves, cyclones and other natural disasters would challenge the economies of small island nations, especially when accompanied by such man-made devastation as pollution, over-fishing and the discharge of waste into bodies of water. The question of how the impact of natural or man-made disasters can be reduced will be an important item on the conference agenda.

Exploitation of Pacific resources

The exploitation of the many resources of the Pacific that is being carried out – or at least being considered - without the consent of their legitimate owners, the indigenous peoples, has been and remains a major source of conflict in the Pacific. There is growing awareness of this issue throughout the region and a growing determination on the part of the indigenous peoples of the Pacific to retain ownership over their resources.

The Pacific Ocean has a total surface of 30.6 million square kilometers, with about 30 percent of the world's Exclusive Economic Zones (EEZ). These zones dominate the lives of the region's 11.4 million peo-

ples. The Pacific tuna fishery is the largest in the world, producing around 2 million tonnes annually. If managed sustainably, tuna represents the Pacific's most important natural resource for long-term income generation.

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean came into force in June 2004. This Convention aims to harmonise the effective management of tuna stocks in the Pacific Ocean and to promote their sustainable exploitation.

Amendments to this Convention have been designed to put an end to illegal fishing activities within the EEZ of the Pacific Island countries. Since the beginning of 2004, many boats have been caught fishing illegally, most of them Taiwanese, Chinese or Indonesian.

Health issues

Media awareness campaigns have been conducted all over the Pacific, largely to reduce the impact of mosquito-borne diseases such as dengue, malaria and *lymphatic filariasis*. Nevertheless, the diseases continue to claim lives. In 2004, two serious dengue epidemics broke out in Tonga and New Caledonia. An outbreak of dengue fever was also confirmed in Palau.

Latest regional statistics from the Secretariat of the Pacific Community (SPC), reveal a total of 7,832 reported cases of HIV/AIDS in the region. The hardest-hit is PNG with 7,036 cases but the estimated number of undetected cases could push the "real figure" up to 22,000. The World Health Organization (WHO) says that given the current level of infection and the rate of increase of the disease in Papua New Guinea, it is possible that the number of infections could reach one million in 10 to 15 years.

Other countries and territories affected are New Caledonia (246 cases), Guam (173 cases), French Polynesia (226 cases), Fiji (171 cases), Tuvalu (9 cases) and Vanuatu (2 cases). The Cook Islands, Niue, Pitcairn and Tokelau are still declaring an official zero count.

This year, several conferences and meetings have taken place in order to support the fight against HIV/AIDS and, at the Forum Leaders meeting in August 2004, governments approved the "Pacific Regional Strategy on HIV/AIDS" for 2004-2008. The Pacific Islands AIDS Foundation (PIAF) pursues a double goal: improving the quality of life of those infected and affected by the HIV virus, and making sure the message on how to prevent HIV/AIDS gets across. The stigma attached to the disease is still very strong. In PNG, a woman was killed because she had AIDS.

Increasing urbanization has resulted in untold lifestyle changes. Non-communicable diseases such as obesity and diabetes are on the rise. A study carried out in March 2004 revealed that the Northern Marianas now has the third highest rate of diabetes in the world because of a sedentary lifestyle and poor diet. Statistics show that one in every five adults in the Northern Marianas has diabetes and one in three children is overweight. The Confederation of Northern Marianas Islands (CNMI) government spends over US\$20 million annually in preventing and treating diabetes.

Social issues

In November 2004, the Pacific Islands Regional Millennium Development Goals Report, compiled by the Pacific Community (SPC), United Nations Development Programme (UNDP) and the Council of Regional Organizations of the Pacific (CROP), was published. Reviewing the progress in implementing the Millennium Development Goals (MDGs) in the Pacific Islands, the report notes that some progress has been made but that the worsening state of affairs with regard to some of the targets set for the Pacific demonstrates the need for greater efforts to achieve the goals.¹²

Poverty is a hard and growing reality for many in the Pacific. Shanty towns are emerging on the outskirts of big cities and, with urban migration, youth unemployment is on the rise, fueling inevitable social tensions. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) recently stated that the region's

security concerns stem in large part from unchecked urban development, declining social cohesion in urban areas and the inability of local or provincial governments to deliver basic services, and plan for or coordinate urban expansion.

Infant and child mortality are declining and there has been good progress towards reducing maternal mortality. The MDG targets can therefore be achieved if there is significant emphasis on meeting basic health care needs. But much remains to be done in the area of gender equality and women's empowerment. Domestic violence against women and children, for instance, is on the rise, as well as sexual assaults against women and children. However, growing awareness thanks to the support given by AusAID to domestic violence programmes in Fiji, Vanuatu, Tonga and PNG has been matched by new legislation stressing that violence against women and children is an offense.

Meetings and cultural events

In March 2004, with support from, among others, IWGIA, the Pacific Concern Resource Centre (PCRC) hosted the first Pacific Consultation in Fiji in preparation for the UN Permanent Forum for Indigenous Issues (PFII). Representatives of indigenous peoples from 15 Pacific nations gathered to debate the six thematic areas addressed by PFII: human rights, education, health, culture, environment and socio-economic development. The results of the consultation were presented in New York at the 3rd session of the Permanent Forum in May.

From October 29 to November 6, 2004, the Conference of the **Melanesian Meltrust** (a grouping of Melanesian NGOs) was held in Vanuatu. The theme of the gathering was "Sustainability and Preservation of the Culture and Environment of Indigenous Peoples of Melanesia". The Conference was attended by representatives from six Melanesian countries. The meeting endorsed support for the independence of West Papua and Kanaky, and also called for the re-inscription of West Papua with the United Nations' Decolonisation Committee.

In January 2004, the first **Oceanic Documentary Film International Festival (FIFO)** took place in Te Ao Maohi/French Polynesia, the idea being to give more exposure to Pacific productions within the region and beyond. Two documentaries from Melanesia and one from French Polynesia won awards. All three focused on the Pacific region's unique culture, traditions and the current problems and challenges it faces.

In July, some 2,500 indigenous people from all over the Pacific gathered in Palau for the 9th Festival of Pacific Arts. The Festival is held every four years and brings Pacific peoples together to share and exchange their cultures.

REPORTS FROM COUNTRIES UNDER FOREIGN CONTROL

Out of the 13 countries in the Pacific under foreign control only Kana-ky, Tokelau, American Samoa and Pitcairn are on the UN list of non-self governing territories to be decolonized.¹³ The remaining nine countries are still pursuing permanent solutions to their own political situations. The case of Bougainville is special, since it will be given a chance to democratically determine its political status within a specified timeframe similar to those under the Decolonization programme.

American Samoa

At the UN Decolonisation seminar in Madang (May 2004), delegates from American Samoa suggested that they be removed from the UN list. In justifying the step, they said the people of American Samoa were satisfied with their partnership with the United States and "looked forward to enhancing this partnership in the future". The debate over this question concluded with a delegate from American Samoa calling for written comments from the Special Committee of 24 on Decolonization outlining steps for the territory to be removed from the list.

However, the governor of Manu'a Islands, a district of American Samoa located east of the main island of Tutuila, announced in October that he would call a summit of traditional leaders to discuss what

form of government Manu'a should have in the future. He proposed three options for governance: (i) a territorial form of government; (ii) a republic with free association with the U.S. or (iii) to remain as part of American Samoa but with provision for a separate local budget for Manu'a and more autonomy.

Bougainville

Since the approval in 2002 by the PNG parliament of the autonomy law for Bougainville, the UN mission to the island (UNPOB) has been overseeing the implementation of the Peace Agreement as well as facilitating the disposal of weapons.¹⁴ In 2004, UNPOB reached the last stage of its work - i.e. the actual destruction of the weapons collected - and by the end of the year the final draft of Bougainville's Autonomous Constitution had been approved by the PNG Cabinet and signed as a legal document. This paves the way for Bougainville to hold its first elections within six months, under UN supervision. The Bougainville autonomous constitution is probably the first in the Pacific to allocate 3 out of 41 seats in Parliament to women.

Commonwealth of Northern Marianas Islands (CNMI)

The Northern Marianas is home to the Chamorro people, who are culturally, historically and geographically linked with the Chamorro of Guam. The other indigenous group is the Refalawasch, who originally came from the Carolinas (Federated States of Micronesia). The Northern Marianas is a territory of the US through a Covenant agreement of 1986. The people of CNMI are US citizens but cannot vote in US presidential elections.

Pagan Island's pozzolan

In 2004, the Chamorros and Refalawasch had to fight hard to keep a precious natural resource: the pozzolan in Pagan Island, the fifth largest island of the Marianas. Pozzolan is a certain type of volcanic ash

that is used as a cement additive, especially in the construction of bridges, tunnels or skyscrapers. In 1981, when Pagan Island's volcano erupted, it brought an estimated 200 million tons of pozzolan to the surface. At the same time, most families living on the island had to be evacuated to Saipan. In early 2004, an Arizona-based corporation called Azmar International almost succeeded in getting an exclusive permit to strip-mine Pagan's pozzolan. The Marianas Public Lands Authority (MPLA), responsible for managing resources on public land, asked Azmar Limited to comply with mining requirements within a 60-day period. This decision was met with fierce resistance from indigenous Chamorro and Refalawasch people, the owners of public land on Pagan, who formed an association called "Pagan Watch", to represent their interests. After months of intense publicity and overwhelming public opposition, the MPLA eventually denied Azmar's request for a permit because of the company's wilful refusal to provide the requested documents. Assurance was, however, given that the MPLA would process the application again once it had complied with all the requirements.

In December, the MPLA created a task force to study the potential for commercial mining projects on Pagan Island for the future benefit of the entire CNMI community. For the members of "Pagan Watch", the fight will go on as long as there are mining firms seeking to mine pozzolan.

Preserving the Chamorro culture

An important decision was made in 2004 by Northern Marianas' Governor Juan Babauta and his Guam counterpart Felix Camacho when they agreed "in principle" to create a special joint commission to preserve the Chamorro language. The commission will look at a uniform language for all Chamorros, as differences between the languages spoken in Guam and in the CNMI are beginning to appear. In the CNMI, several bills have been introduced requiring schools to teach the native language, and/or requiring the use of the Chamorro language in instruction. These bills have however yet to be passed in the legislature. Currently, schools teach students the Chamorro language only through

their bilingual programme. Both English and Chamorro are the officially recognised languages in the Commonwealth.

Kanaky (New Caledonia)

Kanaky is home to the Melanesian Kanak people. It has been under French rule since 1853. Over the years, the Kanak have been made a minority in their own country. The current total population of Kanaky has been estimated at 300,000, while the number of Kanak people registered by the indigenous authorities totals 100,000.

The Nouméa Agreement signed in 1998 between France, the pro-independence FLNKS (National Kanak and Socialist Liberation Front) and the anti-independence RPCR (Rally for New Caledonia within the French Republic) organizes Kanaky's political life with a gradual handover of political power from France. A referendum on independence is planned in 2013 or 2018. The Nouméa Agreement established three provinces as well as a New Caledonian government. It also officially recognized the existence of the Kanak people and provided for the establishment of an indigenous body, the Customary Senate.

Unexpected change of government

The second provincial elections since the signing of the Nouméa Agreement took place on May 9. Unexpectedly, it marked the end of rule on the part of the anti-independence RPCR in the Southern Province. A new anti-independence party comprising RPCR dissidents rallied under the banner *Avenir Ensemble* (Future Together) and emerged as the winner. The pro-independence parties lost all their seats in the Southern Province. The new balance of power in Congress is the following: all anti-independence parties together (RPCR, *Avenir Ensemble* and the local branch of the French far-right National Front) now have a total of 36 representatives, while pro-independence parties (FLNKS and Union Calédonienne and three smaller parties) have 18 representatives. Political commentators and analysts say that the loss of all their seats on the part of pro-independence parties in the Southern Province could be the beginning of the partitioning of Kanaky.

The new Congress includes 23 women, compared to only nine in the former. This is due largely to enforcement of the law on "parity", a new law on gender equality that requires each contesting party to nominate an equal number of women and men.

The 11-member Congress Government comprises the following: four ministers for "Avenir Ensemble", four ministers for the RPCR and three ministers for the pro-independence FLNKS and Union Calédonienne. After several failed attempts, two women were elected to lead the country: Marie-Noëlle Thémereau (Avenir Ensemble) as the President and Déwé Gorodey (FLNKS) as the Vice-President, a first in Kanaky's history.

Among the measures that will particularly affect the Kanak people is the government's plan to introduce, as early as 2005, specific New Caledonian components in the primary school curriculum, including Kanak language and culture. It is also planned to accord more powers to the Customary Senate and reforms to that effect could also be introduced in 2005. Finally, Thémereau announced the replacement of the current French identity cards with Caledonian citizenship identity cards.

There are, however, a number of issues left unresolved by the previous government. One is the question of immigration. At the moment, any French person or EU citizen can emigrate to Kanaky and settle there, as Kanaky is still "France". This poses a serious employment problem, as most of the time better qualified professionals, mainly from metropolitan France, leave the locals little chance of finding a job. The other question is: will these newly-arrived immigrants be allowed to vote in the referendum for independence that will decide the future of the country and its first inhabitants, the Kanak? A ruling of the European Court of Human Rights is expected on this issue at the beginning of 2005.

Recently, the Human Rights League of New Caledonia drew public attention to the widening gap between the "haves" and "have-nots" in the country. A Social Forum held in Nouméa at the end of December 2004 drew attention to the lack of housing facilities and ways this could contribute to "grave social problems" within the next ten years. It was further reported that currently, out of the estimated 300,000 inhabit-

ants of New Caledonia, between 9 and 11,000 live in slums without running water or electricity, especially in the suburbs of the capital Nouméa.

In September, President Marie-Noëlle Thémereau signed a Memorandum of Understanding with the European Union formalizing a 21.5 million euro grant to focus on professional training and what is locally described as “economic and social re-balancing” between its three provinces, the North, the South and the Loyalty Islands. One of the main aims is to raise the skill levels of local professionals and train them according to the real needs of the local economy.

A new chairman for the Customary Senate

In August 2004, the Customary Senate (*Sénat Coutumier*) appointed Chief Paul Jewiné from Maré island (one of the Loyalty Islands) as its new chairman for a one-year term. One of his priorities as Chief of Chiefs will be to get the Congress to pass a bill recognizing the legal validity of traditional talks - locally referred to as *palabres*. He also wants to create a Kanak Language Academy. The Customary Senate comprises 16 members, all High Chiefs in their respective areas. The Chiefs are elected for a six-year term and each year they have to elect a new Chairman. The Chairman is elected according to a “revolving” chairmanship principle among the eight customary areas of Kanaky. According to the Nouméa Accord, the Customary Senate must be consulted on all matters pertaining to the Kanak traditional identity and related symbols, traditional land tenure or customary civil status.

Controversy over the census

The census organized by France in August 2004 caused general uproar over a specific issue: whether the questionnaire should contain an item specifically referring to an individual’s ethnic group. President Chirac has previously strongly opposed the citing of ethnic category, stating that France did not regard its citizens as belonging to ethnic groups but simply as French citizens. Both pro and anti-independence parties opposed the census and it was boycotted by the Kanak people. An exact knowledge of the ethnic origin of the inhabitants of Kanaky is indeed crucial if the “re-balancing” between the affluent Southern province

and its less favoured, mostly Kanak-populated Northern and Loyalty Islands, as stipulated in the Nouméa Agreement, is to be implemented. Despite opposition, the census was carried out in August 2004. In order to appease critics, the new government of New Caledonia decided that a so-called "cultural survey" would be conducted at a later stage, in which the ethnic origin of the inhabitants of New Caledonia would clearly appear.

Te Ao Maohi (French Polynesia)

The indigenous people of Te Ao Maohi - the Maohi people - make up approximately 70% of the population while 30% are mainly European and Chinese people. At first a French Protectorate in 1842, a French colony in 1880, then a French Territory in 1946 with a new autonomy status in 1984, Te Ao Maohi's statute changed again in 2004 from "Overseas Territory" to "Overseas Country". Te Ao Maohi was removed from the UN list of countries to be decolonised in 1947 after a unilateral decision by French President General de Gaulle. From 1966 to 1996, France conducted 210 atmospheric and underground nuclear tests on the atolls of Moruroa and Fangataufa in which a large number of Maohi indigenous people were involved.

The new autonomy status

The new autonomy status for Te Ao Maohi was actively pursued by President Gaston Flosse, who had ruled the country for 20 years. The new law came into effect in early 2004 amidst reservations from Maohi people.

The new autonomy status significantly increases French Polynesia's local powers except in such areas as law and order, defence, finance and diplomatic relations. In terms of land tenure, the French Constitutional Council found that giving preference to locally-born citizens or to citizens with at least one parent born in French Polynesia did not reconcile with the French Constitution. Instead, it agreed to another criterion by which to access land property: an intending landowner must be residing in French Polynesia.

French Polynesia can now open representations overseas, without diplomatic status, as opposed to France's overseas missions, engage in diplomacy on France's behalf in the region and sign international agreements on economic issues.

Under the new status, French Polynesia is now an "overseas country within the French Republic" that "governs itself freely and democratically through its elected representatives and by way of local referendum", the Constitutional Council declared. However, President Flosse made it clear that he considered autonomy as "an antidote to independence". Asked about independence in the French Senate, Flosse stated, "No, a thousand times no. French Polynesia wants to remain French. It is French, it is all the more French than it is Polynesian."

First Maohi President

Another aspect of the new status is the modification of electoral rules for territorial elections. Apart from a re-drawing of electoral constituencies in the Tuamotu group, it raises the 5% threshold of votes for representation in the Territorial Assembly to 10% and rules that the leading party in the proportional polls will receive an automatic 30% bonus of seats. Under these provisions, it is feared that local minority parties could disappear and the electoral contest would only take place between Flosse's anti-independence "*Tahoeraa Huiraatira*" and Oscar Temaru's pro-independence "*Tavini Huiraatira*".

After the new status came into force, fresh elections took place. By joining forces with three other junior opposition parties, Oscar Temaru was able to become the first Maohi President. But, in October 2004, the 29th member of Temaru's majority crossed the floor and a vote of no confidence filed by the *Tahoeraa Huiraatira* brought an end to President Temaru's short-term presidency.

An estimated crowd of over 20,000 people took peacefully to the streets of Pape'ete to call for the dissolution of a deadlocked Parliament and fresh elections. Twice, Temaru officially asked the French government to dissolve the Assembly and call for fresh elections in the hope that a clearer majority would emerge on either side. The request was denied on the grounds that French Polynesia's institutions were

“functioning normally”. Meanwhile, Temaru and his supporters refused to leave the President’s office and began a hunger strike, in a last attempt to move the French government to dissolve the Assembly and call for fresh elections.

On October 23, French Polynesia’s Legislative Assembly endorsed the return to power of Gaston Flosse as President with only the 29 opposition MPs in attendance. Temaru’s coalition opposition (28 of the 57 MPs) boycotted the sitting as, in their view, it took place without the Speaker and therefore was not valid. The deadlock was broken in the middle of November 2004 by a ruling of the French State Council effectively calling for fresh by-elections in three months.

Temaru has called on the French government, the European Union and the Pacific Islands Forum to send observer missions to monitor the February by-elections.

The struggle of the nuclear test veterans

While the French nuclear tests in Moruroa and Fangataufa stopped in 1996, the nuclear test veterans affected by radiation are today still fighting for recognition and compensation. The Association *Moruroa e Tatou* (Moruroa and us), founded in July 2001 as the voice of the former test site workers, now has over 2,000 members.

Whereas the Flosse government systematically ignored *Moruroa e Tatou*, the Association was received by newly elected President Oscar Temaru (himself a former worker at the Moruroa site and member of the Association), who agreed to create a working group on the impact of the nuclear tests on the workers’ health. The working group was scheduled to commence work in January 2005 but the ousting of Oscar Temaru has put a temporary halt to this project.

The most important event for the Association in 2004, however, was the commencement in France of pre-trial investigations for a court case filed in November 2003. The case was jointly filed by *Moruroa e Tatou* for the Polynesian veterans and by AVEN (French Nuclear Tests Veterans Association) for the French victims. This is a major step in its struggle for recognition of the existence of a possible link between nuclear tests and diseases that have affected workers on all French ex-

perimentation sites, in the Sahara desert between 1960 and 1966, and later in French Polynesia, between 1966 and 1996.

West Papua

For over 40 years, the Indonesian military (*Tentara Nasional Indonesia - TNI*) have used terror and repressive methods to quell indigenous Papuan demands for independence and yet the resistance is unwavering. In 2001, civil society organizations, including the religious organizations and human right groups, declared West Papua a Zone of Peace. The armed wing of the liberation movement, *Organisasi Papua Merdeka* (OPM), respected the declaration and disengaged from any activity against the military. As a result, the TNI is relying on militias led by Eurico Guterres, the man who caused much bloodshed in East Timor, to provide violent incidents to invite military reprisals.

On August 17, a KOPASUS (Army special forces) patrol near Gura-gi village in the Central Highlands was shot at, suffering light injuries. The action was blamed on Goliat Tabuni, OPM leader in the Central Highlands, and the whole district was declared a Military Operation Zone off limit to the public. During the operation involving helicopters, 27 villages were completely destroyed, including churches, clinics and livestock. The known death toll to date includes 15 people, of which 13 children. The churches and NGOs were prevented from delivering food and other assistance to the people and it is feared that the 5,000 villagers still hiding in the mountains will slowly die from hunger and malaria. On December 22, leaders of all the churches in West Papua, 27 Tribal Councils and human right groups, student and women's organizations issued a Christmas and New Year's appeal for international intervention but all in vain. The indications are that while the world attention is on the tsunami in Aceh, the military and the militias will continue the killing knowing that the appeal is falling on deaf ears.¹⁵

In the ongoing campaign for the review of UN involvement in the fraudulent Act of Free Choice of 1969,¹⁶ leading organizations such as the National Independence Movement, the OPM and the Papua Coun-

cil Presidium (*Presidium Dewan Papua*, PDP) have successfully attracted international attention to their struggle. In 2004, apart from the support of 79 NGOs, 134 members of Parliament and congressmen, Archbishop Desmond Tutu of South Africa also added his moral support to their cause. Meanwhile, the government of Vanuatu and NGOs, spear-headed by the PCRC (Pacific Concerns Resource Center), are lobbying in the Pacific for West Papua to be re-inscribed on the UN Decolonisation List. One setback, however, is that West Papua was excluded from the Pacific Islands Forum's 2004 communiqué. The PCRC is of the view that a more concerted effort needs to be made towards designing a coordinated strategy to keep the West Papua issue on the agenda of the Forum member governments and it is now calling on individual member countries to stand up for West Papua. During the 59th Session of the UN General Assembly in early October, the Foreign Minister of Vanuatu, Mr. Barak Tame Sope, made a passionate plea for the UN to resolve the West Papuan issue, an issue that the UN itself had created by endorsing Indonesia's fraudulent 1969 Act of Free Choice.

Reports from independent nations

Fiji

Over the past few decades, three coups have hampered Fiji's progress. These coups have been premised on claims for indigenous supremacy when in fact they have been instigated for economic and political gain by minority urban-based indigenous Fijian elites.¹⁷ Four years after the takeover of parliament by George Speight in 2000, the uncovering of fresh coup-related evidence this year enabled Police Commissioner Andrew Hughes to open a new chapter in the investigations. The investigations have led to a series of trials against high profile personalities such as Fiji's vice-president and members of Parliament and Senate, and will be continued into 2005.

Although the 1997 Constitution contains provision (Article 95) for a power sharing arrangement between the two or three political parties with the most seats, the elected Prime Minister, Laisena Qarase,

whose party *Soqosoqo Duavata Ni Lewenivanua* (SDL) won 32 seats (45 %) did not include within his Cabinet ministers from the ethnic-Indian Fiji Labour Party (FLP), which won 27 seats (38%).

The FLP challenged the composition of the Cabinet before the Supreme Court on several occasions (twice in 2004 alone) and, every time, the Court ruled that according to the 1997 Constitution, FLP ministers had to be included.

When the prime minister finally complied with the constitutional requirement, a disagreement arose over the number of Cabinet seats to be allocated to the Labour Party. The prime minister offered 14, whereas the Labour Party was entitled to 17. In November 2004, the leader of the Labour Party, Mr. Chaudhry, finally rejected Mr. Qarase's final offer and relinquished his claim to be part of the current Cabinet, which he labeled as "corrupt", stating that he would return in 2006, anticipating the next general elections.

Fiji as a reservoir of soldiers

The Fijian Army is well known for its efficiency and its competence and has long been recruited to serve in UN peace-keeping missions. In 2004, at the request of the UN, Fiji contributed 155 military officers to Baghdad to serve as Personal Protection Officers (PPO) with the United Nations Department of Peacekeeping Operations. Around 1,000 young Fijians have also enrolled with the British Army, with many of them deployed in Iraq. Furthermore, another 500 young Fijians have been recruited by private companies such as Global Risk Strategies International Limited and Warehouse International, who hire them on a three-month contract. As the contracts are renewable, some young men have been in Iraq for over a year now. The main motive for these young indigenous Fijians to sign up despite the enormous risks to their lives is the prospect of earning enough money to be able to support their families at a time when unemployment and subsequent poverty are on the rise in Fiji.

At the same time, the Fijian nuclear veterans who served on Christmas Island with the British Army in the late 1950s, are still struggling for recognition and compensation from the British government. Britain conducted atmospheric nuclear tests on Christmas Island, and indige-

nous Fijian soldiers were employed on the test sites, with disastrous long-term consequences for their health. In 2003, the British government recognized their claim, enabling the start of a class action in 2004.

Republic of the Marshall Islands (RMI)

The Republic of the Marshall Islands has been independent since 1986 but a Compact of Free Association with the US grants a funding package in exchange for the right to veto foreign affairs, as well as military control.

Nuclear test compensation

On March 1, 2004, the Marshall Islands commemorated the 50th anniversary of the explosion of the hydrogen bomb code-named *Bravo*. The bomb was detonated by the US on the surface of Bikini Atoll and had devastating consequences for the environment and the health of the inhabitants of Bikini, as well as nearby islands such as Enewetak and Utirik. The U.S. tested 67 nuclear weapons at Bikini and Enewetak atolls from 1946 to 1958. The people of Bikini and Enewetak were removed from their islands and became so-called “nuclear nomads”. They have not yet been able to return home.

With Compact I, the US set up a Nuclear Claims Tribunal with a fund to compensate nuclear test victims, as well as a medical programme. This special health programme for nuclear test-affected Marshall Islanders expired in 2004 and the new Compact Agreement does not include specific funding for the programme. The ongoing radiological studies and monitoring of the affected atolls have also been cut, even though they are essential if future resettlements are to take place because they provide information on the safety of the islands. This has led to numerous complaints from leaders of the radiation-affected islands. The Marshall Islands government has expressed anger at the U.S.’s unilateral action to cut programmes, calling for Washington to take responsibility for the victims of nuclear testing. Meanwhile, the Marshall Islands Nuclear Claims Tribunal issued its smallest payment ever in October 2004 because the compensation fund is nearly exhausted.

US military base on Kwajalein Atoll

After the US took Kwajalein Atoll from the Japanese in 1944, it became a primary testing ground for US missile defense technology, for which about 12,000 Kwajalein islanders had to be displaced to nearby Ebeye Island. The so-called “Star Wars” programme launched by Ronald Reagan in the 1980s has been extended by President Bush in anticipation of the supposed threat from “Axis of Evil” countries such as Iraq, Iran or North Korea. A new Compact signed between the US and the Marshallese governments came into force on May 1, 2004. Under this amended Compact, the US will extend its presence on Kwajalein until 2066 with an option for 20 additional years, and the annual rent for the site of US\$11.3 million will be raised to US\$15 million.

The Kwajalein landowners and traditional leaders reject their government’s new deal with the US. According to them, the level of payment is unfair and there are environmental consequences that need to be addressed. They live in poor conditions, crowded onto just 66 acres of land only 2 1/2 miles by boat from the base for the US\$4 billion missile range facility and fear that by the time the US military leave Kwajalein, the atoll will have been rendered uninhabitable or, for the most part, unusable by the people it belongs to. The Kwajalein are insistent that they will only abide to the 2016 expiry date stipulated under Compact I and they have since asked both US and Marshallese governments to begin discussions to formulate an exit strategy and their re-settlement to Kwajalein.

Solomon Islands

When ethnic violence erupted in 2003 between militants from Guadalcanal, where the central government is located, and militias from the densely populated neighboring island of Malaita, the government, whose power had already been seriously eroded by a lack of integrity and by corruption, was unable to act decisively. Many people were killed and displaced. At the request of the government, or what remained of it, Australia stepped in, coordinating a Regional Assistance Mission to the Solomon Islands (RAMSI) to restore the government’s

authority. The operation was very successful for most of 2004 but, as the situation began to stabilize, the central government was tested once more by Malaita's call for independence and Western Province's call for state powers equivalent to that of a federal system. As the Solomon Islanders and RAMSI prepared to celebrate Christmas and a more promising 2005, a member of RAMSI was murdered by a former trooper from a disbanded and disarmed militia. Australia responded immediately by sending in 100 troops to back up RAMSI operations and maintain public confidence.

Aid and international agreements

In February, the Solomon Islands and PNG signed an agreement of cooperation whereby PNG would meet the shortfall of lawyers to assist in its legal services. The country also signed a number of investment agreements including US\$26.365 million to be invested by the Malaysian Hincki Investment Ltd in palm oil projects and US\$63 million from the European Union in development aid. Japan agreed to provide US\$6.7 million to upgrade the country's international airport. A Memorandum of Understanding signed in June with New Zealand and the European Union will provide US\$20.11 million to cover a basic education programme for 3 years. Papua New Guinea also offered to assist students studying in PNG.

Human rights

In November, a visiting member of Amnesty International revealed that there were hundreds of cases of abuse against women committed during the conflict that had not been reported through fear of reprisal. He gave examples of 55 women interviewed, of whom 13 were teenage girls. Due to this silence, the abuses still continue.

Tonga

Tongan society is traditionally divided into "Nobles" and "Commoners", with the King holding absolute power. The 30-member Legislative Assembly, the *Fale Alea*, comprises 12 seats reserved for Cabinet

Ministers appointed by the King, nine nobles' representatives who are elected by the 33 hereditary noble title holders and nine people's representatives who are elected by the rest of the 100,000 strong population.

Push for democracy

There has been an increasing demand for democracy in Tonga. The Human Rights & Democracy Movement in Tonga (HRDMT) led by Akisili Pohiva, a commoner, has been calling for an end to ministerial privileges and an increase in Commoner seats in the Assembly.

In February 2004, the US State Department said in its Annual Global Rights Review that the human rights record of the Kingdom of Tonga "remained poor", with "no rights for the citizens to change their government and authorities infringing of freedom and speech and of the press". This report was the beginning of a long debate in Tonga and, in July, a consultation on human rights issues was organized by the HRDMT.

In November 2004, King Taufa'ahau Tupou IV endorsed a recommendation from the Prime Minister to increase his Cabinet to 16 members, including two ministers from the current people's representatives in the Legislative Assembly. The appointment of the four new Cabinet Ministers is expected to take place after general elections in March 2005.

This will allow representatives of the people to have access to government for the first time. Yet the people's representatives are divided in their views on this decision. While some of them describe the move as a "beautification exercise", others (including HRDMT's Akisili Pohiva) see in it the beginning of a genuine political reform, allowing people to elect their leaders.

As the voter turnout in the last elections was less than 50%, a nation-wide campaign has been commenced in order to increase voter participation in the 2005 general election.

The media law

At the beginning of 2004, a media law was passed whereby the issuing of licenses was to be reviewed annually by the government. *The Taimi'o*

Tonga, a newspaper printed in New Zealand that has been critical of Tonga's government and had already been banned in 2003, was once more banned. One hundred and fifty-two Tongans, whose designations ranged from Members of Parliament, NGO executives and senior religious leaders to members of the media, government officers and businessmen, took the government to court over the new media legislation.

In May 2004, a constitutional challenge led by Tonga's people's representatives was filed against the Tongan Government in the kingdom's Supreme Court. The challenge was based on the refusal of the government to issue a license to the *Taimi 'o Tonga* newspaper and it questioned the legality of the Tongan Constitution concerning freedom of the media. Five months later, Chief Justice Robin Webster declared the *Media Operators Act* invalid, along with the *Newspaper Act*, passed in 2003. After an absence of more than 12 months, all Tongan newspapers and magazines, including the *Taimi 'o Tonga*, are expected to be back on the streets of Tonga again by 2005. □

Notes and sources

- 1 These are American Samoa, Bougainville, Guam, Te Ao Maohi (French Polynesia), Rapanui (Easter Island), Pitcairn, Ka Pae' Aina (Hawaii), Tokelau, Wallis & Futuna, Kanaky (New Caledonia), West Papua, Maluku and the Northern Marianas.
- 2 Term used to describe a country's inability to govern effectively, including the provision of basic services, upholding the rule of law and sound financial management.
- 3 New Zealand, Fiji, PNG, Tonga, Samoa, Vanuatu, Kiribati and the Cook Islands.
- 4 NCS is a uniform and common system used in NATO for identification, classification and stock numbering of items of supply.—Ed.
- 5 The ACP group consists of 77 countries in Africa, the Caribbean and the Pacific, most of which are former European colonies. It was established in 1975 to manage preferential economic and aid relationships with the EU.—Ed.
- 6 14 Pacific Island states (Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guin-

- ea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu) as well as Australia and New Zealand.
- 7 Kava is a plant whose dried roots make a fine powder used in the production of kava, a social beverage widely consumed in the Pacific. Known for its calming and stress reducing effects, kava is today also turned into pills and used to relieve pain and stress.—Ed.
 - 8 Adopted in 1995, the Waigani Convention bans the import into Pacific Islands Forum countries of hazardous and radioactive waste. It further controls the cross-border movement and management of hazardous waste within the South Pacific region.
 - 9 Nine of the 14 Pacific Islands Forum countries are signatories to the Basel Convention (Australia, Cook Islands, FSM, Kiribati, Marshall Islands, Nauru, New Zealand, PNG, Samoa).
 - 10 According to a study by the South Pacific Regional Environment Programme (SPREP), there are 857 World War II Japanese shipwrecks lying in the Pacific region.
 - 11 Coral bleaching occurs when reefs are stressed, usually by excessively warm water, and will eventually result in the death of the coral.—Ed.
 - 12 Secretariat of Pacific Islands Community, *Pacific Island Regional Millennium Development Goals Report*, Nouméa, New Caledonia, November 2004.
 - 13 16 non-self governing territories- most of them small islands in the Caribbean and the Pacific – figure on the list of the UN Special Committee on Decolonization, a body of 24 members established in 1961 and charged with bringing to self-government or independence Territories originally voluntarily submitted by United Nations Member States as non-self-governing. In doing so, the administering Powers accepted as a “sacred trust” to bring these Territories to self-government; they also accepted, by virtue of Article 73e, the United Nations’ overseeing function in this process. The list has been under attack since many territories which consider themselves as non-self-governing are not included, e.g. French Polynesia.—Ed.
 - 14 **Ogan, Eugene. 2003.** *The Bougainville Conflict: Perspectives from Nasioi. State Society and Governance in Melanesia*, Discussion Paper No.99/3, Research School of Pacific and Asian Studies, Australian National University, Canberra.
 - 15 **Rumakiek, Rex. 2004.** *West Papua: The Case and the Cause*. Paper presented at the Conference on Conflict and Conflict Resolution in Asia and the Pacific, held at USP, Suva, Fiji Islands 25 – 27 October 2004.
 - 16 Recently declassified documents from the US National Security Archive have revealed that the UN lent support to Indonesia’s annexation of West Papua by “taking note” of the so-called “Act of Free Choice” despite significant evidence that Indonesia had failed to meet its inter-

national obligations – namely to conduct an election on self-determination in which all adult Papuans had the right to participate. —Ed.

- 17 The people of **Fiji** are made up of Fijians (51%), Indians (44%), Europeans, other Pacific Islanders, overseas Chinese and others (5%). Fijians are predominantly Melanesian with a Polynesian admixture. The ethnic Indians descend from contract workers brought over in the 1870s by the British to operate the sugar estates. —Ed.

Pacific News Bulletin. 2004. Various volumes. Suva, Fiji Islands: Pacific Concerns Resource Centre (PCRC).



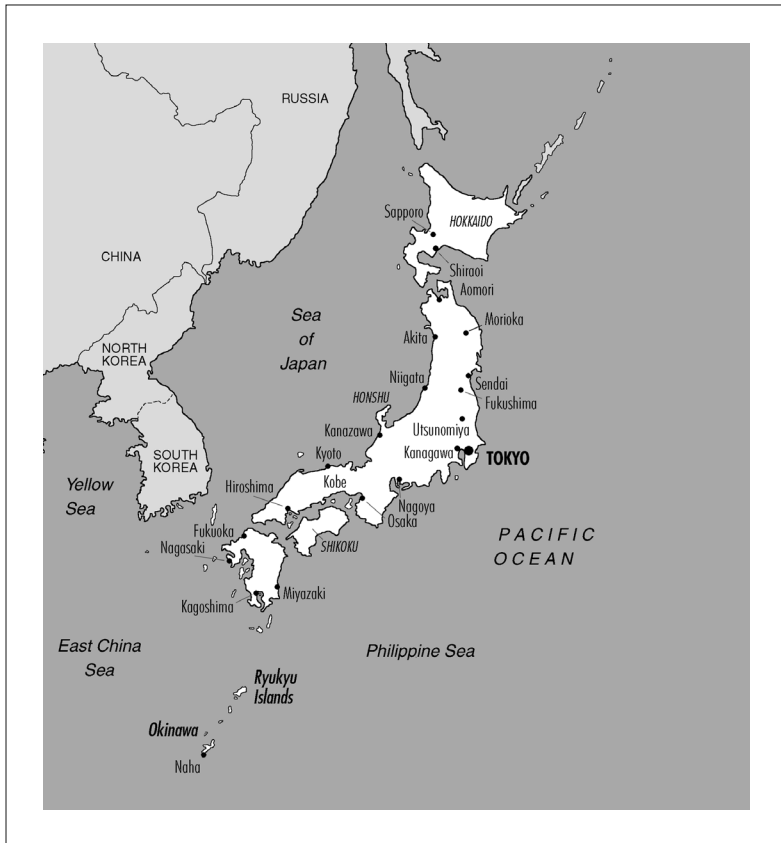
JAPAN

The indigenous peoples living within Japan are the Ainu and the Okinawans. Reflecting Japanese colonial expansion, their respective territories are located on opposite ends of what is now considered the Japanese archipelago: Ainu territory is in the north of Japan (Hokkaido) and present-day Russia (the Kurile Islands and southern Sakhalin) and Okinawan territory spans the Ryukyu Islands, far to the south.

The Ryukyus: massive militarization

The Ryukyu Islands that make up present-day Okinawa prefecture have a long history of colonization and discrimination. The islands formerly known as the independent Ryukyu Kingdom were colonized by Japan in 1879 and later occupied by the US after the Second World War. US occupation formally ended in 1972 when the islands were reincorporated into the Japanese state. Since then, the US military has continued to occupy large parts of the islands, relying on Japan's continued denial of Okinawans' self-determination. 75% of all US forces in Japan are located in Okinawa prefecture, a mere 0.6% of Japan's territory. In addition to the US military's 37 installations here, which occupy 20% of Okinawa's main island, it also controls 29 sea zones and 20 air spaces around the prefecture.

Throughout 2004, the Okinawans' ¹ most pressing problems continued to stem from the massive presence of US military forces on their territory. The construction of new military facilities, the delayed closure of others and the associated problems facing Okinawans epitomise the way in which the US exploits persistent colonial relations (at home and abroad) to sustain its military presence. Rather than the



long-promised reduction of US forces in the Ryukyus, with active Japanese support the US military is not only maintaining but in fact strengthening its presence. Alongside this, Japanese military presence has begun to increase as well.

Despite widespread and sustained opposition, several plans to construct new military facilities continue to move forward. Among them is a joint US-Japanese plan to build a US military air base atop a coral reef in Okinawa's pristine Henoko Bay. The project involves massive land reclamation and will stretch a mile and a half long and half a mile wide across waters known to be the primary habitat of the critically endangered dugong (*sea manatee*). Both construction and opera-

tion of the air base will destroy the marine eco-system and important fishing resources well beyond Henoko Bay, irreversibly impact on the coastal community's relationship with the sea and put the area's population in danger of accidents and pollution. Without conducting an environmental impact assessment, Japan's Defense Agency (which is in charge of all military construction in Okinawa) is now preparing to drill into the reef and seabed.

Related to the offshore air base project is the military's plan to build seven new helipads in nearby Yanbaru Forest (also a habitat to endemic and critically endangered species). The military plans to house its controversial MV-22 Osprey aircraft at the proposed air base and train using the helipads.

Further complicating the Henoko issue is the US military's insistence that the new base be completed before it closes the Marine Corps' Futenma Air Station, which is dangerously located in the middle of urban Ginowan City. The August 2004 crash of a 13,000-ton transport helicopter from Futenma into a nearby campus was a frightening reminder of what is at stake. The military took control of the crash site and neighborhood by force. Marines occupied the campus and residential streets, prevented authorities from accessing the site and refused Okinawan authorities' demands to investigate the crash. The military also resumed flights just three days later, with the wreckage still on the ground. On average, over 110 flights per day originate from Futenma. Most are flight drills, so helicopters merely circle low over neighborhoods, schools and hospitals before landing. By linking the already delayed closure of Futenma to the completion of the air base at Henoko, expected to take 16 years, the US and Japanese governments are demonstrating their willingness to subject Ginowan residents – and later Henoko residents – to daily peril and distress.

The now eight-year struggle against the new base began when the US and Japanese governments ignored the results of a 1997 citizens' referendum in which the majority voted against the air base project. Today, polls show that 94% oppose construction of the base anywhere in the Ryukyus. 84% percent want immediate, *unconditional* closure of Futenma.

Both governments' disregard for Okinawans' public safety, as well as their democratically expressed will, is also reflected in the US plan for a new live-fire urban warfare training facility just 250 meters from a residential neighborhood in the town of Kin. With Japanese government consent, the US began construction of the facility last year despite vocal and formal opposition from residents and Okinawan authorities.

More generally, 2004 saw an increase in crimes by US servicemen, contamination of water supplies from the bases, several emergency aircraft landings, incidents of aircraft parts falling out of the sky and an in-air collision between two fighter jets.

In all cases, the US government attempts to distance itself from Okinawans' protests by insisting that conflicts are between the local communities and the Japanese government. As "domestic" disputes, the US claims it is not legally responsible for the impact of its military. For its part, in turn, the Japanese government rejects responsibility for US military actions. Hence it is only by relying on Japan's continued denial of the Okinawans' right to self-determination that the US military can acquire new facilities on Okinawa and maintain its presence here.

The Ainu

As a community, the Ainu continue to face many obstacles to the realization of their self-determination. Problems include the unresolved matter of Ainu communal property, the limited legal recognition of Ainu rights, and the exclusion of Ainu from the process of nominating a substantial area of Ainu territory as a UNESCO World Heritage site.

The Ainu recently filed an appeal with Japan's Supreme Court after lower courts ruled against their charge of gross mismanagement of Ainu communal property on the part of the government. At issue are outstanding communal assets resulting from the Japanese government's practice of putting Ainu income from land transfers, fishing and agricultural cooperatives under the control of local (Japanese controlled) municipalities during the late 19th century. The communal

property was then consolidated under the Hokkaido prefectural government via provisions in the so-called "Hokkaido Former Aboriginal Protection Act" of 1899. Records of actual government oversight are scant, however, with whole decades at times missing.

Nearly 100 years later, supplementary provisions in the Japanese government's 1997 Ainu Culture Promotion Act stipulate that all remaining communal property should be returned to the Ainu. As in the past, however, the government did not consult with the Ainu community. Instead it unilaterally established procedures to address the communal property claims and limited the entire restoration process to just one year. Without properly evaluating the assets or their management, the government is offering only a fraction of the real value of the communal property lost.

The history of mismanagement of the communal assets by the prefectural government has been the focus of a lawsuit and a series of appeals against the governor of Hokkaido. Citing violations of their human rights, plaintiffs demand fair compensation. The Sapporo District Court found in the government's favor, arguing that plaintiffs had not been disadvantaged in the process. Several plaintiffs travelled to Tokyo in November 2004 with over 6,300 signatures supporting their appeal before Japan's Supreme Court. The group demands that, at the very least, the government begin a public hearing into the issue.

The communal property issue highlights the inability of the *Ainu Cultural Promotion Act* to address the most pressing problems facing the Ainu in any fundamental way. Although it recognizes the Ainu people as an ethnic group, the content of the law provides for only limited and indeed government-defined promotion of Ainu culture. Despite Ainu efforts to revise the law and ensure recognition of indigenous rights, it has remained the same for seven years.

The Ainu have also been excluded from the Japanese government's efforts to gain recognition of Shiretoko Peninsula, part of Ainu territory, as a World Heritage Site under UNESCO's *Convention concerning the Protection of the World Cultural and Natural Heritage*. Despite the significance of Shiretoko to the Ainu – the name itself comes from the Ainu language – the Japanese government's statement of nomination to UNESCO seeking recognition of the region as a World Heritage site

mentions the Ainu only in passing. The Ainu Association of Hokkaido charges that the Japanese government did not consult with the Ainu at any time during the process of registering Shiretoko with UNESCO, nor did it seek to investigate the important relationship between Shiretoko and the Ainu.

There are two requests from the Ainu side, submitted during the 2004 UN Permanent Forum on Indigenous Issues. The first is to put the Ainu in charge of managing the Shiretoko World Heritage process. The second is to recognize the right of the Ainu to revitalize traditional ceremonies such as *ashiri chepu nomi* and *kamuuy nomi* as a part of eco-tourism in Shiretoko. Under a formal request from UNESCO, the Japanese government responded that it could accept the eco-tourism model put forth by the Ainu. Citing near completion of the World Heritage process, however, the government refused to recognize the right of the Ainu to manage the Shiretoko Heritage project. □

Note

- 1 Also called Uchinanchu (those living on Okinawa Island), or Ryukyuans.

CHINA

The Chinese government denies that there are indigenous peoples or indigenous issues in China.¹ This position rests on the assumption that it was European colonialism in the non-Western world that contributed to the present state of indigenous peoples and indigenous issues in other parts of the world. The Chinese government argues that all the ethnic groups are Chinese people that have lived on their land for generations, and jointly driven away the colonial power.

A number of academics and activists, however, argue that China, as a multi-ethnic nation-state composed of the dominant Han group and other ethnic groups, was a modern invention of the Nationalist Party and the subsequent Communist Party in their fight against the imperialistic invasion of Western powers in the late nineteenth and early twentieth centuries. In the four thousand years of historical records of the dominant Han, alternating military conquests among the Han and other neighboring ethnic groups brought about major historical changes in ethnic relations, with both wide-ranging internal colonization and displacements. Some see these histories of conflicting ethnic relations as an issue of indigenous peoples versus a dominant group.

Although it denies the existence of indigenous peoples and indigenous issues, the Chinese government does instead recognize the issues of national minorities. In classifying national minorities, the Chinese government has followed the Stalinist definition of a nationality as "a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life and psychological make-up, manifested in a common culture". In practice, the official identification and classification of national minorities took place in the 1950s and laid the basis for official recognition of ethnic groups in today's China. Fifty-five ethnic groups are officially recognized as national minorities. Since the official classification was undertaken

within a number of constraints such as time, resources, dependence on informants and historical limitations, the official classification is continuously contested.²

The changing Minority Policy

In the early years of Socialist China, ethnic policy seemed to respect the political, economic, cultural and religious autonomy of minority groups. During the Cultural Revolution, however, this policy was drastically transformed. A number of critics have stated that the problems of communist radicalism were damaging to the political, economic, cultural and religious autonomy of minority groups, as communism was the only yard-stick of progress and structural transformation. The decline in radicalism since the 1980s has re-emphasized autonomy for the minorities.

In 2004, the Chinese government issued the first white paper reporting on the human rights situation in the country.³ The report states that ethnic minorities enjoy equal rights to participate in the administration of state affairs and the right to independently manage the affairs of their own regions and their own communities. By 2003, all principal leading positions of the local autonomous governments in China had been entirely assumed by citizens of the ethnic groups exercising regional autonomy in the areas concerned. A large proportion of the cadres serving in leading positions of the governments of ethnic autonomous areas also come from ethnic minorities. Moreover, the Peoples' Congresses in autonomous areas have the right to pass laws applying to the areas under their jurisdiction.⁴

Despite these ethnic policies, the election and appointment of officials of ethnic origin is still manipulated by the Chinese Communist Party. The candidates to be appointed or running for election are hand-picked by the Han-dominated Communist Party. In a similar vein, even though the Congresses of ethnic autonomous areas are given the right to pass their own laws, the officials and Con-

gresses are still prevented from exercising that power. The harmonization of national law and local law is still an issue to be tackled in practice.

The “Go West Program” and the threats of developmentalism

Besides the preferential ethnic policy in personnel recruitment and autonomy in regional governance, the Chinese government has proclaimed a series of development projects to boost the development of the western part of the country in order to achieve a more “balanced” development between the coastal regions and the western regions, predominantly inhabited by ethnic minorities.

The development projects are closely related to the exploitation of natural resources that are needed for “developing” the coastal regions. The “Supply of Western Electricity to the East” project is undertaking a massive exploitation of the rivers in south-western China in order to generate hydropower to fuel the coastal regions and develop the so-called “world factory”. The “Supply of Western Gas to the East” program aims to exploit the oil and gas fields in northwestern China to supply gas to the cities in the east. Finally a huge proposed network of highways and airports will open up access to natural resources, natural landscapes and ethnic cultures for the use and consumption of industries and city people in the eastern part of the country.

This developmentalist vision has stimulated many local governments of ethnic autonomous regions to dance to the tune of the central government and the investors. Many mega projects, and considerable competition among similar projects in various localities, have become a major concern. Displacement from and deprivation of land, forests and other means of livelihood is becoming a serious threat to the indigenous peoples, or ethnic minorities, who have inhabited these regions for thousands of years.

Hydropower projects and displacement

In western China, the government has put forward various plans to exploit every river system in the region. The Lanchang River, the upper course of the Mekong River running through Southeast Asia, is to be blocked by eight large dams and huge areas of the river valleys will be flooded. Hundred of thousands of indigenous people will be displaced, and 60 million people living on the water and related resources in the middle and lower course of the Mekong River will be seriously affected.

Along the Dadu River and its tributaries in Sichuan Province, 48 hydropower stations have already been built, with another 300 hydro-stations planned. The valleys along the Dadu River have been home to the Han, Yi and Zhuang (Tibetans) ethnic groups for hundreds of years. Lake Mugecuo, regarded as sacred by the Tibetans, will be dammed. National and international environmental groups have organized campaigns calling on the Chinese government to seriously consider the ecological impact of such a project. Their action has temporarily succeeded in halting the construction process. The Pubugou megadam alone, which forms part of this project, will displace 100,000 people. By the end of October 2004, more than 50,000 people had surrounded the construction site and the local offices to protest against the improper and inadequate compensation offered. The protest was suppressed with violence and resulted in serious clashes with riot police. Media coverage was blocked, so information on casualties and deaths is scarce, but estimates range from several to tens of deaths, and from dozens to hundreds of injured and arrested. The protests and clashes drew the attention of central government to the problems of compensation and allegations of corruption among local officials. A number of local officials have thus far been dismissed and the construction is temporarily halted until proper compensation can be made to the affected population.

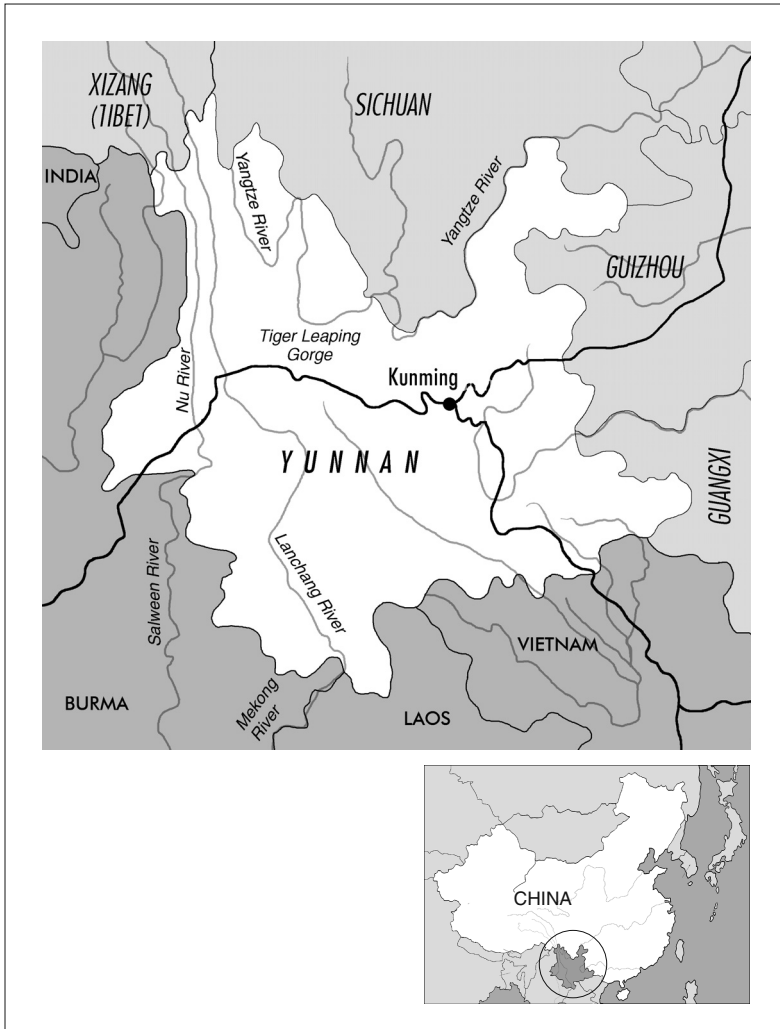
NGO involvement and campaigning

A few Chinese NGOs have collaborated to help the indigenous peoples put their concerns about hydropower development to the Chinese government and the public.⁵ In 2001, the Yunnan-based organization Green Watershed highlighted the displacement problems inflicted by the Manwan hydropower station along the Lanchang River. The indigenous people there were inadequately compensated with poor land and housing.

In 2003, the Yunnan Provincial Government proclaimed that intensive hydropower development would be undertaken along the Nu River, the upper course of the Burmese Salween River. Thirteen large hydropower projects will be built along the river in cooperation with the China-based Huadian Group, with the investment amounting to 100 billion yuan (12 billion US dollars). This ambitious hydro project will relocate as many as 50,000 people, predominantly indigenous people of the Lisu, Nu, Dulong and Tibetan ethnic groups, along with other ethnic hill people. Because of the natural barriers, many of these indigenous peoples still maintain the language and way of life of their ancestors; assimilation into the dominant Han culture has been minimal. These indigenous peoples would suffer not only from the highly probable deprivation of their means of subsistence, as in other hydropower project areas, but also from the rapid cultural shock and transformation following their relocation.

Even though the leading officials of the autonomous government are indigenous themselves, they did not consult the indigenous peoples in the affected communities but presented grand narratives of "poverty alleviation and development through hydropower projects". By the end of 2003, when the community by the dam site was to be relocated, the villagers still did not know the details of compensation and relocation arrangements.

Foreseeing these problems, Green Watershed - in collaboration with environmental groups in Beijing - organized indigenous peoples from the affected communities to visit communities that were relocated in connection with the Manwan hydropower station along the



Lanchang River of Yunnan in mid-2003. The indigenous people and local inhabitants were asked to voice their opinions about the effects of hydropower on their own development. Since then, they have actively initiated a number of media and Internet campaigns calling on the public and government to protect indigenous cultures as well as the

ecology of the Nu River. They also actively participated in government-sponsored seminars calling on the environmental protection agency to address problems of ecological concern in approving the hydro project. By early 2004, these efforts had successfully won the support of the Bureau of Environmental Protection and the backing of the prime minister in halting the project until a comprehensive environmental assessment has been conducted.

By mid-2004, the Chinese government had approved another mega-hydropower project in Yunnan. The upper course of Jinsha River, where the famous Tiger Leaping Gorge is located, is to be dammed. More than 100,000 people will be relocated, among them indigenous Naxi, Lishu, Zhuang, Yi, Bai and other hill tribal peoples. More than 200,000 mu (12,500 ha) of arable land will be flooded in this mountainous region.

Green Watershed again joined forces with other environmental groups from Beijing to call on the government and the public to address the problems of hydropower and the serious impacts on both indigenous peoples and the ecosystem. In July 2004, representatives of the affected indigenous communities gathered in the Lijiang city of Yunnan and issued a statement to petition the Chinese government to stop the rampant development of hydropower projects in Yunnan.

In October 2004, the Chinese government convened a symposium with the United Nations and the World Bank on "Hydropower and Sustainable Development", in which hydropower was "green-washed" as sustainable development, and the negative impacts on local inhabitants, indigenous peoples and the ecology ignored. Green Watershed, together with the newly founded Chinese River Network, organized representatives from the affected indigenous communities to attend the symposium. The indigenous representatives attracted wide media coverage in voicing their dissent towards the "green-washing" of hydropower and the irresponsibility of the power corporations and local authorities.

Such co-operation between environmental groups and indigenous peoples is under a great deal of political pressure. Hydropower's vested interest group of local governments, power corporations and

hydro-engineers accused the campaigners of being environmental fundamentalists opposed to any kind of development. Furthermore, officials from local authorities spread rumors in the indigenous communities that these groups were illegal and linked to anti-Chinese forces outside China. Local authorities threatened to revoke the legitimate NGO status of organizations taking part in the campaign.

Concluding remarks

Apparently, the Bureau of Environmental Protection has accepted some of the ecological claims the campaigns are making against hydropower projects. The Bureau recently tightened up the procedural integrity of environmental assessments prior to the approval of new hydropower projects. A few mega-projects in areas predominantly inhabited by indigenous peoples have been halted.

Although the anti-dam campaign has had a few temporary victories, the difficulties revealed during the campaigning reflect a number of problems in protecting the rights of indigenous peoples amid China's rapid development. While the campaign can easily appeal to the public and the government through the prime importance of ecological protection and related regulations, and sometimes to the UN's regulations governing the preservation of World Heritage, the indigenous organizations and peoples have hardly any legal instruments they can mobilize to protect their indigenous cultures, ancestral land, sacred landscapes and the land on which they live. Furthermore, the voice of the indigenous peoples can easily be hijacked by local officials of indigenous origin. They claim to represent the indigenous peoples but only want to pursue a "developmentalist vision" of development as dictated by the state and the investors, arguing that the indigenous peoples will be better off and their culture modernized. Without an open public arena for organizing and communication, many indigenous peoples are kept in the dark regarding the displacement and relocation, and ensuing resource deprivation and cultural transformation, that the state-led internal colonisation of China's western regions implies. □

Notes

- 1 China Concerned with Protection of Indigenous Peoples' Rights. <http://www.china-embassy.ch/eng/ztnr/rqwt/t138829>.
- 2 Readers interested in the policy and issues of ethnic minorities in China can consult **Mackerras, Colin. 2003.** *China's Ethnic Minorities and Globalization*, London: Routledge Curzon.
- 3 **The Chinese Government. 2004.** *White Paper on Human Rights in China, 2003*.
- 4 The People's Congress is similar to a parliament or council in Western democracy. It consists of a number of representatives indirectly elected from among directly elected representatives of regional constituencies. In practice, the direct and indirect elections are heavily manipulated by the Communist Party.
- 5 The author would like to thank a number of friends in the indigenous communities and those in the campaign against the hydro-power station for contributing to his understanding of the state of the campaign.

TIBET

Tibet was occupied by China in 1949-50. This occupation led to a popular uprising in Tibet's capital Lhasa on 10 March 1959. Tibet's religious and political leader, the 14th Dalai Lama, went into exile, and with him around 85,000 Tibetans. Tibet is to this day an occupied country.¹

Tibet has a population of approximately 5.6 million Tibetans. Most of them are followers of Tibetan Buddhism, with the Dalai Lama as its central figure. Around half the population lives in Tibet Autonomous Region (TAR), which roughly corresponds to Central Tibet before occupation, while the other half lives in Tibetan areas now falling within Chinese provinces. As a consequence, when Tibetans and Chinese speak of Tibet they are not referring to the same thing. To the Chinese, Tibet equates to the TAR.

The Tibetan population is under pressure and marginalised by the large number of Chinese settled in Tibet, primarily in the towns. Their exact – and fluctuating – number is not known but, in many towns, the Chinese constitute or threaten to become the majority. As they hold economic and political power, their position and impact on Tibet is much greater than their actual number would suggest.

Since the beginning of the 1990s, Tibet has been targeted by China's "Western Development Programme", aimed at integrating the "backward Western provinces" into the mainland, mainly through large development projects. This has in Tibet, among other places, led to the construction of a much-contested railway line between Golmud in Qinghai Province and Lhasa. Construction progressed significantly throughout 2004 and more than half the track has now been laid. Observers expect that the railway will lead to an increased influx of Chinese immigrants, and further exploitation of Tibet's natural resources. The most controversial issue is the cost of the railway (3.2 billion USD),

which comes to more than the combined cost of health and education services in TAR over the last 50 years.

Political developments

2004 did not bring significant changes for Tibet, either in status or in the actual living and human rights situation in the country. There were no indications that the Government of China would soon be ready to start negotiations with the Dalai Lama on the future of Tibet, or that the international society was considering changing its policies towards more concerted pressure on China to find an acceptable solution for Tibet. Things have continued much as in previous years, with controversial top-down development activities, subsidized economic growth, and continued marginalisation and suppression of basic human rights for Tibetans.

Since the last visit of a Tibetan delegation to China in 2003, the Tibetan Government in Exile had been waiting for an invitation for a third delegation to visit China in 2004. Signs from China, however, were not encouraging. The publication of a White Paper on Tibet in May was considered, by international observers and Tibetans in exile alike, to be a serious set back. In the Paper, China denied that the "one country, two systems" model, known from Hong Kong and suggested by the Dalai Lama, would be applied to Tibet. It also warned the Dalai Lama not to question Chinese sovereignty in Tibet.

The Chinese government finally issued the invitation in June, and a delegation consisting of the Dalai Lama's two special envoys and their assistants went on a 10-day visit. As was the case following the earlier visits, the delegation returned with positive impressions of their meetings with Chinese officials but without any clear commitments to negotiations. The delegation also stated publicly that it agreed with the Chinese officials that there remained "central issues of disagreement" that had to be resolved before negotiations could start. These issues, no doubt, include China's precondition that the Dalai Lama must agree to the fact that Taiwan and Tibet form "inalienable parts of China", and agree to the borders of Tibet.

Given the repressive nature of the Chinese regime and the lack of critical understanding of its colonial role, some observers see it as a positive sign that young Chinese are showing a growing interest in Tibetan Buddhism and Tibet. Yet it remains an open question as to whether a changed attitude among parts of the Chinese population will contribute to greater tolerance within the Chinese government towards Tibetan wishes and, eventually, towards negotiations with the Dalai Lama.

On the international scene, the issue of the EU lifting its 15-year-old ban on export of weapons to China has been controversial. The proposal was raised by some European countries eager to extend their economic ties with China but the European Parliament (EP) voted overwhelmingly against it in November. At the EU-China summit in the Hague in December, however, the Chinese were told by the head of the EU Council that the ban would be lifted but that the "time is not yet quite ripe". The EP and the many organisations protesting against such a step argue that the human rights situation in China has not improved significantly, that the question of Tibet remains unsolved and that China may use the weapons against, among others, Taiwan and the people of Tibet. A lifting of the ban without preconditions would be regarded by China as an acceptance of its policies and repressive regime. The US also warned the EU against lifting the ban.

Human rights

During 2004, the focus on human rights in Tibet was on Tenzin Delek Rinpoche, who was arrested in 2002 and sentenced to death for his alleged participation in bomb attacks and "terrorist activities". Since his arrest, and the execution of Lobsang Dhondrup who was arrested with him, politicians, the US senate, the EP, the Tibetan Government in Exile and numerous organisations and individuals have protested at the sentence and demanded his unconditional release. The Chinese government has remained silent on the issue but reacted to the US Senate's resolution by stating that it would not accept interference in "internal Chinese affairs". On 30 December, it was finally announced by the of-

ficial Chinese news agency, Xinhua, that the death sentence might be turned into life imprisonment if the “monk continues to behave well and does not commit further crimes”. The case will be heard and the final verdict given by the Supreme Court in Sichuan. Protests are likely to continue since Tenzin Deleg has repeatedly proclaimed his innocence.

The Chinese authorities have released some prisoners, including the monk Ngawang Woeser who was arrested during the pro-independence demonstrations of 1987. The number of Tibetan political prisoners continues to fall but, all in all, the human rights situation in Tibet is bleak. This is demonstrated by a number of human rights reports.² Tibetans continue to be arrested for activities that would not be punishable under international law. The fall in the number of political prisoners could be an indication of more tolerance among Chinese authorities although it is more likely to be caused by the severe repression of the slightest sign of pro-independence protests. As late as last December, a monk was arrested on the charge of possessing a portrait of the Dalai Lama. This has been forbidden since 1994.

There is still no news of the boy who disappeared after the controversy over the choice of the next Panchen Lama, the second highest religious figure in Tibet, in 1995. No human rights organisation or individual has to date had any access to the young boy and his family, said to be under house arrest in Beijing.

Living conditions

According to reports on poverty, economic development, health and education, there has been no or very little improvement in the living conditions of the majority of Tibetans in Tibet. On the contrary, negative consequences of the Chinese-led economic development are on the increase, for example, traffic accidents and prostitution. Recent reports also warn that health and access to health care has not improved despite the fact that the health situation for Tibetans is very bad compared to the average health situation in China. The percentage of infant deaths is, for example, three times higher in Tibet. There has been

a slight fall in illiteracy levels as a consequence of improvements in the education system, most of which have taken place in primary schools and in urban areas. However, the education level, particularly of women, continues to be very low. The work situation for the majority of Tibetans, having to compete with the better educated Chinese immigrants, continues to be difficult. Well-educated Tibetans do not face the same problems but they only constitute around 15% of the Tibetan population and hardly have any effect on the overall level of Tibetan marginalisation.

The number of, primarily Chinese, tourists to Tibet continues to grow. However, the benefits for the Tibetan population are limited, since most businesses are in Chinese hands. Recent regulation has increased the control of Tibetan tourist guides and restricted their number. The guides have little freedom to discuss openly with foreigners. Journalists and human rights organisations are still not welcome, and censorship of publications and the Internet is widespread. A book by a Tibetan woman writer *Notes on Tibet* was, for example, banned because the authorities accused the book of “exaggerating the positive role of religion in society”, and of “venerating the Dalai Lama” while neglecting China’s great achievements in Tibet. The Chinese authorities continue to control information about Tibet in China. □

Notes

- 1 The Tibetan Government in Exile does not regard Tibetans as an indigenous people. Tibetans do, however, face many of the same problems and the same lack of fundamental rights (most notably the right to self-determination) as indigenous peoples around the world. This is why Tibet is included in *The Indigenous World*.
- 2 Reports include the International Campaign for Tibet (ICT): “*When the Sky Fell to the Earth*” (on religious repression), International Tibet Support Group Network (ITSN): “*China Plays Games with Human Rights*”, and the United Kingdom’s Foreign and Commonwealth Office’s annual report on human rights.

TAIWAN

Taiwan's indigenous peoples, who constitute 1.7% (440.000) of the population¹, were until recently referred to in Chinese as "barbarians" or "mountain compatriots". Many indigenous people in Taiwan have had the painful experience of being laughed at and teased by non-indigenous people using these derogatory references. It has now been 20 years since these "barbarians" stood up to fight for their rights, and one of the first things they asked for was a respectful name.

Vice president offends the indigenous community

On July 2, 2004, a severe typhoon devastated the mountainous area of central Taiwan, home to many of the country's indigenous peoples. The area was still under reconstruction following a severe earthquake in 1999. While the natural disaster was a tragedy, the comments of Vice President Annette Lu Hsiu-Lien in the wake of the typhoon enraged the indigenous community. Ignorant of the excessive cultivation activities of non-indigenous inhabitants in the area, Vice President Lu stated that the indigenous communities should emigrate to Central or South America to lessen the harm being done to the natural environment by human agricultural activities. Additionally, when responding to the furious indigenous communities, she even claimed that Taiwan's indigenous community was actually not the first people to inhabit the island.

Representatives from indigenous communities, joined by indigenous parliamentary members, protested in Taipei at her unfair accusation and her open discrimination against indigenous peoples. Large-scale demonstrations were held on Ketagalan Avenue, the main road leading to the Presidential Office. The indigenous community demanded that Vice President Lu apologize formally for her improper

comments, recognize the equal rights to which indigenous peoples were entitled and stop disparaging indigenous communities in public. To date, Vice President Lu has not apologized for her comments.

Land Rights

The Draft Land Restoration and Conservation Act (LRCA) prepared and championed by the Council for Economic Planning and Development (CEPD) was sent to the Executive Yuan Board² in October 2004 for a final draft to be sent to the Legislative Yuan. The deputy chairperson of the CEPD, who is in charge of the Draft, emphasized the importance and urgency of enacting the LRCA, describing it as strong but necessary medicine for the excessive development in the mountains and hills. Under the Draft, sensitive environmental areas such as mountains, coastlines and rivers will be classified into 12 or 13 categories and managed directly by the Council of Agriculture. If the Draft is accepted by the legislature, all land above 500 meters will be classified into three different types of mountain reserve on the basis of environmental features, and the coastline will be regulated as coastal reserves.

The enactment was cheered and supported by environmentalists. But from the indigenous communities' perspective, the designation of reserves in mountain areas sacrifices their customs in the name of environmental protection. The environment in the mountain areas has been devastated by the excessive, and often illegal, development carried out by immigrant Chinese Taiwanese. For years, the government has failed to find an effective solution to this problem. Now it proposes prohibiting all use of the land in mountain areas, thereby displacing indigenous communities from their ancestral land. This will not only affect them economically but will also lead to the loss of their indigenous culture. Without proper explanation, informed consultation and effective participation from the indigenous community in this process, the CEPD will never gain the support of the indigenous communities, and the government cannot expect the indigenous communities to cooperate in their environmental conservation plans. The Draft is still

under discussion and there is still time for the government to reopen negotiations around this Draft with the indigenous communities, giving both parties the chance to form a better foundation for future cooperation on land conservation policies.

President Chen Shui-Bian promised to build a new partnership with indigenous peoples in 1999 when he was running for president for the first time. In 2003 he reaffirmed this promise. Indigenous activists believe that under such a new partnership, indigenous peoples' inherent rights to their ancestral land should be recognized and enshrined. Without respect for inherent indigenous land rights, the government's land planning will sacrifice indigenous communities' well-being just as previous colonial governments did.

Indigenous hunting customs and sustainability

Hunting is an activity prohibited by law in Taiwan. But, since the revision of the Wildlife Conservation Law in 2004, indigenous communities are now entitled to conduct hunting activities in designated areas based on their traditional cultural and religious practices. The Forestry Bureau held a training program for indigenous hunters in December 2004. The program was designed to combine the essence of indigenous traditional hunting culture with modern ideas of biodiversity and environmental sustainability. The program was also designed to build the capacity of local communities to manage natural resources, and was not meant to encourage hunting activity in general.

Seventeen out of 31 indigenous hunters who fulfilled the training requirements went off on a hunt as part of the program. No rules were breached during the hunt and a relationship of mutual trust was built between the Bureau and the participating hunters.

The program was controversial among certain environmental organizations. A Buddhist environmental organization was particularly vocal, stating that traditional indigenous hunting culture had already vanished, and that the dispersed traps in the field had become a constant threat for animals in the wild. They found the link between the

disappearance of indigenous culture and the lack of designated hunting areas weak, and strongly opposed the “brutal game” of hunting.

For indigenous communities, the practice of hunting represents a holistic view of culture. It reflects their attachment to traditional territory, and sharing of the game is an important normative social practice. The hunting culture roots indigenous communities’ lives and society in natural settings.

Hunting has become a complicated issue in which the indigenous communities’ customs conflict with national regulations. Hunting by the indigenous communities challenges the government’s authority over natural resource management, and is inconsistent with the government’s project to “civilize” (and disarm) indigenous communities. “Modernization” brought with it floods of tourists and excessive development activities in the mountain areas; the indigenous subsistence economy was destroyed and the indigenous communities were displaced, or even forced to participate in the destruction of the natural environment in order to earn a living in the cash economy.

National forestry policies have ignored indigenous communities’ knowledge of natural resource management, and mistakenly enforced inappropriate forestry policies that have proved detrimental to society as a whole. It would be unfair to blame such destruction solely on indigenous communities. The designation of indigenous hunting areas is not about brutality but an opportunity for the indigenous communities to rebuild their relationship with the surrounding nature, and an attempt to revive the traditional hunting culture and community structure. It is important that such efforts be made before the traditional hunting culture truly vanishes as older hunters in the communities begin to pass away over the coming years.

Update on the Cou honey case

In 2003, the Cou headman (*Peyonsi*) of Tapangu village came across a Chinese Taiwanese taking a barrel of “wild honey” from Cou ancestral territory (see *The Indigenous World 2004*). The Cou headman exercised his authority as headman and confiscated the barrel. The Chinese Tai-

wanese reported the headman for robbery. He was found guilty and sentenced to six months in jail with two years' probation. The case gained symbolic importance among indigenous activists and also drew attention and support from local human rights organizations. A special appeal was brought in 2004 but was overruled. The Cou tribal group has vowed to fight to have the court recognize the Peyonsi's innocence and his right to exercise his authority as Cou headman.

20th Anniversary of the term “*Yuan-zhu-min*”

In December 1984, a group of indigenous activists first used the name “*Yuan-zhu-min*,” literally meaning “people who have originally lived here”, for the organization they were starting. This led to a series of campaigns demanding a respectful name. After 10 years of struggle, former President Lee Teng-Hui finally used the name “*Yuan-zhu-min*” to refer to indigenous peoples in an official speech he gave at a conference on indigenous culture in 1993. In 1994, the Constitution was amended and the term gained legal status.

Each indigenous tribal group has their own way of referring to themselves, in many cases simply the designation “human being” in their own language. The term “*Yuan-zhu-min*” is used in pan-indigenous activism and refers to the pan-indigenous identity that indigenous communities have used to differentiate themselves from the Chinese Taiwanese majority. The campaign that started in 1984 has been enriched by later developments in the indigenous movement, including the right of indigenous individuals to use their traditional names in official documents, the right of tribal groups to use a name they regard as proper rather than the name given them by the government, and the right to use traditional names for mountains and rivers rather than random or politicised names assigned by the government. Some of the main roads or administration areas are now also named after the indigenous tribal groups of the area, in symbolic tribute to the indigenous community.

Although discrimination against indigenous peoples remains prevalent, and absurd comments are still made by Chinese Taiwanese poli-

ticians (e.g. Vice President Lu's comments referred to earlier), it is undoubted that the name "Yuan-zhu-min" and two decades of the indigenous movement have made significant contributions to indigenous society in Taiwan. Many indigenous individuals who were previously ashamed of being stigmatized as "barbarians", including some celebrities, now proudly admit and claim that they are indigenous people.

A memorial concert was held in December 2004 to celebrate the 20th anniversary of the name "Yuan-zhu-min". The concert was well-attended by different generations of indigenous activists and others who support and defend indigenous rights. Songs of struggle were sung, stories of struggle retold to the younger generations, memories refreshed and unfinished goals discussed at this 20th anniversary reunion. □

Notes

- 1 The indigenous peoples are divided into 11 major groups: Ami, Atayal, Paiwan, Bunun, Puyuma, Rukai, Tsou, Saisiyat, Yami, Thao, and Kavalan (see *The Indigenous World 2004*). —Ed.
- 2 The Executive Yuan is the administrative body of the government. The Executive Yuan Board is the decision-making body of the Executive Yuan.

PHILIPPINES

A frequent observation of people and organizations working with indigenous peoples in the Philippines is that concrete, accurate data on a comprehensive scale is greatly lacking. The standard way of estimating the number is to peg the percentage at 10% of the total population. Thus with some 84 million Filipinos today, the figure for indigenous peoples stands at around 8 million or so. There is no reliable basic nationwide data on indigenous peoples, for example regarding literacy, income and so on. However, reports on indigenous peoples in the Philippines consistently show that they are among the most marginalized of the country's poor. The Philippine government attempted to correct these social injustices through promulgation of the *Indigenous Peoples Rights Act (IPRA)* in 1997. After seven years of the IPRA, it is an understatement to say that there is still much left to be done.

Almost two thirds of the country's indigenous peoples are estimated to live in the southern large island of Mindanao, while the bulk of the remainder reside in the mountainous northern part of the northern island of Luzon, the Philippines' largest island. The rest are mainly small communities scattered over the central islands of the archipelago, as well as in the central and southern regions of Luzon.

Mining and development

A common feature of the Philippines' indigenous peoples is that they live in the more isolated, frequently mountainous regions of the country, where they have for the most part managed to maintain their traditional ways of life. Not surprisingly, these areas also happen to be the repositories of rich natural resources such as forests and minerals. Since logging has wasted the Philippines' forest cover from 17.1 mil-



lion ha. in 1934 to 5.39 million ha. in 1996, forests hold little interest for investors. The Philippine government in particular, feels that the lacklustre economy could be jumpstarted by attracting foreign investors to mining prospects in the country. According to a report by a Department of Environment and Natural Resources (DENR) official, the Philippines ranks 3rd in the world for gold, 4th for copper, 5th for nickel and

6th for chromite in terms of endowment (meaning mineral resources per unit area).

Mining hurts indigenous communities in at least two ways. Not only does it destroy the natural environment from which they generally derive their subsistence but the economic benefits are largely reaped by investors and workers from outside their communities.

A crucial Supreme Court decision

In early 2004 (January 27), mining came to the fore as an indigenous concern when the highest court in the country, the Supreme Court, ruled in favor of a petition from a B'laan community in south-central Mindanao on the matter of the Western Mining Corporation (or WM-CP, an Australian firm) entering into a financial or technical assistance agreement (FTAA) with the Department of Environment and Natural Resources (DENR). The communities to be affected by the mining enjoined the Supreme Court to declare the *1995 Mining Act* unconstitutional, cancel the FTAA and prevent the DENR from processing any more FTAA applications.

It is frequently misunderstood that this Supreme Court decision invalidated the *1995 Mining Act*. Unfortunately this was not the case. It only agreed that the FTAA issued to the mining corporation in this particular case was a service contract, which the Philippine Constitution disallows. The Constitution likewise forbids foreign corporations from fully managing or operating the exploitation, development or utilization of the country's natural resources. This was an additional reason for the FTAA with this particular company to be declared null and void.

But even if it was only a partial victory, there was much rejoicing. There was a renewal of synergies between indigenous peoples and environmentalists, and there was a reconfirmation of the need for more coordinated and sustained education and advocacy on the mining issue. Awareness building and community consolidation are particularly crucial for indigenous communities because, as one environmental lawyer declared, "The indigenous communities [where most mining

areas are] are the last line of defense against mining". Advocacy on the mining issue will be more difficult if the indigenous peoples themselves allow the mining to take place in their ancestral domains.

Free, prior and informed consent

Meanwhile, the IPRA has stipulated that any development project that is to take place in or affect indigenous communities must first obtain the free, prior and informed consent (FPIC) of these communities. The National Commission on Indigenous Peoples (NCIP), the government agency mandated to oversee indigenous concerns, issued an Administrative Order in 2002 regulating how corporations and organisations should go about securing such FPIC. Corporations have complained that the process is too long and costly, and the Macapagal-Arroyo government, ever fearful of losing investor interest, has been pressuring the Commission to shorten the process. The matter of whether indigenous communities' grant FPIC or not is thus particularly important in the anti-mining campaign.

Restructuring the National Commission

On September 27, 2004, President Macapagal-Arroyo issued an Executive Order that upset three basic sectors of Philippine society – indigenous peoples, farmers and the urban poor. Macapagal-Arroyo issued the Executive Order (EO 364) *"Transforming the Department of Agrarian Reform [DAR] into the Department of Land Reform [DLR]"* aimed at supporting an asset reform as one of her five anti-poverty measures for social justice. The president understood "asset reform" as comprising not only agrarian reform but also urban land reform and ancestral domain reform. Hence the Order placed both the National Commission on Indigenous Peoples and the Presidential Commission on the Urban Poor (PCUP – mandated to oversee urban poor concerns) under the Department of Land Reform. Both these Commissions would be placed under the "supervision and control" of the DLR.

Was the president authorised to undertake such a sweeping reorganization? Judging by several laws, it would seem so. Government spokespersons were quick to point out the advantages of the restructuring. For both the NCIP and the PCUP, there was the prospect of being able to gain access to the billions of pesos recovered from the ill-gotten gains of the Marcos regime (1972-1986) and which Congress had earmarked for agrarian reform. And there was the offer to avail themselves of the sorely needed technical expertise that the DLR would inherit from the Department of Agrarian Reform.

The PCUP and the urban poor saw this move as a way of finally getting sorely lacking government attention. On the other hand, the farmers were apprehensive that this turn of events would derail the acknowledged slow process of agrarian reform even further. The indigenous sector was equally upset. Even the head of the Tribal Council Association of the Philippines (TRICAP), whose members identify more with mainstream politicians, joined the popular demand for recall of the president's Executive Order, or at least the exclusion of the NCIP from it. The incumbent Chair of the NCIP was nearly sacked by the president, who interpreted his move to consult with indigenous leaders and support groups as an act of defiance against her. To some extent, the issuing of this Executive Order even had the effect of uniting indigenous groups and advocates who had hitherto been divided.

A month later a compromise was reached – *Executive Order 379* – which stated that the NCIP would now simply be an agency attached to the Department of Land Reform without the “supervision and control” provisions of the earlier order. This has settled the discontent somewhat, and there is now a “wait-and-see” attitude, especially with regard to the NCIP remaining an independent agency as mandated by the IPRA. There are still policy implications in this regard. Firstly, the NCIP can avail itself of the ill-gotten gains only if Congress legislates in this regard and considers it a priority. There is currently even difficulty in getting Congress to allot a regular operational budget to the NCIP.

More importantly, the Executive Order shows that the government does not recognize the difference between agrarian reform and urban land reform, on the one hand, and indigenous peoples' ancestral domains, on the other. With the former, the government is recognized as

the owner of the land and it is therefore redistributing it to the urban poor and farmers. Ownership of ancestral domains is fundamentally different since these lands have been with the indigenous peoples since "time immemorial", and the ancestral domain title to be awarded is simply the government's way of recognizing this prior ownership.

Land titling

The government's recognition of indigenous ownership of ancestral domains remains the primary issue. There have been improvements in terms of numbers. The mere 11 titles approved by the NCIP by the end of 2003 had risen to 29 by the end of 2004. This figure falls far short of the NCIP's target of more than 50 titles for 2004. Indeed, there is still a long way to go, 29 titles in seven years is an average of only three to four titles a year. There is an estimated 300-500 ancestral domains throughout the country. At the current rate, it will take the NCIP at least 75 more years to process all the titles. The popularly expressed fear is that, by that time, the indigenous peoples will have been decimated by poverty, development aggression or loss of their identity.

Compounding the NCIP's funding constraints for this important goal is its continuing adherence to a titling process the bureaucratic requirements of which increase the cost by at least 50%. The NCIP also continues to bow to the pressure of geodetic engineers who insist on traditional ground survey methods which only they can do, refusing to allow more participatory and less expensive ways of boundary delineation such as the use of resource-grade Global Positioning System (GPS) machines. The traditional way is also at least 50% more expensive.

One way of responding to funding constraints and the NCIP's lack of expertise in titling requirements (such as the production of ethnographic proofs) is to engage in partnerships with civil society organisations. To its credit, the NCIP has been doing more of this lately. But it remains difficult because one of the bases for such agreements is that the NCIP comes up with a financial plan, and the projected cost in this is usually quite high. In addition, the well-meaning initiatives of NCIP officials at Central Office are frequently derailed by self-interest or a

lack of understanding and commitment on the part of NCIP employees at local level. Hence another popularly expressed fear or cynicism goes thus: is the government really serious about recognising IPs' rights to their ancestral domains?

There will also be a need to start reviewing how the indigenous communities that have already been awarded titles are faring. Has the title empowered them or do they still face difficulties in asserting their rights despite the title?

The indigenous peoples' Consultative Body project

The project for the formation of a Consultative Body of indigenous leaders to advise the Commissioners of the NCIP commenced in 2003 (see *The Indigenous World 2004*). It was hoped, in vain, that the Consultative Body would be established by September 2004. Factors hindering the process were the elections, which took place in mid-year, and constant threats from the President regarding the leadership of the current Chair, who has been very supportive of the project.

What is significant about the Consultative Body project is the fact that it reaches more than 90% of Philippine provinces with indigenous inhabitants, and thus most of the major groupings of indigenous organisations and support groups, and all levels of the NCIP. It is hoped that Consultative Bodies will be established at three levels – provincial, regional and national – during 2005. Whatever happens to the Consultative Bodies after they are formed, the coming together of different groups and the basic data generated by the process are already momentous achievements.

Concluding remarks

In the Philippines, the International Decade of the World's Indigenous Peoples came to an end in 2004 just about as quietly as it had begun ten years ago. The same concerns are there – development aggression (this year the focus is on mining), recognition of territorial rights and the

government's response. We believe that the quietness of the indigenous peoples in the Philippines and their advocates is an indication of their sustained vigilance. □

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- Files of and observations derived from AnthroWatch's participation in the Consultative Body Project (an IWGIA-supported project) and in the protests against EO 364.
- Reports and observations derived from the titling experiences of the Ancestral Domain Support Program, an IWGIA-supported project co-implemented by the Inter-Peoples Exchange (IPEX) and AnthroWatch.

TIMOR LOROSA'E

Timor Lorosa'e (formerly East Timor) occupies half of an island located between Indonesia and Australia, with a population of around 926,000 people¹ and a per capita income of USD300.² Timor Lorosa'e was a Portuguese colony for almost 450 years, and a territory occupied by the Indonesian military for 23. It was liberated from Indonesia in 1999 after a majority of the population voted against Indonesia's proposed autonomy in a UN sponsored ballot on 30 August 1999. The UN referendum was marred by violence, and this resulted in the UN Multi-National Forces (INTERFET) intervention on 20 September 1999.

After gaining control of Timor Lorosa'e, the UN established the United Nations Transitional Administration (UNTAET) to determine the conditions for independence. On 20 May 2002, the UN handed over administration to the Timorese.

This article will first highlight the major political and other related events of 2004. This will be followed by a brief analysis of these events in order to provide an insight into how they have affected or shaped Timor Lorosa'e's nation/state-building process.³

Pursuing political stability

The events that occurred in Timor Lorosa'e during 2004 can be categorised into two groups: international and national. Each category has different implications for Timor Lorosa'e. The international events affected Timor Lorosa'e's stability and economy while the national events affected its democratization process.

At the international level, two distinct events occurred in 2004. The first were the negotiations and agreement with Indonesia on land bor-

der delineation. As a country sharing a land border with Indonesia, it is most important that Timor Lorosa'e should have a demarcation agreement as this will provide stability along its border. Stability is crucial, since any disturbances on the border with Indonesia will disturb Timor Lorosa'e's development process and its chances of obtaining foreign investment. So, since 2002, Timor Lorosa'e has engaged positively with Indonesia to discuss land border delineation. During November and December 2004, Indonesia and Timor Lorosa'e reached an agreement.⁴ This agreement is also important for Timor Lorosa'e's stability since it lays down the foundations for improving its relationship with Indonesia. A good relationship with Indonesia will prevent further activities on the part of anti-independence militia in Timor Lorosa'e.

Following this agreement, on 14 December 2004 there were discussions between the presidents of Timor Lorosa'e and Indonesia in Denpasar, Indonesia, to set up a Commission for Truth and Friendship that will help these two countries to resolve the issue of the political violence that took place on the part of anti-independence militias in 1999. The objective of this commission, according to its terms of reference, is to establish the conclusive truth in order to ensure that events similar to those of 1999 do not recur.⁵

This initiative, however, has received mixed reactions in Timor Lorosa'e. Local and international NGOs have criticised the government, arguing that this commission will undermine justice. They even organised a workshop in December 2004 calling for an International Tribunal to investigate the post-UN referendum violence. President Xanana Gusmão, however, is currently trying to hold a dialogue with the victims of the 1999 violence and with civil society in order to discuss ways of resolving these differences and thus smooth the establishment of the commission.

This positive process did not apply to the negotiations between Timor Lorosa'e and Australia on delineation of their maritime boundaries.⁶ Since the negotiations started in 2001 (between the UN, acting on behalf of Timor Lorosa'e, and Australia), there has been very slow progress towards reaching an agreement. The negotiations broke down in October 2004 when Australia decided to temporarily withdraw.⁷

These complicated negotiations have resulted in political tension between the two countries.⁸ The main problem is that they cannot agree on how to delineate their maritime boundaries. Australia wants to use the continental shelf principle, which could result in boundaries being drawn very close to Timor Lorosa'e, since Australia claims that its continental shelf stretches almost to its coast.

On the other hand, Timor Lorosa'e argues that the boundaries should be drawn halfway between the two countries since Australia and Timor Lorosa'e share one continental shelf and their Exclusive Economic Zones overlap.

National events

Besides these two events, there have been some national events of importance to Timor Lorosa'e. The first took place in July 2004, when a group of former Falintil (*Forças Armadas De Libertação Nacional de Timor Leste*, National Armed Forces for the Liberation of East Timor) guerrillas staged a demonstration in front of the government offices calling on Prime Minister Mari Alkatiri to resign and call new elections. This was due to allegations of corruption and mismanagement in Alkatiri's government. The demonstration ended in violence when the police started shooting into the crowd. A number of people were injured, including Foho Rai Boot, a former Falintil commander who led the demonstration. President Xanana Gusmão decided to initiate a dialogue between the government and the demonstrators in order to resolve the problem. This demonstration shows that there is still political tension and crises of confidence in the government.

Secondly, in July 2004, the government decided to deport an Australian journalist who at that time was investigating corruption within the Timor Lorosa'e government. The deportation raised questions as to the government's compliance with the democratization process. The event also raised concerns over the government's tendency to apply authoritarian rules since the deportation was questioned by both the opposition and civil society.⁹

Thirdly, in September 2004, fighting broke out between martial arts groups in Ainaro district, resulting in widespread destruction with hundreds of houses being burnt down.¹⁰ This event was of great concern to the people and national leaders since it shows that some people still resort to violence to resolve their differences.

Finally, in December 2004, the government introduced legislation on freedom of assembly, which was passed by a majority in the parliament. This legislation raised concerns over potential human rights violations on the part of the government since it contains articles prohibiting people from organising demonstrations that question the reputation of the government or its leaders.

Conclusion

In summary, one could argue that international events have, to some extent, affected Timor Lorosa'e's stability and economy. Good relations with Indonesia have provided important steps towards stability on its border and, although there are still some reports of militia activities, the Indonesian military has committed itself to preventing any further militia infiltration into Timor Lorosa'e. The tense relationship with Australia has affected Timor Lorosa'e's economy since oil and gas revenues, which were expected to flow into the country, have not been realised. This has created difficulties for the economy.

National events have, to some extent, affected Timor Lorosa'e's democratisation process. The prohibition on demonstrations and the deportation of the Australian journalist show that there is a government trend towards applying authoritarian rules in Timor Lorosa'e. □

Notes

- 1 See *ABC Asia Pacific: East Timor: Census Shows Fertility, Population High, Nutrition Low*, 15 September 2004, available at http://www.goasiapacific.com/location/asia/GAPLocAsiaStories_1200019.htm, accessed on 13 March 2005.

- 2 See **Hill, Hal and João M. Saldanha. 2001.** The Key Issue. In *East Timor: Development Challenges for the World's Newest Nation*, ed. Hal Hill and João M. Saldanha, p.3. Singapore: Institute of Southeast Asian Studies; see also **United Nations Development Program. 2002:** East Timor Human Development Report 2002: Ukun Rasik A'an; The Way Ahead. Dili:UNDP.
- 3 The author would like to thank Dr. Tony O'Connor for his useful comments on this article.
- 4 The agreement will be signed in 2005. See UNMISSET Daily Press review, 21 December 2004 (in the author's collection).
- 5 See Terms of Reference of the Commission (in the author's collection).
- 6 Inside these maritime boundaries lie hundreds of billions of barrels of oil and gas, which, if exploited, will economically benefit Timor Lorosa'e and Australia, especially the Northern Territory. See AFP: Australian oil giant threatens to pull out of East Timor project, 21 November 2004.
- 7 In mid-August 2004 the Australian Minister of Foreign Affairs announced that there would be an agreement between Timor Lorosa'e and Australia in December. Discussions, however, broke down during the next meeting when the two sides could not agree on the basic issues. See *Lusa News Agency*: East Timor: Dili-Canberra sea border talks break down, 27 October 2004; see also AFP, op.cit.
- 8 See Jose Ramos Horta: Address to the Lowy Institute for International Policy, Monday, 29 November 2004. (In the author's collection). At the time of writing, Timor Lorosa'e and Australia have just concluded another round of negotiations (March 2005) with each side optimistically stating that agreement will soon be reached in order to start oil exploration that could benefit Timor Lorosa'e's economy.
- 9 Sonny Inbaraj: A Daily Becomes the Prime Minister's Punching Bag, *Inter Press Service* (IPS), 9 March 2005.
- 10 The Ainaro incident occurred due to an argument between two different members of two different martial arts groups. The argument ended with fighting that later involved members of the two groups. The fighting caused hundreds of houses to be deliberately burnt. See President Xanana Gusmão's Address to the Nation, 30 August 2004 (in the author's collection).

INDONESIA

2004 was a dismal year. Manggarai, Flores, in the Province of Nusa Tenggara Timur (NTT), again saw harsh state violence against indigenous peoples. This conflict is rooted in land claims: the indigenous peoples claim it is their land while the local government says their claim is breaking the protected forest area regulation found in the Head of District's Decree on *The Establishment of District Manggarai Joint Team on the Order and Security of Manggarai Forest*.¹

With the tsunami in December 2004, indigenous peoples of Alor Island, Nabire (West Papua) and Aceh, (North Sumatera and Simeulue Islands) saw their habitat wiped out. Apart from causing the death of hundreds of thousands of people, the tsunami also had a serious impact on the local indigenous community based organizations, which are members of the national umbrella organization AMAN (*Aliansi Masyarakat Adat Nusantara*). The Aceh-based indigenous organization JKMA (*Jaringan Kerja Masyarakat Adat Aceh* or *Indigenous Peoples Networking of Aceh*) lost their coordinator, who was also the Coordinator of Sumatera and a National Executive Coordinator. In addition, 30 of AMAN's member communities were destroyed. Fifteen of these were totally ruined by the tsunami and earthquake. A number of community leaders associated with AMAN also died in the tsunami. This has made it difficult to reconsolidate JKMA member communities along the west coast of Aceh. AMAN is currently putting great efforts into reorganizing JKMA.

Mining Act

A draft of a New Mining Act is being reviewed by the House of Representatives (*Dewan Perwakilan Rakyat*, DPR). This new act strengthens

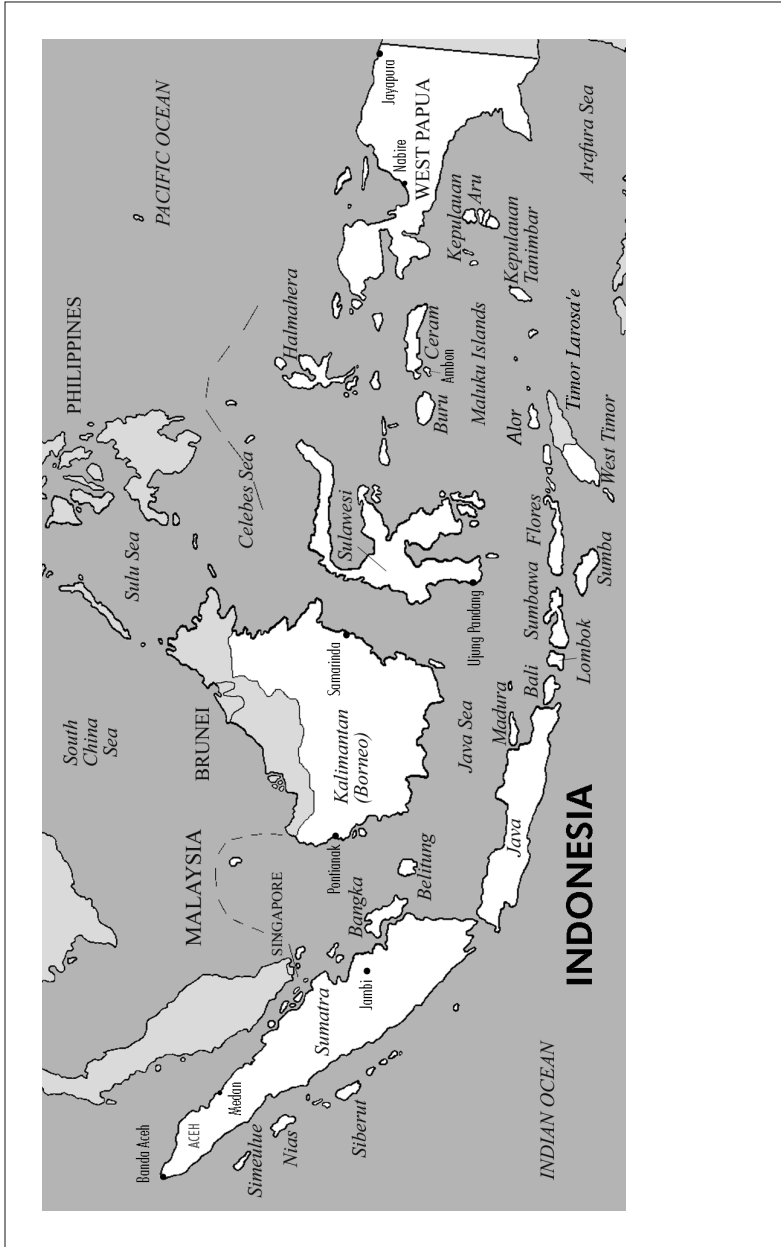
the earlier decision on mining in protected forests.² Some indigenous and local communities in Kalimantan and Sulawesi have been protesting against this. The act provides the legal basis for 13 mining investors to develop mining concessions in 25 districts in 10 provinces of Indonesia. It is clear that the act is being passed to avoid the obstacle that can be found in *Act No 41/1999* on forestry, which forbids the opening up of protected forest for mining concessions.

According to the Indonesian government's official explanation, the act is intended to respond to the demands of mining corporations. The total concession for the thirteen investors³ is 925,000 hectares located in various protected forests. The whole project will seriously affect 7 million people in and around the mining concession areas. 30% of these people live below the poverty line.

Human rights violations

Since the beginning of what is known as the Reform Era in Indonesia – 1998 until the present day - it has been expected that there would be a better future for the indigenous peoples of the country, at least in terms of legal recognition. Developments so far have, however, been insufficient. The case of the Colol community in Manggarai, a district in Flores Island, the central part of Indonesia, illustrates how indigenous peoples' rights have been ignored by other stakeholders due to the state's policies.

On March 10, 2004 hundreds of farmers stormed Manggarai Police Station to demand the release of seven local residents who had been detained by the police the previous day for planting coffee in their kitchen gardens. The local government is claiming their kitchen garden land as protected forest. The police opened fire, causing the deaths of five people, and seriously injuring 26 more.⁴ Disappointment had been growing in Colol community over the process of gazetting their kitchen gardens as protected forest. They consider this to have been imposed on them rather than as having been a participatory process. Many of the people from Colol community have been working the land for generations in a system of farming and habitation known as



Gendang One Lingko Pea. In this traditional system, the lands that have now been classified as forest conservation areas are their traditional lands. They knew nothing of new developments in the Local Regulation whereby their lands were being taken over. Living a subsistence way of life, they know that working these lands is their only way of surviving.

Following the clash, a legal process commenced. The chief of Manggarai police, Sr. Comr. Bonifasius Tompoi, was identified as being responsible for the shooting incident, along with 15 indigenous peoples. The court ruled that these people were responsible for the clash and sent them to jail. Some of them spent up to seven months in prison.

Political transformation and the indigenous movement

In other parts of the country, there have been more positive signs of development, political transformation and new impacts on the indigenous movement. Some of the most promising developments have been seen in North Lombok, in the province of Nusa Tenggara Barat. The indigenous peoples here are making efforts to develop the autonomy of indigenous communities. Their effort is inspired by AMAN's concept of creating local governance structures within the framework of the Local Autonomy regulations building on local social and cultural systems.⁵ The goal of political transformation is clear. The starting point is to develop a discourse on indigenous autonomy in the villages, regardless of whether the village adopts the *Desa* governance system (that is, the state administration's local governance system) or not. What is happening in Bentek and Sesait villages, North Lombok, as compared to other places, is a basic change in acceptance of its social structure. Led by indigenous activists, the two villages are promoting the implementation of *Wettu Telu* - the separation of authority in village governance. The traditional *adat* structure is responsible for environmental management, including natural resource management, while social relationships and judicial matters are governed by the *Desa* political structure headed by the Chief of Village, and spiritual matters fall to the traditional religious structure. This governance sys-

tem is widely accepted among the indigenous peoples of the two villages.

These indigenous peoples have been criticizing the *Local Autonomy Act*, particularly its content with regard to the direct election of local government chiefs.⁶ Unlike discussions in other districts of the country, the main issue here is not the issue of origin of the candidate. Their concern is rather the need to reform the government system in such a way that local democracy is based on local social and cultural systems.

AMAN's organisational development

The division of work between AMAN's secretariat and the regional coordinators is still causing many difficulties. This became clear once more in the aftermath of the tsunami in late December 2004 when many people were killed in Manggarai, Bulukumba, etc. Such a situation needs a quick political response but, due to the structural difficulties mentioned above, AMAN was slow to respond. This affected its relationship with civil society organizations and NGOs.

Realizing there were difficulties, the secretariat had earlier in the year proposed that the National Coordinators should delegate part of their political mandate to the secretariat. In the Coordinators' Meeting in Pontianak on November 5, 2004, it was decided to give this mandate to the Executive Secretary. Based on this decision, the secretariat has initiated joint work with the National Commission of Human Rights (*Komisi Nasional Hak Asasi Manusia, KOMNAS HAM*). This has led to an agreement to develop a Memorandum of Understanding (MoU) on collaboration between AMAN and KOMNAS HAM. The MoU is still in the process of formulation but communication has been growing, particularly through a series of seminars on the indigenous movement in Indonesia.

Another significant development in the local indigenous organisations is the growing involvement of indigenous youth. They are building networks among themselves, and are planning to hold a national youth congress. Their concern for capacity building is very serious,

and this can clearly be seen in the daily communications between them. To facilitate this development, the secretariat has a staff member responsible for “cyber facilitation” for indigenous youth. For those who have no email access, communication is via letter. More than 100 indigenous youths are currently actively involved in networking and community-level work. The process will be monitored until the next Congress, at which time the plan to develop an indigenous youth organisation will be publicly declared.

In Java, AMAN’s associated organization, Pamapuja, shows signs of changing its focus. While AMAN has so far paid more attention to the right of access natural resources, thus colouring the indigenous movement in Indonesia as a material-based movement, Pamapuja is now promoting the importance of a culturally-based movement, with its declaration on the importance of respect for and protection of the cultural heritage of indigenous peoples in Java. In the political arena, the indigenous movement in Indonesia has driven the local governments and political parties to raise this social aspect as a way of gaining a political bargaining position. According to research carried out by the Indonesia Institute of Science (*Lembaga Ilmu Pengetahuan Indonesia*, LIPI), certain aspects of the indigenous movement in Indonesia should be seriously considered, since a manipulation of meanings is taking place. Research shows that in Banten Province and South Sulawesi Province, local autonomy and the indigenous movement’s main issue have been transformed into a “back to old fashioned” structure centered around noblemen. In Sulawesi, there is a strong trend towards the symbiosis between local autonomy and the indigenous issue giving a kind of cultural legitimacy to the noblemen (*Andi*); the same goes for the *Jawara* in Banten – the latter are a group of people who are socially respected for the strength of their local knowledge, their social relationships and their leadership.

All these local features of the indigenous movement in Indonesia demonstrate a number of differences between the context of indigenous peoples in Indonesia and indigenous peoples in Western countries, who have already carved out a more common understanding of what it means to be indigenous. □

Notes

- 1 No. Pb.188.45/27/VI/2002.
- 2 Act No. 19/2004 on the Decision of Perppu (*Peraturan Pemerintah Pengganti Undang-Undang*, a government regulation that functions as an Act or Law before the intended Act or Law is released).
- 3 The thirteen investors are PT. Sorik Mas Mining, PT. Karimun Granite, PT. Natarang Mining, PT. Indominco Mandiri, PT Interex Sacra Raya, PT. Pelsart Tambang Kencana, PT. Nickel Indonesia (INCO), PT Aneka Tambang (ANTAM), PT. Nusa Halmahera Mineral, PT. Weda Bay Nickel, PT. Gag Nickel, and PT Freeport Indonesia (FI).
- 4 The gardens were gazetted as conservation forest through the Head of District's Decree No. Pb.188.45/27/VI/2002 on *The Establishment of District Manggarai Joint Team on the Order and Security of Manggarai Forest*.
- 5 Read more about Local Autonomy and its impact on indigenous communities in *The Indigenous World 2002-2003* and *2004*. —Ed.
- 6 Act No. 32/2004.

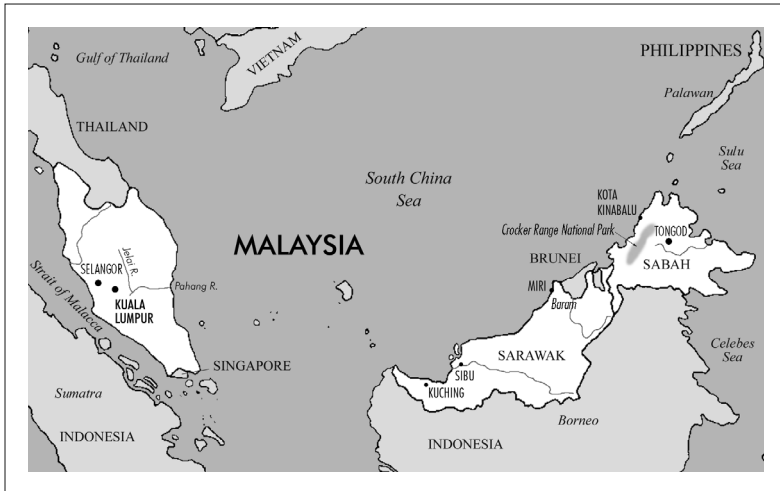
MALAYSIA

The *Orang Asli* are the indigenous peoples of Peninsular Malaysia. They number 145,000, representing 0.5% of the national population. Anthropologists and administrators have traditionally regarded the *Orang Asli* as consisting of three main groups comprising several distinct sub-groups. The main groups are the Negrito (Semang), the Senoi and the Aboriginal-Malay. In Sarawak, indigenous peoples are collectively called *Orang Ulu* or *Dayak* and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. The 39 different ethnic groups in Sabah, called natives or *Anak Negeri*, make up about 60 % of the 2.4 million population.

Land rights and court cases

In Sabah and Sarawak, Native Customary Rights (NCR) to land and resources continued to be a significant topic in 2004. Community organizations and the national Human Rights Commission held numerous workshops and inquiries with the purpose of raising awareness, discussing issues and options and advising communities on how to deal with the local government and companies. Relevant data was systematically collected, documented and shared in order to assist the communities in their claims. A limited knowledge of governmental procedures and lack of skills in asserting NCR within indigenous communities continue to hamper efforts to secure rights over land and resources.

In Sabah, defendants in the Tongod case (see *The Indigenous World 2004, 2002-2003*) have made a renewed appeal for the court to dismiss the case (the first appeal was rejected). A new affidavit was forwarded to the court but a date has not been set to hear the pleadings. Earlier in



2004, disagreement over whether to accept financial compensation or not obstructed community dialogue and action in one of the villages involved in the case (Mananam). But, through various dialogues with the newly elected representative to the State Legislative Assembly in Tongod and also working together to build gravity water supplies to the villages in the area (work initiated by the local NGO PACOS Trust), the tension was abated. These activities also significantly reaffirmed the communities' struggle and lobbying efforts. The Bundu court case, also in Sabah (see *The Indigenous World 2004*), had a positive influence on the community itself. A number of individuals who had previously been undecided have since come down in support of the court case. Unfortunately, some remain unconvinced, particularly community leaders who have vested interests in the company, which illegally logged the forest near Bundu after winning a contract from the government to build a water supply to the village. The community organisation had to combat these negative influences by involving the community in dialogues and decision-making processes. To date, the defendants have yet to submit an affidavit for their defense.

In March 2004, the Sarawak Court of Appeal deferred judgement on an earlier decision made in 2001 by the High Court in favour of four Iban from Rumah Nor, Bintulu. The High Court judge ruled that the

plaintiffs do have native customary rights over a disputed area of 672.08 hectares that formed part of a provisional lease of 8,854 ha issued by the government to a plantation company, Borneo Pulp Plantation. This was a victory that effectively rendered the provisional lease to the company null and void. The defendants' lawyer tried to contend, among other things, that native customary rights as recognised by Section 66 of the *Sarawak Land Settlement Ordinance 1933* only cover *temuda* (cultivated) land and do not extend to *pulau* (preserved virgin jungle) and *pemakai menoa* (communal land). The decision had wide implications for the government, as there are currently no less than 50 similar cases in Sarawak on native customary rights, filed mostly by Iban and Orang Ulu.

Almost all the Orang Asli lands are still not recognized and, although there is a provision for Orang Asli reserve land, the government can revoke such reserves for any reason without notice or compensation. The Orang Asli consider these court cases as one way of asserting their rights over their resources and territories. In a number of successful cases in Peninsular Malaysia, judgements have upheld indigenous peoples' rights to their lands. The case of *Koperasi Kijang Mas v Perak State Government* (1991) ruled that the Jahai in Belum have rights to forest resources, including timber. In the case of *Adong Kuwau v Johor State Government* (2000), the court ruled that the Jakun of Kuala Linggiu have rights over forest resources in order to maintain their livelihood. Similarly in the case of *Sagong Tasi v Selangor State Government* (2002), the court ruled that the Temuan in Bukit Tampoi have legal rights over their traditional lands.

About 40 per cent of the Orang Asli population¹ lives close to or within forested areas. They engage in swiddening (hill rice cultivation), hunting and gathering. These communities also trade in petai, durian, rattan and resins to earn cash. A very small number, especially among the Negrito (e.g. Jahai and Lanoh), are still semi-nomadic, preferring to take advantage of the seasonal bounties of the forest.

Government policies and programmes

In September, the European Commission, through the UNDP (United Nations Development Programme) national office, launched a small

grants programme to promote the sustainable management of tropical forests, placing special emphasis on supporting poverty reduction among indigenous peoples. Three indigenous representatives from Peninsular Malaysia, Sabah and Sarawak form part of the project's steering committee. Indigenous organizations view their inclusion on the committee as a positive step towards engaging with the government, in particular the Ministry of Environment and Natural Resources, around the formulation of activities that would benefit indigenous communities.

Another positive trend towards more indigenous participation and collaboration with the government was noted in Sabah. Two initiatives in 2004 on the part of the PACOS Trust (a process to draft both the Rules that would accompany the Sabah Biodiversity Enactment 2000 and the Crocker Range Park Management Plan) demonstrated commendable cooperation on the part of relevant government departments and policy makers. In the past, various government officials and politicians have repeatedly expressed the need to take the views of indigenous peoples seriously but this has always been seen as mere lip service. The actual incorporation of a series of Rules drafted by indigenous peoples into the final document, and its adoption by government, however, has yet to be seen. These rules relate to protecting indigenous knowledge and biological resources in indigenous territories. Likewise the comments that were painstakingly collated by PACOS Trust, and submitted to the Sabah Parks in order to amend the management plan for the Crocker Range Park to take into consideration land claims and other demands by the communities have yet to be incorporated.

Lobbying work by indigenous organizations has indeed attracted the attention of bilateral donors. Many also believe that the inclusiveness and openness shown by many government departments and elected representatives (state governments as well as national governments) could be related to the government's growing realization of the rapidly dwindling state resources and the need for cooperation among all parties concerned. A statement by the deputy (federal) Finance Minister declaring that Sabah was one of seven states that was "almost bankrupt" confirms the fact that the state is indeed economically poor.

National elections and “developmentalism”

The National Front (BN) coalition won a spectacular victory in the March 2004 national elections. Analysts attributed this to the new prime minister, Abdullah Ahmad Badawi (a BN member) who assumed his position five months prior to the election with a firm pledge to “improve governance”, “fight corruption”, restore “safety and security” and “improve the delivery of services by the civil service” along with a style of politics that attracts support even from his critics. The BN’s victory was also attributed to the revision of constituency boundaries made possible through amendments to the *Election Act* and *Election Offences Act* passed in April 2002. The delineation exercise carried out by the Elections Commission prior to the 2004 election was probably the most comprehensive yet, and many irregularities were subsequently reported. This included complaints from voters of their names being transferred to other constituencies or opposition areas being lumped into a single constituency while BN strongholds were divided into several smaller constituencies, increasing the number of seats for the BN.

The use of the *Internal Security Act* and other coercive laws, as well as the courts, to curb and repress the opposition between the 1999 and 2004 elections also forced some charismatic leaders out of the election process.²

The emergence of a culture of “developmentalism”, which has changed the nature of politics among Malaysians, also shaped the election results. The Malaysian electorate want rapid economic growth, which they associate with the BN, and the BN parties exploited this by transforming themselves into extensions and instruments of the state to assist not merely in maintaining the status quo but also in delivering public works and services. More and more Malaysians are imbued with “developmentalism” and increasingly ask what development projects or services the political parties can provide for them.

Although the situation for indigenous communities was no different, some indigenous-majority areas tried to make a difference by emphasising land issues. Indigenous communities submitted a Native Customary Land Rights Memorandum to the Sabah State Government

and the Malaysian Human Rights Commission in an attempt to lobby the government on indigenous rights and to empower village representatives involved in the process. This Memorandum was also used to ask candidates to make a stand during the state and parliamentary elections. The campaign particularly had an effect in Pitas constituency, where the BN candidate won, but with a reduced majority. After the elections, an official from the Chief Minister's Department came to Kanibungan, Pitas where Rungus and Tambonuo communities had endorsed the Memorandum. The Deputy Chief Minister announced that 15,000 ha of Native Customary Rights land would be excised from an area of approximately 250,000 ha of land - much of which was under NCR - given to a state agency in the 1980s. Some of the cases that accompanied the Memorandum were referred to the Anti-Corruption Agency to determine whether there were irregularities in the land transfers.

The indigenous movement

In February 2004, the Indigenous Peoples Network of Malaysia (IPNM) hosted indigenous representatives from all over the globe who attended the Seventh Conference of Parties (COP7) to the Convention on Biological Diversity (see article on the CBD process in this volume). It also coordinated the participation of 100 indigenous representatives from Malaysia. At the meeting, IPNM made a strong statement as to why they had rejected the timber certification process, stating that the Malaysian Timber Certification Council (MTCC) continues to disrespect NCR and indigenous peoples' ways of life. IPNM is now preparing for its next general assembly and is in the process of assessing the effectiveness of the network.

Meanwhile, local indigenous organisations and movements continued their capacity building of community organizations in 2004. In particular, resource persons were pooled in order to improve community mapping skills and techniques so that maps could be produced using GPS and GIS. Negotiating techniques to facilitate dialogue between the community and government, and facilitating discussion on resource management within the community, were also included in

training workshops. Problematic areas were surveyed and many are in the process of being mapped. Community maps have helped indigenous communities throughout Malaysia in negotiations with outside parties, the government and in court battles. □

Notes and references

- 1 Including Semai, Temiar, Che Wong, Jah Hut, Semelai and Semoq Beri.
- 2 **Loh, Francis. 2004.** Understanding the 2004 Election Results: Looking beyond the Pak Lah factor. *Aliran Monthly* 2004:3 (www.aliran.com)

THAILAND

The indigenous and tribal peoples of Thailand live in two geographical regions of the country: indigenous fishing communities in the south of Thailand (the *chao-lae*) and the many different highland peoples living in the north and northwest of the country. With the drawing of national boundaries in Southeast Asia during the colonial era, many peoples living in highland areas throughout the region were divided. There is thus not a single indigenous group in the north that resides only in Thailand.

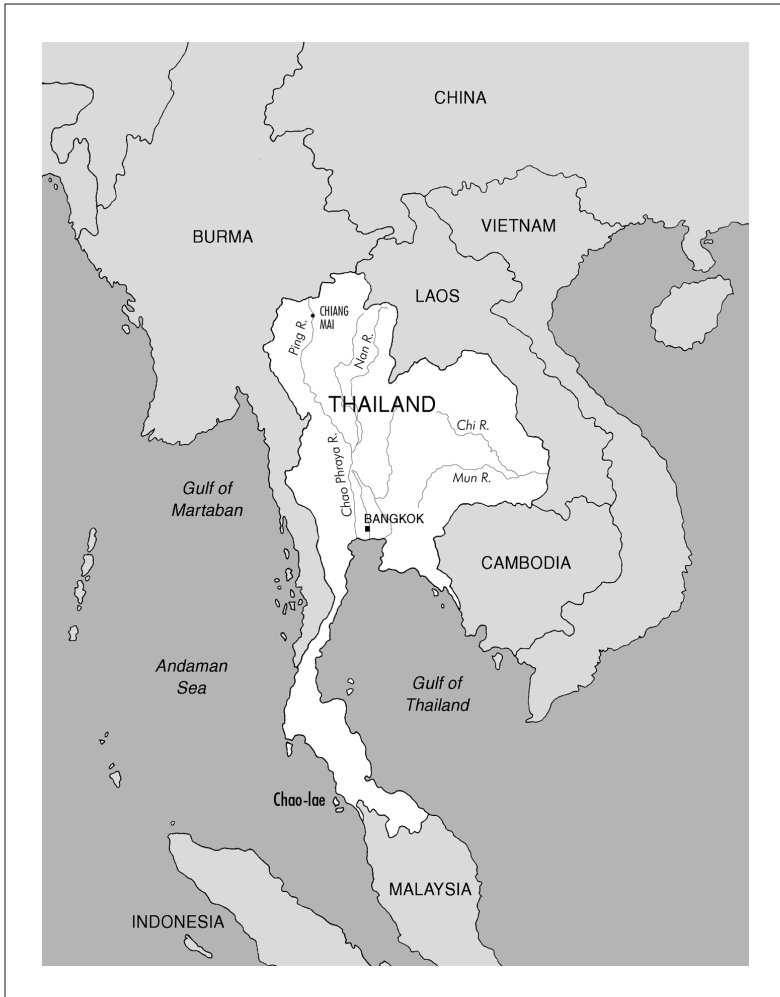
Whatever their distinct history, all indigenous and tribal peoples of Thailand share similar experiences of discriminatory government policies. This experience dates from the 1970s, a time when government attention was focused on the highlands in an effort to implement opium replacement projects in response to international pressure to reduce drug production, and when the Communist Party of Thailand had fled the cities and sought refuge in remoter areas, including the forested highland areas of the north. Thus from the very beginning, the Thai government's perspective of highland peoples was coloured by a perception of threat, whether it be the threat of drugs or a threat to national security and border control.

When the environmental impact of highland development projects and widespread commercial logging became apparent in the 1980s, a new threat was added to the list, that of environmental degradation. It is this three-pronged perception of threats in the highlands that has historically shaped government policies towards indigenous and tribal peoples in the north and, over the past decade, although there have been positive developments away from this approach, it continues to underlie the attitudes and actions of government officials.

Government policies

In October 2004, the government of Prime Minister Thaksin Shinawatra became the first elected government to serve a full term in office since the abolition of the absolute monarchy in 1936. This is indicative of the high level of popularity still maintained by the Thaksin administration, and the ruling party – Thai Rak Thai – is the only political party in the history of Thailand to hold a majority of seats in the national parliament. With such a secure power base, the policies introduced by this administration have been far more activist and reformist than usual in Thai politics. Their impact on indigenous and tribal peoples has been mixed, with both limited positive effects from some of the service-oriented policies and severe disadvantages from environmental, forest and land policies.

For highland communities, the most threatening aspect of the Thaksin government's reformist approach is not the promulgation of new policies but rather the increasingly strict implementation of existing policies. It is estimated that almost 10 million people in Thailand live in areas classified as one of the many categories of "reserved" or "conservation" forests, where they experience restrictions on cultivation and residence rights. In fact, if the law were to be interpreted strictly, almost 10 million people would be illegally residing in these forests. This situation has been allowed to continue because local government officials have so far not insisted on the relocation of communities. However, in 2004 the government initiated the so-called "Forest X-ray" policy, which seeks to examine all forested and cultivation areas in order to achieve four stated objectives: to remove all trespassers from forested areas; to prevent further trespassing; to reclaim forested areas as state land; and to change the focus of the agricultural patterns of highland communities to one of income generation and reduced use of natural resources. This policy was declared on June 1, 2004 and all relevant agencies were ordered to implement it. It signals a move away from the previous, lenient approach of allowing the continued residence of highland communities despite the formal illegality of this.



One immediate impact of this policy has been a rise in the number of arrests of indigenous and tribal peoples in the highlands for continued cultivation of traditional lands. In one well publicized case, 48 members of the Pang Daeng community were arrested for cultivating areas classed as “reserved forests” and detained in the Provincial Office in Chiang Mai. The arrests were characteristic of the government

approach to highland communities, with over 200 armed government officials entering the community in the early hours of the morning of July 28, pulling people from their houses and into trucks. Actions such as these heighten the feeling of threat and intimidation among communities throughout the north, and although widespread publicity in this case led to the release of the detained villagers a month later, such publicity cannot be brought to bear on all similar cases. In 2004, relocations also occurred in Lampang Province, with a Lahu community being resettled to the lowlands in the second half of the year. This relocation was concurrent with the release of the preliminary findings of a study commissioned by Ratchapat University, Chiang Rai, and the Coordinating Centre of Non-governmental Tribal Organizations (CONTO) on the long-term impacts of relocation on indigenous and tribal communities. Unsurprisingly, in the community chosen for the study, the Wang May community in Wang Nua District, Lampang Province, this report found severe impacts in terms of lowered levels of cultural retention, increasing levels of urban migration, increased levels of HIV/AIDS, deaths and suicides and reduced self-sufficiency in agriculture.

Protected areas

As elsewhere in Asia, the protected areas policy in Thailand is an issue of great concern for indigenous and tribal peoples as their traditional territories are largely found in areas of high biodiversity and environmental value. The global trend towards increasing the area classified as "protected" is also present in Thailand. The agency now in charge of protected areas, the Department of National Parks, Wildlife and Plant Conservation, has inherited a five-year plan from the old Royal Forestry Department that aims to increase the proportion of areas in Thailand classified as protected from an estimated current 15% of the total land area to a target of 40% by 2011. Any increase in protected areas in Thailand will need to consider the rights of communities currently residing in these areas if it is not to result in the relocation and wide-spread marginalization of highland communities. However, current practice in protected areas does not appear to give much space to such considerations.

The news is not all bleak though, as 2004 also saw the start of government moves towards developing a so-called “co-management” approach towards protected areas management. With support from the Danish Foreign Ministry, a pilot project has been launched in eleven protected area sites, four of which have large resident populations of indigenous and tribal peoples. One of these, the Ob Luang National Park in Chiang Mai, is home to a number of Karen and Hmong communities. The structure of these co-management arrangements envisages the inclusion of community committees and non-governmental organizations active in the area in management and decision-making bodies. The reality in the Ob Luang National Park however is somewhat different, with communities relegated largely to “implementation” rather than active decision-making roles. But the very act of developing such an approach could indicate changing perspectives among government officials regarding the possible management arrangements for protected areas.

In addition to the potentially positive nature of such initiatives, there are other developments at the policy level that could prove beneficial to indigenous and tribal communities. In January, Thailand ratified the Convention on Biological Diversity (CBD) and thus assumed obligations to protect and promote indigenous peoples’ knowledge and land rights. This ties in well with the community-level initiatives in Thailand that have been developed over the past decades with the aim of proving that effective natural resource management strategies exist and are being maintained in communities. These initiatives include mapping of traditional territories and mapping of traditional knowledge use patterns, a project being implemented now by Hmong and Karen communities living in and near the aforementioned Ob Luang National Park.

Populist policies

In addition to the increasingly strict implementation of existing forest and land-related policies, the government has implemented a number of radical and far-reaching social service delivery policies that have

impacted both positively and negatively on indigenous and tribal communities. These policies include: a continuation of the "30 Baht Health Care" policy, the "One Million Baht per village" policy, the "Small, Medium, Large Projects" policy and the "War against Poverty" policy. The first three of these are directed at social development, and provide services or access to credit directly to communities. One important aspect of these policies is that, in line with the government's nationalist agenda, they are accessible only to people with Thai citizenship,¹ and thus marginalize communities who are in the process of obtaining, or are still being denied, Thai citizenship. All three have also proven to be more complicated to implement than the government's rhetoric suggests. The "30 Baht Health Care" policy provides all individuals who have been issued a "gold card" with access to medical care for the sum of 30 Baht (approx US\$0.80), a service provision that is socially unbalanced as it is offered to all Thai citizens regardless of their economic status. After a year of implementation, hospitals throughout the country are facing enormous debt loads since expenses far outweigh the income received from patients and government subsidies. One result is that the health service to poorer people has become increasingly shallow, with painkillers such as paracetamol being provided for most complaints. A second issue of concern is that the "gold card" cannot be issued to those who still have no citizenship, and without this card no healthcare is available without payment of fees, and these are steadily rising in the face of debts incurred by hospitals within the 30 Baht scheme.

The "One million Baht per village" and the "Small, Medium, Large Projects" policies are intended to provide access to credit at the community level. In both schemes, community committees are responsible for central funds from which credits are made available to community members at low interest rates. While conceptually sound, the implementation of the One-Million Baht program has seen a sharp rise in levels of debt given that easy credit is available within communities but the means to develop and support effective income generation activities are lacking. The "Small, Medium, Large Projects" fund, announced in the run-up to the latest national election, seems bound to follow the same path.

The fourth of the policies mentioned above, the “War on Poverty” policy, has the potential to have a positive impact on the livelihoods of at least some indigenous and tribal peoples since it contains a clause allowing for the granting of temporary cultivation rights to poor communities living in certain categories of forest. However, excluded from this are the lands classified as National Parks or other environmentally sensitive conservation areas – sites in which the majority of indigenous and tribal peoples live. Additionally, only those with Thai citizenship can apply to register for the “War on Poverty” program. Without this registration, the benefits to be provided to the poor (temporary continued residence in forests, debt relief, etc.) are unattainable. Since many indigenous and tribal people have not been granted citizenship, the potential benefits of this policy will not reach the key identified target group.

Master Plan

For the past 40 years, the government of Thailand has used framework documents for national development planning called the “National Social and Economic Development Master Plans”, each covering a five-year period. In 1992, the government issued the first of another kind of development policy framework, the “Master Plans for Community Development, Environment and Narcotics Control in Highland Areas”, which are specific to the highland areas in the north of the country and therefore of central importance to the lives of indigenous and tribal peoples. As discussed in last year’s edition of *The Indigenous World*, the current Highland Master Plan (3rd Phase, 2002 – 2006) was drafted with no input from the communities concerned, in clear contravention of the Constitution, and is still being rejected by highland communities. The umbrella organization that works with tribal development organizations in Thailand, the Centre for Coordination of Non-governmental Tribal Organizations (CONTTO), continued to work throughout 2004 to push the government to reform this policy and bring it into line with the real needs and aspirations of highland peoples. These efforts have so far been unsuccessful for, although a series

of sub-committees has been established to review the policy, they are characterized by a lack of any action or results. In 2005, CONTO and the Assembly of Indigenous and Tribal Peoples of Thailand (a national-level forum of seven different indigenous and tribal networks) will be working on a detailed alternative Master Plan to be presented to the government.

Future outlook

Strong trends in Thai politics are acting to further marginalize indigenous and tribal peoples. However, this is only one aspect of a more complex situation, since potentially positive developments are also occurring. The government is taking steps to define protected areas in a way that is not inherently exclusive of continued community residence and cultivation, and this is of central importance for indigenous peoples in Thailand. Indigenous and tribal peoples are also organizing in bodies such as the Assembly of Indigenous and Tribal Peoples in Thailand, which provides them with a collective voice to negotiate with the government on issues such as the Master Plan, discriminatory implementation of social service policies and continued problems of lack of citizenship in highland communities. The extent to which increased national-level political mobilization of indigenous and tribal peoples in Thailand will be effective, however, rests on the continuation of ongoing efforts among indigenous and tribal communities to strengthen their local and provincial networks, and their agricultural and environmental conservation practices. □

Note

- 1 Almost a third of Thailand's indigenous and tribal population lack citizenship papers. This means that they are considered illegal residents and have no right to a voice in politics. Read more about the citizenship problem in *The Indigenous World 2002-2003, 2004*. —Ed.

CAMBODIA

2004 was a pivotal year for indigenous peoples in Cambodia. Considerable land alienation has taken place in the country as a result of illegal activities, causing serious damage to indigenous communities. Partly in response to this, and partly in response to government created opportunities to develop legal instruments to enable land rights, the first ever National Forum of Indigenous Peoples on Land was held in September, attended by indigenous peoples from 14 different provinces of Cambodia.¹ It was only following this event that the fact that indigenous peoples live throughout Cambodia was finally recognised. Many live integrated into Khmer society but still maintain an indigenous identity. The forum issued a joint statement on the severe land loss indigenous communities are currently suffering, and its impact on indigenous culture and livelihoods.

Land rights

The 2001 Cambodian *Land Law* contains provisions for indigenous communities to gain title to their land, either in the form of individual titles or as a communal title. This law defines indigenous community land as residential land, agricultural land or land kept in reserve as part of the traditional rotational cultivation system. Legal instruments defining the requirements for legal recognition of communal land ownership have yet to be written and work on them has been crawling along, beleaguered by a number of obstacles.

In the meantime, land has been leaving community ownership at an alarming rate, through land grabs, land purchases, land concessions to companies, the establishment of military bases and other means. Legal opinion on the legality of this is divided but it is likely that land

currently used by indigenous communities and not privately titled should not be sold or transferred away from indigenous community management before it has been titled. However, a report published in late 2004 by the NGO Forum on Cambodia documented reports of land alienation in Ratanakiri Province in the northeast of Cambodia. The study concluded, among other things, that there was a severe land alienation problem affecting indigenous communities in Ratanakiri, and that this was in many cases devastating the social fabric of indigenous communities. As this social fabric is destroyed, so too are the future options and possibilities for community development and poverty reduction.²

Community leaders have made a number of requests to the Cambodian government asking for a moratorium on land transfers away from indigenous communities but none of these requests have been acted upon, possibly due to the fact that high-level and influential people are involved in illegal land acquisitions. To combat this, a number of community members employed as staff on different projects have been involved in providing information to others with regard to community rights and legal matters.

There are also many problems in other provinces of Cambodia. Of concern is the proliferation of "land concessions" issued by the government over areas including indigenous peoples' land in provinces such as Kompong Thom, Kompong Speu and Mondulakiri. These land concessions aim to establish industrial agricultural plantations and, in the case of Kompong Speu, a resort. They destroy native forest and reduce indigenous people to positions of subservience and poverty, since they are being excluded from managing and using their natural resources. In Mondulakiri, a 199,999-hectare land concession for a pine plantation has been approved in principle by the Cambodian government despite a supposed moratorium on land concessions. Herbicides have been sprayed over an estimated 15,000 ha, reportedly resulting in the poisoning of wildlife, domestic animals, community water supplies and community members.

While this happens, work continues in 3 pilot areas (2 in Ratanakiri Province and 1 in Mondulakiri Province) to develop and trial procedures for communal land registration and to inform the development of legal instruments within the land law. This work is being carried out by the Ministry of Land in cooperation with NGOs. Consultations on



land registration have been held with indigenous people from nine provinces (following the national consultation forum).

Mines and forestry issues

Mining concessions are of great concern. Indigenous people have little or no control over the granting of mining concessions on their lands.

Mining concessions have been granted over areas including indigenous people's land in Ratanakiri, Mondulakiri, Kompong Thom and Stung Treng Provinces. Communities worried about a proposed iron mine in Stung Treng have been harassed by local authorities. Two gem-mining concessions of approximately 1,500 hectares each have been granted in Ratanakiri against community wishes.

The Royal Government of Cambodia made a number of statements in 2004 concerning its expressed desire to maintain forest cover in Cambodia. Like all communities using forest for livelihood support, indigenous peoples do not have secure management rights over the forest areas they traditionally use and manage. Land alienation means that indigenous peoples have to shift their agricultural areas into the forest, but this is now being restricted.

Only limited forest concessions were supposedly granted in 2004, as a result of an Independent Forest Sector Review. This review recommended that no concessions be granted in provinces with indigenous people until their claims had been processed. Existing concessions, however, continue to intimidate indigenous communities and prevent them from developing their own secure and sustainable livelihood support. Five of the six existing concessions are in areas where indigenous people live. With the shift away from forest concessions, there has been a growth in the rhetoric of community forest promotion. This is a favourable development. Procedures guiding this process are being developed and it is imperative that they respect and allow for traditional community management rights over mature forest and not just degraded forest. Many forest areas, especially spirit forests, burial forests and small areas of forest among agricultural lands need to be included in communal land titling if indigenous land management and culture is to be protected. Excluding these forest areas from communal title and having them as community forests owned by the state but managed by communities under limited-term agreements would have the effect of drastically slowing down the mapping that is required for communal land, thereby reducing the land security of indigenous communities in general.

Health

Indigenous people in Cambodia have a significantly poorer health status than other Cambodians. Increasing degradation of the provinces' natural resources is impacting negatively on the already precarious health and nutritional status of local people. There is a serious risk that HIV/AIDS may become endemic in indigenous communities. If this occurs, it will have disastrous effects not only on the cohesion and viability of the indigenous communities but also on the families' food security (it is the food producers that are most affected, plus people tend to sell land in order to pay for their medical costs).

Malaria, tuberculosis and diarrhoeal diseases are endemic in indigenous communities, and vaccine preventable diseases and acute respiratory infections continue to be major causes of morbidity and mortality. Studies have shown that more than 90% of children and most women are anaemic, and rates of vitamin A deficiency are also high. 70% of children show stunted growth, which is an indication of chronic malnutrition. Intestinal parasite infections are universal and hygiene and sanitation in the villages is very poor, increasing the risks of diarrhoea and malnutrition. The risk of a cholera epidemic is high, the last one being in 1999.

The majority of the population does not have access to government health services. The ongoing national health sector reforms have yet to benefit the indigenous population, with very little improvement in evidence in the fields of health management, financial resources or adequately qualified staff in provincial health facilities. Indigenous people also report that they are often forced to pay high informal medical fees in order to obtain medical services.

Hydro-electricity dams

In previous years, extreme problems have been reported as a result of hydro-electricity dams located on the Sesan River in Vietnam, which

flows through Ratanakiri province in the northeast of Cambodia. The dams have resulted in deaths from flooding and irregular river flows.

While these problems continue, they are likely to be exacerbated by more dams that have already been commenced or are being planned in Vietnam, on the Sesan River and on the Srepok River. These dams are being planned or built without adequate assessment of past impacts, any rectification of the problems or first conducting serious future environmental and social impact assessments. International donor agencies and multilateral banks continue to support and validate their construction by supporting associated projects such as power line construction. In this way, large international institutions such as the Swedish International Development Agency, the Asian Development Bank, the World Bank and the Vietnamese government are effectively undermining the lives of indigenous peoples in northeast Cambodia. There are very strong local concerns that industrial power generation and the model of industrial development that it supports will have profound and long-term negative impacts on the lives of indigenous people.

In 2004, the Sesan 4 dam was commenced in Vietnam. This was despite the lack of a real Environmental Impact Assessment or any consideration of the impacts of the Yali Falls Dam. It was also announced that the Vietnamese and Cambodian governments have signed an agreement for construction of a new Sesan 4b dam on the Cambodia-Vietnam border. It has been reported that this dam will provide free electricity to Cambodia but people on the Sesan River in Cambodia say they do not so much want electricity as control over their own lives and river. It is extremely doubtful that the electricity will even benefit those along the river and is likely to further entrench the Cambodian elite.

In addition to dams affecting the northeast, a survey has been carried out by the Ministry of Industry, Mines and Energy that proposes hydropower dam sites in numerous areas. If constructed, these dams will affect indigenous people in at least eight provinces.

Local government and decentralisation

Commune Councils were elected for the first time in Cambodia in February 2002. This was heralded as a means of community management and involvement in local governance. Whilst this has been a positive development in many ways, 2004 has shown that Commune Councils have been co-opted by corrupt elements of Cambodian government and society. For example, while some Commune Councils have remained respectful and accountable to their constituency, a large number have become involved in illegal land sales and transfers. They often receive considerable commissions for doing so.

There is obviously a need to review local government experiences in indigenous peoples' areas and develop ways in which Commune Councils can serve the interests of communities rather than powerful outsiders.

A great deal of money is still being directed into "development" without adequate support for true community development or human development support. In many areas, government and NGO projects deliver services in non-indigenous languages and buy community participation by way of per diems and financial incentives.

The effects of this are starting to be seen in the form of dependency and a loss of community self-management and ownership. If indigenous peoples are not actively involved in their own development, and if there are no local alternatives to the industrial development models now being promulgated, many severe social and economic problems may be expected to arise, as they have in other indigenous communities around the world under similar conditions.

Representation and advocacy

Continuing efforts have been made to develop indigenous communities' representation. The National Forum of Indigenous Peoples on Land plus various community networks are slowly building structures that are based on tradition in order to be able to represent indigenous

communities in negotiations with government and others. It is also worth mentioning that the Special Representative of the UN Secretary General this year particularly focused on issues affecting indigenous people when meeting the prime minister.

Concluding remarks

It is imperative that the land rights of indigenous people recognised in Cambodian Law are respected and that these laws are implemented as a matter of priority. The situation whereby laws are created but disregarded must end.

The General Policy for Highland Peoples' Development, drafted by the Inter Ministerial Committee in 1997, is currently under review. The policy recommends that indigenous peoples should be involved in all areas of development within their domain. This is essential, as Cambodia needs a National Policy that allows indigenous peoples to guide their own development. The impediments to ratifying this policy need to be identified and openly debated, and steps should be taken by the government to adopt the policy.

It is also now apparent that there is a strong need to undertake a culturally appropriate survey of indigenous peoples in Cambodia in order to discover how many indigenous peoples actually exist and wish to be recognised as indigenous peoples. □

Notes

- 1 The meeting was organized by a new grouping of NGOs working with indigenous peoples. These organizations have now jointly commenced a project on indigenous peoples' rights, with the umbrella organization NGO Forum of Cambodia as implementing agency. The September 12 meeting took place in Trang Village, Chh'en Commune, Oral District, Kompong Speu Province (2004).
- 2 The report is available at: <http://www.ngoforum.org.kh/Land/Docs/Indigenous/Indi-Ratanakiri.htm>.

VIETNAM

The Vietnamese government officially recognizes 54 ethnic groups, including the Kinh, the majority ethnic Vietnamese. All other 53 ethnic groups are, in official parlance, referred to as “ethnic minorities”. Vietnam’s indigenous peoples thus form – along with other minorities such as the Chinese and Khmer – a part of this category. The ethnic minorities number around 10 million people and make up about 14% of the population. However, they constitute 29% of the poor. 75% of ethnic minorities – and thus most of the indigenous – live in mountainous areas, mainly in the north and in the Tay Nguyen, better known as the Central Highlands. All ethnic minorities have Vietnamese citizenship. In some districts, the ethnic minorities actually constitute a majority, or several minorities together may outnumber the Kinh. However, some areas have experienced an enormous influx of Kinh over the past decades, and this has fundamentally changed demographic patterns and local socio-economic systems.

New unrest in the Central Highlands

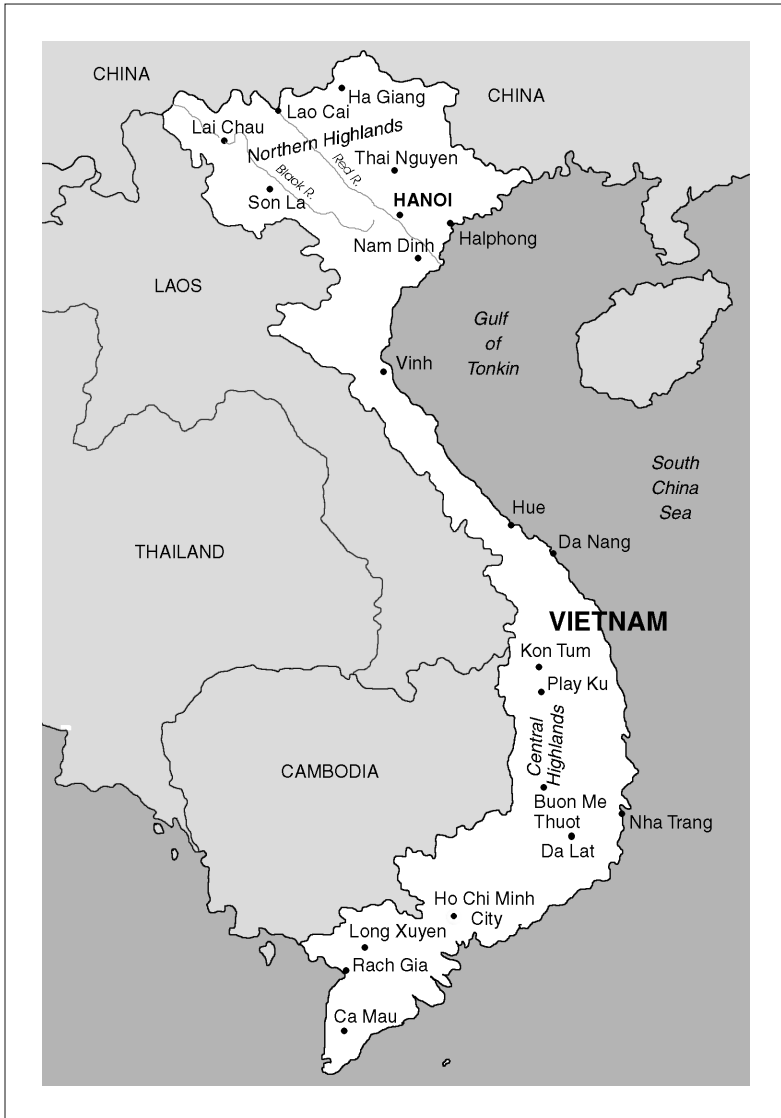
Seventeen indigenous Ede from the Central Highlands were sentenced to between three and ten years’ imprisonment during a court trial in Dac Nong province from November 16 to 18, 2004. Among other things, they were accused of threatening national security and instigating public disorder during periods of unrest between April 9 and 12 of the same year. This was the first of several trials expected in the wake of the latest unrest, which broke out three years after the first episode and is so far the largest uprising in the Central Highlands.

Thousands of indigenous¹ from the Central Highlands fled to Cambodia after security forces heavy-handedly put down demonstrations

in early 2001 (see *The Indigenous World 2000-2001* and *2002-2003*). Around 1,000 of them were allowed to move to the United States under a UNHCR resettlement programme in 2002 and 2003. A new wave of indigenous refugees was caused by the government's crackdown on the renewed demonstrations in Dac Lac and Gia Lai provinces during the Easter weekend in April 2004. In Dac Lac about 2,500, and in Gia Lai an estimated 3,000, indigenous demonstrators protested against land alienation and religious persecution in the Central Highlands on the part of the Vietnamese government. According to the US-based Human Rights Watch, security forces and civilians supporting them attacked the demonstrators with clubs, metal bars and other crude weapons and at least ten demonstrators were killed and dozens wounded. Hundreds went into hiding or attempted to flee to Cambodia. Additional police and military forces were dispatched to the region, security checkpoints were established along the main roads and strict restrictions placed on travel within the highlands, on meetings of more than two people, and on communication with the outside world.

The Vietnamese media presented a somewhat different picture. In Dac Lac province, some demonstrators were allegedly carrying axes, spears and other weapons and violence broke out after the demonstrators started throwing stones in response to the security forces' attempts to stop them at the outskirts of the capital, Buon Me Thuot. No deaths were reported in Dac Lac but, according to official reports, two demonstrators and one militia were killed in Gia Lai. About two dozen were allegedly wounded and around the same number arrested.

In a commentary, the army newspaper *Quan Doi Nhan* described the Human Rights Watch accusation that the Vietnamese government had maltreated and tortured "ethnic minority Christians" as a "brazen fabrication of the situation in Vietnam". The Vietnamese government continues to claim that the protests and demonstrations in the Central Highlands were instigated by foreigners, i.e. the US-based Montagnard Foundation. The government continually reiterates that it was not due to oppression that people from the Central Highlands crossed the border into Cambodia but because they were lured with promises of money and emigration to the USA. Amnesty International, however,



has also been able to document the deaths of at least eight people and fears that many more could have died as a result of the violent crack-down on the protests in 2004. And the organisation also reports that

refugees returning to Vietnam face possible torture and long periods of imprisonment following secret trials.

There is evidence that members of the Montagnard Foundation were involved in organizing the recent demonstrations in Dac Lac and Gia Lai provinces. Protesters allegedly shouted the name of the Montagnard Foundation's president-in-exile, Ksor Kor\k. Its role may, however, be much less significant than the Vietnamese government believes, and most informed international observers agree that the 2001 and 2004 demonstrations in the Central Highlands were an expression of genuine concerns, that they were above all a response to the ongoing land alienation and marginalization of the indigenous peoples. Unlike the refugees who fled to Cambodia in 2001, who cited religious discrimination as their main problem and were willing to be resettled in third countries, the recent refugees criticize the government for its illegal confiscation of their lands for coffee cultivation and other commercial purposes. They insist that they intend to remain in Cambodia until the UN gets their land back and have refused all offers of resettlement in the US or elsewhere.

The roots of the unrest

There can hardly be a region in Vietnam that has experienced more massive transformations over the past decades than the Central Highlands. In 1943, 95% of the population was indigenous. After the division of the country in 1954, around 58,000 refugees from the North (mostly Catholics and indigenous Tay and Nung) were settled in the South, many of them in Dac Lac province. But it was not until after the reunification in 1975 that the massive changes took place. The government engaged in large-scale transmigration programs and sponsored the resettlement of hundreds of thousands of Kinh. By 1989, the Kinh made up over 70% of Dac Lac's population. The transmigration program was reduced in the 1990s but, with the coffee boom of the 1980s and 90s, large numbers of voluntary migrants moved to the Central Highlands. Today, the indigenous have become a minority in all Central Highlands provinces. They have lost most of their land to the mi-

grants, their social structure and economic system have been disrupted and many people have been pushed into poverty. In Dac Lac province, the official poverty rate is 11.9%, and most of this is made up of indigenous families. In Gia Lai, the poverty rate is 14.25%, over half of whom are indigenous.

The indigenous began their organized resistance against the colonization of their land under the former South Vietnamese government in the 1960s, with the formation of the *Forces Unifiées pour la Libération des Races Opprimées* (FULRO – the United Front for the Liberation of the Oppressed Races). FULRO continued its armed resistance against the new government following the unification of North and South Vietnam, seeking the creation of an independent state for the indigenous of the Central Highlands. In the early 1990s, the Vietnamese government declared FULRO to have been eliminated. The Montagnard Foundation is sometimes seen as FULRO's successor.

Although the Vietnamese government's official statements continue to decry "the foreign hand" in instigating the protests, some of its less populist responses suggest that there is tacit recognition of their underlying causes. The strategy adopted to deal with the present – and possible future – unrest is thus two-pronged, combining short and long-term measures.

On the one hand, the "extremists" are to be brought to justice – like those who were sentenced to between six and twelve years in 2001 and 2002. And in 2003 a decree was issued against the "abuse of the right to demonstrate". On the other hand, general government support programs for ethnic minorities are being strengthened. These include poverty alleviation programs, the recruitment of more indigenous into cadre positions, free education for indigenous children and basic services. The so-called Program 135, also known as "Resolution 22 of the Politbureau on Measures in the Central Highlands" particularly aims to address grievances among the indigenous through poverty alleviation.

Another indicator of the somewhat increased sensitivity towards the indigenous peoples' plight in the Central Highlands was the announcement of Deputy Prime Minister Nguyen Tan Dung in August 2004 that the government was to temporarily stop resettling people in

new economic zones in the Central Highlands, and would work to slow down voluntary migration to the area, which is rich in coffee plantations.

There is, however, little hope that the alienated land will be fully returned to its original owners, or that they will receive proper compensation. And any measures taken by the Vietnamese government to mitigate the impact of past state-sponsored colonization and development programs on indigenous communities may be offset by a new development scheme planned in the Central Highlands. Stage 1 of the National Hydropower Plan Study in Vietnam, conducted in 2002 by the Swedish and Norwegian consulting firms SWECO, Statkraft Engineering and Norplan, recommends the construction of more hydropower dams in the Sesan and Srepok River Basins. If built, the proposed dams would result in the eviction of at least 12,500 people, many of them indigenous.

New law on communal land rights

In 2004, the National Assembly of Vietnam passed a new land law. Referring to it as “special good”, the law further consolidates the commodification of land and introduces market forces for land in urban areas such as Hanoi or Ho Chi Minh City. Among its positive elements is a provision that the wife’s name must be mentioned alongside that of her husband when issuing land use certificates. For Vietnam’s indigenous peoples, most relevant however is that the land law now includes the category of “communal land”, something local and international NGOs and donors have lobbied for over the past few years. Up until now, land use certificates could only be issued to individuals, households, mass organizations, state enterprises or companies. By introducing the concept of communal land, the new law provides for the possibility of communities applying for certificates for communal land. However, the law does not define what communal land means and it is thus unclear under which conditions and for what types of land a community can receive a communal land use certificate. Like the concept of “communal land”, the term “community” itself has not

been clearly defined and is therefore open to different interpretations. This could, for example, lead to an overlap in the concepts of community and group, and land could therefore be allocated to various groups within communities rather than the community as a whole. Another problem is access to credit, since community members cannot use a communally-held certificate as collateral.

The amended law signifies an important step towards recognising indigenous communities' land and forest rights. A number of issues still need to be resolved, however, before the law can be properly implemented. Local NGOs and development agencies are presently engaged in exploratory projects trying to implement the new law, and these will hopefully generate inputs for the formulation of the implementing guidelines needed to address the remaining ambiguities. □

Note and sources

1 The indigenous of the Central Highlands are often referred to as "Montagnards". This means "mountain people" and was used by the French colonizers to denote the indigenous peoples living in the highlands. Due to its colonial roots and the derogatory connotations it had at that time, we prefer not to use this term. The Vietnamese government refers to them – as to all indigenous peoples – as "ethnic minorities".

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LAOS

With a population of about 5.5 million, Laos is the most ethnically diverse country in mainland Southeast Asia. The ethnic Lao dominate the country both politically and economically but comprise only around 30% of the population. People who speak first languages belonging to the Lao-Tai language family make up about 66% of the population. The rest mostly have first languages within the Mon-Khmer, Sino-Tibetan and Hmong-Mien language families. These latter groups are sometimes considered to be the “indigenous peoples” of Laos, although officially all ethnic groups have equal status and therefore the concept of “indigenous peoples” is not generally applied in Laos.

Although people in Laos are generally represented as belonging to clearly differentiated and fundamental ethnic groups, often based on ethnolinguistic characteristics, the ethnic makeup of the country is actually far more complex, with identities often taking multiple and fluid forms. The ethnic makeup of the country remains quite confusing, even for Lao nationals.

Opium eradication campaign intensifies

In 2004, the Lao government continued with its opium eradication policy and the goal of stopping all opium production by March 2005. In 2004 the total area under opium production in Laos reportedly dropped from 7,847 ha to 3,500 ha (see *The Indigenous World 2004*). However, there remains considerable concern that opium and heroin addicts may resume opium planting again once donor programs have left certain areas. Phongsaly Province alone reportedly has 3,826 addicts, although it has been assumed that only 4% of the 2,084 addi-



tional addicts who received treatment in 2003 have lapsed into opium use again,¹ which seems unlikely. There are reportedly around 28,000 opium addicts in the country, most of them members of ethnic minorities.² As reported in *Indigenous Affairs 4/2004*, many of the indigenous opium growers living in mountainous areas have been badly affected by the rapid pace of Laos' opium eradication programme, as many do not have suitable livelihood alternatives to replace the income they used to receive from growing opium. In addition, most indigenous opium addicts cannot afford to buy the opium needed to feed their habits once they are unable to cultivate their own.

Hmong messianic movement remains a concern

In August 2003, an ethnic Hmong-led messianic movement against the Lao government erupted in Houaphan Province, northern Laos (see *The Indigenous World 2004*). Although there are few details available, it appears that the situation in Houaphan generally calmed down in 2004. However, there have been some unconfirmed rumours of the movement spreading to previously unaffected parts of Houaphan Province, as well as to Phongsaly Province. Some have described it as a "Pan-Hmong" movement, believing that it may also be affecting parts of Vietnam and China populated by Hmong. Indicative that the movement is still a significant concern to the Lao government, H.E. Tong Yeu Tho, the ethnic Hmong vice-president of the Lao Front for National Construction (LFNC), has been temporarily posted to Houaphan Province to assist in reducing tensions within the Hmong community.

It seems possible that the Lao government's opium eradication programme, which is affecting Laos' main opium growing group, the Hmong, may at least partially be responsible for the increased unrest amongst Hmong in opium growing areas.

Internal resettlement

In 2004, one of the main issues facing indigenous peoples was government promoted resettlement, consolidation or "village stabilization" programs, sometimes associated with opium or shifting cultivation eradication policies, efforts to increase the size of villages, or schemes to relocate villages from remote areas to easily accessible lowland areas, next to new roads. Although provinces and districts throughout the country are approaching this complex issue differently,³ internal resettlement continued in many parts of the country, despite considerable evidence that internal resettlement in Laos has generally been poorly conceived and planned, and that it has often had severe nega-

tive livelihood, health, cultural and environmental impacts (see *The Indigenous World 2002-2003, 2004*).

Donor interest in the issue increases

There has been increased debate within the international donor community in Laos regarding internal resettlement and the role of donors in supporting it, rejecting it entirely, or working in other ways to address this critical issue. Indigenous peoples in Laos make up the vast majority of the people who are being spatially reorganized through government policies.

The United Nations Development Programme (UNDP) and the Humanitarian Aid Department of the European Commission (ECHO) jointly sponsored a study of rural livelihoods and resettlement issues in Luang Nam Tha and Sekong, two provinces dominated by indigenous peoples that have been subjected to considerable policy-induced internal resettlement in recent years. The project report was completed in April 2004, and concluded that people resettled from upland areas to the lowlands have often experienced serious livelihoods difficulties, as well as health problems and conflicts over land and resources with neighbouring communities.⁴

Another study supported by ECHO and conducted by the French NGO Action Contre La Faim (ACF) indicated that internal resettlement is continuing at a worrying pace in a number of provinces, with many very negative implications for local people. It indicated that most of this resettlement has been poorly planned and funded, and that the people resettled have often faced serious health and livelihoods difficulties, especially in the initial years after moving.

Many of the same problems were highlighted in a workshop organized by the National Agriculture and Forestry Research Institute (NA-FRI) in the northern city of Luang Prabang in January 2004. Many speakers either directly or indirectly challenged the government's policy of eradicating shifting cultivation by 2010. Much of the resettlement of indigenous peoples from mountainous areas to lowland areas in Laos has been justified in the name of eradicating swidden agricul-

ture and the related promotion of wet rice cultivation in the lowlands. A case study from the far-northern province of Phongsaly showed that people living in upland areas and employing shifting cultivation away from roads are economically better off than relocated people living adjacent to roads in lower areas.⁵

Other recent research indicates that development policies such as shifting cultivation eradication and village "stabilization" are having a direct and often negative impact on dietary intake among upland peoples in Laos. There is an urgent need to look into this more seriously. It has also been argued that too much emphasis is being placed on staples such as rice in food security planning, and that increased focus needs to be placed on non-rice foods such as wild fish, wild and domestically grown vegetables and other edible non-timber forest products.⁶

The initial results of a study on donor involvement in internal resettlement issues show that donors have a wide variety of policies and approaches to the issue, and that most donors are involved in internal resettlement, often unintentionally, in one way or another.

Most recently, a group of bilateral and multilateral donors (not including any NGO representation) initiated a dialogue with the Lao government regarding "village consolidation" (the resettlement of people from two or more smaller villages into single larger villages) and has prepared a concept paper on the subject.⁷ It is expected that the first meeting between donors and the Department of International Affairs of the Laos Ministry of Foreign Affairs will take place in early 2005.

Large hydropower dams

In 2004, the largest and most controversial dam in Laos, the US\$1.2 billion 1,070 MW Nam Theun 2 project, which has been in the planning stages for years (see *The Indigenous World 2004*), continued to wait for a World Bank financial guarantee that would open the door for construction to begin, including the resettlement of at least 17 ethnically diverse communities on the Nakai Plateau. In 2004, the Nam Theun

Power Company (NTPC), together with the World Bank and Asian Development Bank, sponsored local consultations at village level as well as a series of international workshops in Bangkok, Tokyo, Paris, Washington DC and Vientiane in order to try and sell the project to the international development community. However, critics remain highly skeptical that the project will cause only limited social and environmental impacts and result in considerable economic benefits for the country. There is particular concern about the negative downstream impacts of the project, particularly along the Xe Bang Fai River, since large amounts of water will be diverted from the Theun basin into the Xe Bang Fai basin, making it an inherently destructive trans-basin diversion dam.

A number of other large dam projects either received approval to proceed from the Lao government or actually began construction in 2004.⁸ Almost all will impact on areas inhabited by indigenous peoples. Significantly, in 2004 a complaint was issued through the Organisation for Economic Cooperation and Development (OECD) by an NGO in Belgium against the Belgian company, Trachtebel International. In 2001, Trachtebel purchased the Houay Ho dam on the Boloven Plateau in Champasak Province, southern Laos from the Korean Daewoo Engineering Co., which had financed the building of the dam a few years earlier. A Belgian government supported export credit helped finance the Trachtebel takeover. The Houay Ho dam has had many negative impacts on the ethnic Heuny and Jrou people who were relocated as a result of the project.⁹ These problems have most recently been highlighted in a study released in 2004.¹⁰ The National Contact Point (NCP) for the OECD has accepted the complaint, and in October 2004 a debate facilitated by the NCP began between Trachtebel and the NGO regarding the problems facing the people in the resettlement area of the project. It is clear that Trachtebel is having a hard time defending its conduct.¹¹

New list of ethnic groups tacitly approved

Since late 2001, there has been an ongoing process aimed at adopting a new official list of ethnic groups in Laos (see *The Indigenous World 2001-*

2002, 2002-2003, 2004). The adoption of such a list would represent an important step forward in recognizing ethnic diversity in Lao PDR.

On January 19, 2004, the National Assembly's Ethnic Groups Committee replied to the Lao Front for National Construction (LFNC) in writing that they could not yet approve the list and that the old names should continue to be used while more research was conducted. The LFNC has had no chance to formally respond to this decision.

The National Assembly was hesitant to approve the new list because of objections raised by some, including the LFNC in Savannakhet Province. They recognize three ethnic groups as occurring in their province, the "Lao", the "Phou Thai" and the "Brou". However, the central LFNC included a group called the "Tri" on their list. Illustrative of the complexity of identity issues in Laos, Brou people in the Savannakhet LFNC objected to the term "Tri", as they believe "Tri" to be insulting to ethnic Brou people. Representatives from the Central and provincial LFNC travelled to a village previously identified as being "Tri" in Xepon District. The people confirmed that they favoured being called "Tri". The Xepon people claimed that the term was related to their lineage, and that the provincial LFNC should acknowledge the legitimacy of "Tri". However, in the meantime, the Ethnic Groups Committee feared that they might approve a list only to have parts of it later refuted. So, in typical Lao fashion, the Ethnic Groups Committee provided verbal but only unofficial approval of the new list, contradicting the earlier written communication on this issue. Potential criticism for approving the list was in this way avoided. The LFNC has since proceeded to produce a Lao and English language book based on the new classification system, with support from the Lao PDR/Canada Fund. The book will be released in March 2005. The 2005 national census for Laos will also adopt the new ethnic classification system.

New opportunity for organizing

A potentially important opportunity for ethnic minorities has arisen with the Lao government's recent decision to allow, for the first time, the establishment of local Non-Profit Organisations (NPOs) under the

National Science Council (NSC). Three NPOs have been registered, and 14 more will soon receive permission. The government initiated a study regarding NPO establishment in Vietnam in 2000 but the system was not established until 2003-2004, as the government has historically been wary of local private organisations. Ethnic minorities in Laos are organising some of the proposed NPOs. □

Notes and references

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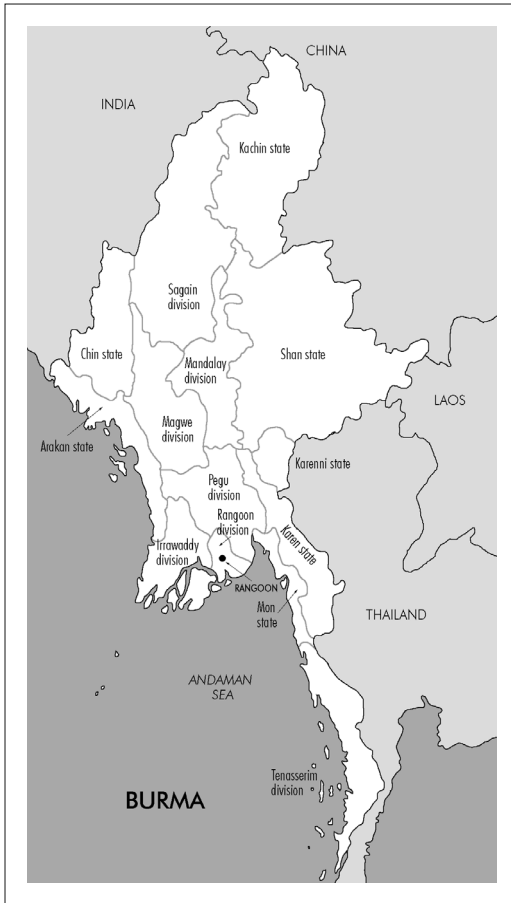
BURMA

Burma is an ethnically diverse country, with seven main non-Burman ethnic nationalities that constitute 40% of the population and inhabit 55% of the land area. Prior to British colonialism, and even at the time of independence in 1948, many of the ethnic areas were viewed as independent and enjoyed autonomy, or semi-autonomy from what is now the central government. The current military regime, the State Peace and Development Council (SPDC) follows the same policy of “Burmanization” and oppression as previous governments, and continually refuses to acknowledge the 1990 election results in which the National League for Democracy (NLD), under the leadership of Daw Aung San Suu Kyi and with a policy of dialogue with the ethnic nationalities, won 81% of parliamentary seats.¹ The military’s repressive rule and continued human rights abuses against non-Burman populations are a severe hindrance to national reconciliation and genuine development. As a result, ensuring indigenous rights in Burma is inexorably linked to genuine political and military reform.

For purposes of convenience, the term “ethnic” is used within this article to denote non-Burman ethnic groups, who are regarded as the indigenous peoples in their respective areas. Furthermore, the term “ethnic nationalities” has also been used in preference to “ethnic minorities” to avoid marginalizing the ethnic populations from Burma’s broader political sphere.

Ethnic diversity justifies military rule

Rather than break with tradition, indigenous relations in Burma during 2004 offered continuing evidence that the ruling military junta views the non-Burman nationalities as an opportunity to entrench military rule. This year, the SPDC not only argued that “ethnic diversity”



justified military rule but also attempted to use ethnic ceasefire groups² to legitimize continued military dominance. Late 2004 threw many ethnic nationalities off-guard when the SPDC's (purportedly moderate) Prime Minister, Gen. Khin Nyunt was ousted, alongside most Military Intelligence personnel, who had previously spearheaded ceasefire negotiations. Thus, ethnic nationality groups were left more vulnerable to military offensives and without a point of contact inside the junta. Nevertheless, 2004 was "business as usual" for the generals, with mili-

tary offensives in Mon, Shan, Chin, Karen and Karenni States, and forced displacement, forced labor, rape and extra-judicial killings country wide, but particularly in outlying ethnic areas.

The National Convention

A major political development in 2004 was the re-convening of Burma's National Convention (NC), a process first begun in 1993 to estab-

lish guidelines for a National Constitution but suspended in 1996 when the SPDC prohibited political debate. Like its 1993 counterpart, the NC is widely viewed, both by Burmese and foreign actors, as being illegitimate, unrepresentative and incapable of managing a transfer to democracy, its main objective being to perpetuate military dominance.³ Ethnic groups attended the National Convention with the expectation of engaging in a *de facto* political dialogue, and yet when delegates arrived they found they were under virtual house arrest, the venue was a military settlement, they had no access to communication and they were subject to restrictive prohibitions on procedure. Delegates were handpicked, freedom of expression was prohibited and speeches had to be approved in advance by SPDC chairmen. Nonetheless, 28 ethnic ceasefire groups attended the 2004 retake. While some regard their attendance as the SPDC manipulating ethnic groups into rubber-stamping continued military dominance, others have argued the National Convention afforded an element of leverage to the ethnic ceasefire groups that chose to attend.⁴ In this way, the National Convention offered an opportunity to raise ethnic issues on a national scale. Despite the shocking restrictions, the ethnic groups persevered and even drafted a joint submission, backed by 13 ceasefire groups, calling for the establishment of a federal union. While the submission itself was rejected on the grounds that "its content was outside the scope of the National Convention", it nonetheless offered an opportunity for ethnic ceasefire groups to work in cohesion. At the same time, however, the SPDC was pursuing its traditional tactic of "divide and rule" by seeking bilateral submissions. In addition to this, the SPDC continued military offensives in non-ceasefire areas as the National Convention was taking place.⁵ The National Convention was adjourned on 9 July after two months and without completing a draft of detailed "Principles" meant to guide the drafting of the constitution. The NC is to be re-convened once again on 17 February 2005.⁶

Prime Minister General Khin Nyunt ousted

On October 19, Burma's Prime Minister and head of Military Intelligence (MI), General Khin Nyunt, was ousted from his position in a

massive purge of Military Intelligence personnel and business people viewed as being loyal to him. Although initially “permitted to retire for health reasons”, this official version was later replaced with accusations of MI corruption, particularly in the ethnically populated border regions. Following this, the SPDC abolished the monolithic Military Intelligence Bureau saying it was “no longer suitable for public welfare”. While MI involvement and complicity in corruption, drug trafficking and the extortion of ethnic villagers have been widely documented, SPDC involvement in corruption has also been widespread. Thus, while extortion, stealing and “taxing” of ethnic nationalities stalled in the immediate aftermath of the ousting, it did not take long for the MI to be replaced by the army, police or Special Branch (SB). Mon and Karen villagers say they now face worse extortion from SPDC authorities, with the army, police and Special Branch now all asking for money when before it was only the MI.

The greatest point of concern for ethnic nationalities following the fall of the MI has been the status of existing ceasefire arrangements and ongoing ceasefire negotiations. The 28 ceasefire agreements forged since 1989, as well as the ongoing negotiations with the Karen National Union (KNU), were all spearheaded by Military Intelligence personnel. Most Burma watchers believe there to have been tension between the MI and the SPDC on how to deal with ethnic groups. MI were said to favor co-opting ethnic groups through ceasefire agreements while the Army favors open confrontation. On 22 October, Gen. Thura Shwe Mann, head of the armed forces, and new PM Lt Gen. Soe Win, announced there “would be no change in national policy” towards ceasefire groups. Nevertheless, late last year, Rangoon’s War Office reportedly adopted a strategy aimed at the “dissolution of ethnic armed groups in the...border regions”.⁷ It involved operationalizing “full strength units” in “areas controlled by the various armed groups”, eventually forcing them to disarm. In line with this plan, force deployments in Karen State, Wa and Shan areas were bolstered.

Militarization

“Maintaining the stability of the Union” has always been both the SPDC’s aim and a key rationale used to justify its hold on power. Thus its “counter-insurgency” campaigns against armed ethnic groups have assumed a high priority. In addition to utilizing the military against armed ethnic opposition groups, the Burma Army also routinely and deliberately targets ethnic civilians as part of its counter-insurgency strategy. Ethnic people living in non-ceasefire areas are victims of arrests, extra-judicial killings, rape, torture and displacement. People are arrested on suspicion of supporting armed opposition groups, having knowledge of their movements and being a member of an opposition group. For example, as part of its ongoing military offensive to destroy the Hongsarwatoi Restoration Party (HRP), an armed Mon opposition group, on 29 August 2004 the Burma Army arrested 8 villagers in Ye Township, Mon State, accusing them of hiding members of the party.⁸ Similarly, since December 2003, when the KNU formed a “gentleman’s” agreement with the SPDC to halt military attacks, over 240 armed clashes have been reported in Karen State. These reports also highlighted the killing of villagers, burning of villages and beatings. Many of the reports emphasized the involvement of the Democratic Karen Buddhist Army, an ethnically Karen ceasefire group: a tactic frequently used by the SPDC to exacerbate intra-ethnic tensions.

Ceasefire breaches are also common, and largely target ethnic civilians. Despite the SPDC’s purported ceasefire with the Karenni Nationalities Progressive Party (KNPP), the SPDC attacked both the Karenni Army and Karenni villagers in Southern Karenni State numerous times throughout 2004. On 28 September, the Burma Army burned one village and later laid 18 landmines around it to prevent villagers returning.⁹ Villagers from parts of Karen State say that tentative ceasefire agreements between the SPDC and the Karen National Liberation Army (KNLA) (the armed wing of the KNU) have intensified Burma Army offensives and made them even more vulnerable to SPDC abuse. Without resistance from the KNLA, villagers and displaced people are unprotected.

Ethnic populations in Burma continue to be displaced as a result of the military regime. An estimated 2.5 million people have fled from Burma to neighboring countries as refugees or migrant workers, alongside approximately 526,000 internally displaced persons in eastern Burma alone. Ethnic populations constitute a large proportion of these figures.¹⁰

Economic development projects

The SPDC has long used a strategy of manipulating “economic development” projects as a means of gaining international funding and cooperation while subjugating ethnic nationality movements and exploiting natural resources in ethnic areas.¹¹ “Development” projects throughout Burma saw this trend continue throughout the year. Prospects of a gas pipeline corridor in Arakan State saw villagers forcibly relocated and forced to work for the military in the construction of service roads and helipads in early 2004.¹² Between January and March, 3,500 villages were displaced along the Karen-Karenni border to make way for development of the Mawchi road.¹³ Burmese authorities also ordered thousands of households to relocate to make space for the upgrade of the Indo-Burma road in Tamu township, Sagaing Division. Villagers were given one month to resettle before their houses and farms would be destroyed, although no resettlement area was allocated.¹⁴

Religion

Non-Buddhist religions, particularly in ethnic areas, face abuses from the military regime. On 14 July, the SPDC banned Muslims from praying in Tenasserim Division. Villagers were ordered to close down two Jamaat Khanas (prayer houses) in Kaw Thaung Myo division.¹⁵ Navy Officers and Local Peace and Development Council authorities in Mergui Township also ordered Muslim elders not to make the *Azan* (public call to prayer) on the archipelago. On 21 July, an SPDC Major General

ordered police in Arakan State to demolish a mosque built in front of Akyab University because it was built without permission.¹⁶

On 1 October 2004, the Chin Human Rights Organization (CHRO) reported forced conversions from Christianity to Buddhism, destruction of churches, SPDC censorship of sermons and the burning of bibles.¹⁷ Christians in Chin State are also prohibited from celebrating Christmas by orders of forced labor on Christmas day.

Women

The women of Burma are particularly vulnerable as a result of the Burma Army's campaign against ethnic populations. During 2004, two reports were published identifying widespread, systematic rape of ethnic women by members of the Armed Forces in Burma. The Karen Women's Organization released "Shattering Silences", a report documenting 125 cases of sexual violence committed by the Burmese military in Karen State from 1988 to 2004. The report condemns the "widespread and systematic nature" of military rape, and documented that at least a third of the rapes were committed by commanders or other high-ranking officers. Furthermore, in 40% of the cases, the women were gang raped; in 28% of the cases they were killed.¹⁸ The Women's League of Burma (WLB) later released "System of Impunity", which documents cases of rape by members of the armed forces in all states of Burma.¹⁹ The SPDC responded to these claims by arguing the women were attempting to de-rail ceasefire talks and "national reconciliation" – a process that was surely undermined by continuing military abuses and maltreatment. □

Notes

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- 2 Ethnic ceasefire groups are armed ethnic groups seeking autonomy and which, since 1989, have signed ceasefire accords with the regime.
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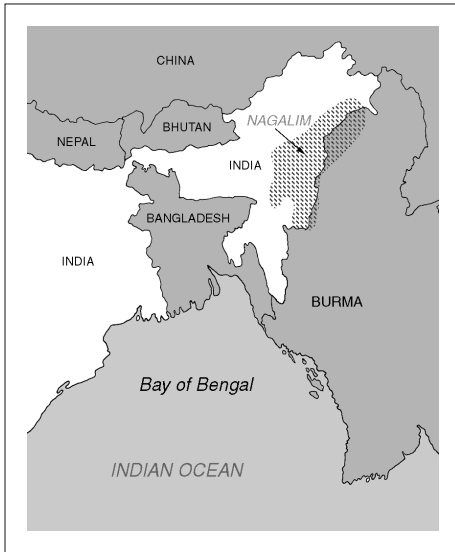
NAGALIM

The Naga live on their ancestral land, which is situated on the Patkai Range stretching approximately from longitudes 92.5E and 97.5E to latitudes 23.5N and 28.5 N. The area is bound in the north by China, in the west by Assam (India), in the south by Manipur Valley and Mizoram (India) and the Chin Hills (Burma), and in the east stretches beyond the Chindwin River and along its tributary the Uyu River (Burma).

The Naga have been systematically denied recognition as an independent political entity by old and new colonial powers alike. Naga ancestral lands have been arbitrarily divided by Burma and India, who in turn have divided the compact Naga territories into different administrative states. The term "Nagalim" refers to a unified Naga homeland, transcending all imposed boundaries. For the past 57 years, Naga have been struggling for their right to self-determination. Although it is one of the longest political conflicts in the world, it has generated little interest.

Political negotiation

After decades of intense armed conflict, India at last acknowledged that the Indo-Naga issue was of a political nature and could not be solved by military means. This acceptance on the part of India's political leaders to resolve the Indo-Naga political issue by negotiation and peaceful means indicates a change in perception and attitude towards the Naga and helped initiate another Indo-Naga peace process. The peace process has renewed a sense of hope among the Naga with regard to regaining their right to self-determination.



The eight-year cease-fire has created a democratic space for the Naga people and provided an opportunity to begin picking up the threads of life and to start the slow process of rebuilding their homes, families, communities and society. When, on October 2, 2004, two powerful explosions ripped through the railway station and a business market in Dimapur, memories and experiences of the past were once more

relived. Many innocent civilians fell victim to the blasts, and the shadow of fear hung over the people once more. The identity of the perpetrators remains unknown but there are indications that the aim was to disrupt the peace process. The incident reminded the Naga of the urgent need for a strengthening of the peace process and it brought all Naga together to condemn the crime with one voice.

Naga in the UN Decade

To mark the end of the International Decade of the World's Indigenous People, and under the theme "*Indigenous Peoples – Partnership in Action*", Naga organized a commemorative day on December 10, 2004 at the Naga Solidarity Park in Kohima (state of Nagaland), entitled "*Towards our rightful place through healing of our spirits*". This was organised under the aegis of the Naga People's Movement for Human Rights (NPMHR) and the Naga Students Federation (NSF). Throughout the decade, Naga have asserted that, as an indigenous people, they are

under forced occupation and seeking recognition of their rights as a sovereign state. At the outset of the decade, they proclaimed:

1. *The right to live together as a people through unification of all Naga inhabited areas.*
2. *The right to be free from occupation forces.*
3. *The right to have United Nations recognition of the Naga country as a sovereign nation.*
4. *The right to practice and revitalize their culture, traditions and customs.*
5. *The right to manifest, develop, use and transmit to the present and future generations their history, languages, arts and literature.*
6. *The right to freedom of movement, assembly and access to all places of learning, faith, belief and worship.*

Civil society involvement in the peace negotiations

Since the signing of a ceasefire agreement between the National Socialist Council of Nagalim (NSCN) and the Government of India in 1997, many peace-building initiatives have been implemented by Naga civil society organizations in support of the peace effort. The present political negotiations have reaffirmed that a military solution is not possible and that the Naga issue is a political one. The fact that the talks are unconditional and at the highest ministerial level in a third neutral country (as e.g. Thailand, the Netherlands, Japan or France) indicates the *de facto* recognition of the Naga people's sovereignty by the Government of India. The Government of India's recognition of the "unique history and situation of the Naga" in July 2002 was an important acknowledgement of the legitimacy of the Naga struggle for self-determination.¹

The Naga negotiating team, represented by the NSCN, has organized a series of consultations with the different sections of Naga society at home and abroad to understand the people's aspirations and strengthen the peace process. The NSCN leadership visited New Delhi for the first time in 2003 after decades of living in exile, at the invitation

of the Indian National Democratic Alliance government's prime minister.² The leaders engaged with both Indian and Naga civil society groups during their visit. A second visit took place in December 2004, this time at the request of the new prime minister of India.³ During this visit, they embarked on extensive consultations of the Naga in Nagalim, in preparation for future substantive negotiations with the New Delhi United Progressive Alliance government. This move has been widely appreciated by the people. The *Naga Hoho* (all-Naga council of tribal leaders) passed a resolution to the effect that unification of the Naga homeland should be the minimum basis on which the political negotiations could be taken forward. The establishment by the Naga Hoho and other public organizations in 2004 of a 'Working Group on Integration/Unification of the Naga Homeland' in order to work more vigorously towards achieving reunification of the Naga homeland is a significant development that has the overwhelming support of the Naga people. A consultation on unification organized by the working group clearly reasserted that:

It is for the people to determine the destiny of the territory and not the territory the destiny of the people. Therefore, any process of negotiation must focus towards reclaiming the rights of the Naga people to exercise their Sovereign Will as expressed and desired by the people. The natural yearning of the Naga people to unify their homeland into one political entity is a manifestation of the will of the people. Any attempt to prevent the unification of the Naga homeland is a denial of the Naga people's right to exercise their Sovereign will. It is imperative to understand together the fact that unification of all Naga areas as an expressed will is directly related to the sovereignty of the Naga people. The Naga for fullest realization of their identity and rights demand the unification of their land which is at the heart of their existence. It implies the desired will of the people to live together as one "political entity" with the freedom to decide the fate of its own destiny.

The leaders' visit to Nagalim

Throughout the leaders' three-week visit in December, they held daily consultative meetings and talks with all Naga tribes, village councils, mass-based organizations, churches, students, women and ordinary Naga from all walks of life. These consultations resulted in a declaration endorsing civil society's support for the NSCN in their negotiations with the Government of India. The declaration read as follows:

Naga people and Organizations covering the length and breadth of Naga Homeland, after two days of intensive, sincere and honest interaction with the Collective Leadership of NSCN, declare:

1. *The fullest support for an honourable settlement to the Indo-Naga political issue on the basis of the uniqueness of Naga history and situation;*
2. *That the unification of all Naga areas is legitimate and therefore non-negotiable;*
3. *That the political solution should be found through peaceful means; and*
4. *That both Government of India and the National Socialist Council of Nagalim uphold the utmost sincerity towards finding a political solution.*

The purpose of the series of consultations was to seek the opinion of the Naga people and to build an understanding amongst the people and a consensus for a settlement based on the uniqueness of the Naga' history and situation.

Before leaving for New Delhi, the leaders asserted:

We understand the rationale behind India's security needs. We are carrying the mandate of the people for an honourable solution. It is but natural for a family to live together. If India cannot deal with this it will become a big issue for us.

The crucial rounds of substantive talks are expected to begin by February 2, 2005, in New Delhi. The Indian side will consist of a three-member ministerial team headed by Minister of State for Programme Implementation, Oscar Fernandes, Minister of State in the Prime Minister's Office (PMO), Prithiviraj Chavan, and Minister of State in the Home Ministry, S. Regupathy. The NSCN leaders are also expected to hold a wide range of discussions with Indian civil society.

All this represents a welcome opportunity for the Naga to regain their place in the international community of nations and peoples. However, in this rapidly globalizing world, rather than that of their status as a sovereign people, the important and challenging issue is that of how their sovereign rights will actually be exercised. It is only through the people's participation that an honourable and respectable solution that embraces the rights and aspirations of the Naga people will be achieved. □

Notes

- 1 Read more about this in *The Indigenous World 2002-2003, 2004*.
- 2 The Hindu nationalist government that ruled India from 1999 to 2004.—Ed.
- 3 From the new Congress-led United Progressive Alliance government.—Ed.



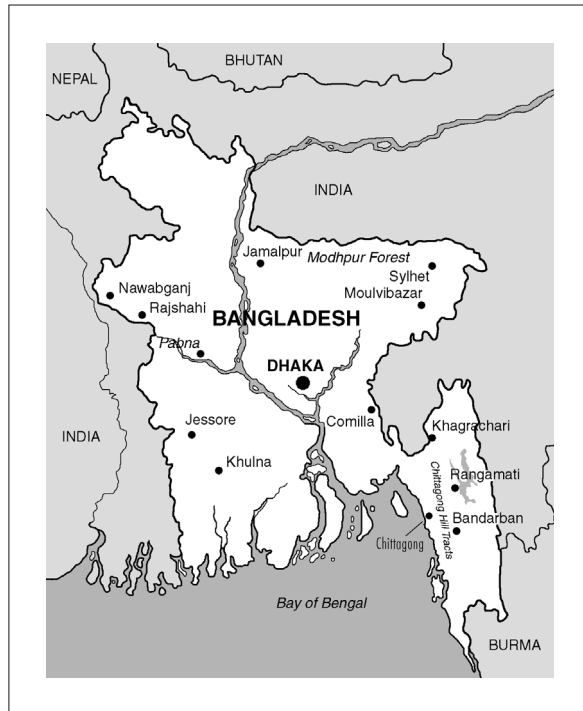
BANGLADESH

Bangladesh lies in south Asia, sharing its borders with India and Burma (Myanmar) to the east, west and north, and being bounded by the Bay of Bengal to the south. The majority of its population (143.3 million) are Bengalis but it also has some 2.5 million indigenous peoples or adivasis - original inhabitants - belonging to 45 different ethnic groups. They are concentrated in the north and south-east of the country. There is, however, no constitutional recognition of the indigenous peoples in Bangladesh except for oblique references to "backward segments of the population".

In 2004, indigenous representatives of Bangladesh participated in various international and regional fora, including the UN Permanent Forum on Indigenous Issues, the UN Working Group on Indigenous Populations (WGIP) and others, to draw attention and seek solutions to the social, economic and environmental problems they are facing. As this report will show, these remain largely the same as before.

Chittagong Hill Tracts

The Chittagong Hill Tracts comprise 13,295 sq. km. of hilly land once densely forested. The area is home to 11 indigenous peoples, namely the Bawm, Chak, Chakma, Khyang, Khumi, Lushai, Marma, Mro, Pankho, Tanchangya and Tripura. They are commonly known as Jummas for their common practice of swidden cultivation (crop rotation agriculture locally known as *jum*). The Jummas are ethnically, culturally and religiously very different from the majority Bengalis.



The 1997 Peace Accord

In December 1997, the 25 year long civil war ended with the agreement of a Peace Accord between the Government of Bangladesh (GoB) and the indigenous resistance movement, Parbattya Chattagram Jana Samhati Samiti (PCJSS, United Peoples Party of the Chittagong Hill Tracts). The Accord recognises the CHT as an indigenous (“tribal inhabited”) region and acknowledges the need to preserve its special characteristics. It also recognises the traditional indigenous governance system and the role of the chiefs. The Accord provides the building blocks for indigenous autonomy in the CHT.

However, many of the major pre-requisites for implementation of the Accord still remain unfulfilled. It has led to some improvement in the general law and order situation but tensions and conflicts remain,

and an analysis of the current situation in the CHT shows that peace and prosperity for the region and its indigenous people is still a distant hope. There have been demands and pressure from inside Bangladesh as well as the donor community for the speedy implementation of the Peace Accord.

The Accord provides for devolution of power to Hill District Councils, the Regional Council, the Ministry of CHT Affairs and a Land Commission. All of these bodies, however, still remain largely without any power or resources. For example, the most crucial functions of the Hill District Councils (HDCs), such as land, development, police, law and order, forestry and environment, still remain with the central administration (via deputy commissioners). There have been calls for the proper empowerment of the HDCs, and for their members to be directly elected as stipulated under the enabling legislation of 1989. There are also serious concerns regarding the legitimacy and authority of the deputy commissioners to continue allocating land to non-indigenous and non-resident persons for commercial and industrial purposes.

Similarly, the Regional Council and the Ministry for CHT Affairs are prevented from operating properly and kept under government control, and the Land Commission, which is supposed to resolve the mass of conflicting land claims brought about by the government-sponsored settlements and subsequent displacements is still not able to do its work (see *The Indigenous World 2004*).

Continuing militarization and human rights abuse

In spite of the Accord's provision for the withdrawal of the armed forces and the dissolution of all non-permanent camps, the Hill Tracts remain one of the most highly militarised regions in the world. Approximately a third of the Bangladesh military is deployed there, and it is estimated that the government spends US\$125 million per year on the continued presence of the military in the region. It has been argued that in a country with so far to go to reach its Millennium Development Goals this money could be better spent on the people of the country and their economic and social advancement.

The CHT Development Board, the main agency responsible for development in the region, was an instrument of counter-insurgency during the conflict, and came under the direct rule of the military. Although the work and functions of the Board are supposed to come under the authority of the Regional Council and be led by an indigenous person, it remains autonomous and under the control of the Bengali member of Parliament for Khagrachari. This has led to protests in the Hill Tracts.

The army is involved in Operation Uttaran (Upliftment) in the Hill Tracts, which focuses on development as a counter-insurgency strategy. It is thus engaged in economic development and infrastructure projects. Over 350 army camps remain in the region, and the Army has expanded its operations in some areas, such as the new training camp near Bandarban, which will lead to the displacement of 25,000 indigenous peoples. More new camps have also been reported in Milachari, Bandarban and at Ghagra in Rangamati Hill District. There were reports that the army had closed down the local primary school in Ghagra to use it as accommodation while the camp was being established in July 2004. A Buddhist monastery in Barkal, Rangamati district, was also forcibly pulled down to make way for a camp for the Bangladesh Rifles, a paramilitary border force. In a related development, there are increasing reports of the presence of armed insurgent groups from neighbouring countries operating in the CHT, and it is alleged the armed forces have adopted a policy of publicizing these foreign insurgent groups as further justification for their continued and expanding presence.¹

A major concern is the continued involvement of the armed forces in gross human rights violations against the indigenous peoples, often in collusion with the Bengali settlers. Reports of killings, rapes, torture and arson were common during the conflict, and led to the establishment of the International Commission on CHT to assess the human rights situation. However, violent incidents and human rights abuses are still continuing.

As reported in *The Indigenous World 2004*, settlers from a neighbouring cluster village attacked, looted and burnt down 14 indigenous villages in Mahalchari, Khagrachari district. The army took no action to

prevent the attack, and were reported to have participated in arming the settlers and being present during the attacks in civilian clothes. In 2004, land grabbing by Bengali settlers with the collusion of the armed forces has continued in Mahalchari (Sindukchari). In May 2004, shops and houses in a Tripura area were looted and burned.

Internecine conflict

The conflict between the anti-Peace-Accord group, led by the United Peoples Democratic Front (UPDF), and the pro-Accord group, under the leadership of the PCJSS, still remains unresolved (see *The Indigenous World 2004*). This intra-indigenous conflict has resulted in allegations of intimidation and violence by supporters of the two groups. It has also led to increased lawlessness and instability in the region, with robbery, extortion and other crimes increasing in frequency. This lack of security is sometimes quoted by donors and the government alike as a reason for the lack of implementation of the Peace Accord and the lack of meaningful development. In reality the situation is more complex, and the present unrest cannot be attributed solely to this development. However, this is often used to justify the continuing presence of the armed forces in the CHT.

Internal displacement

There are still a large number of internally displaced people in the CHT as a result of government programs such as the construction of the Kaptai hydroelectric project, which submerged some 250 sq. miles and displaced over 100,000 persons, the continuing afforestation policy, the government's settlement of large numbers of Bengalis from the plains, or the long years of civil war and the ongoing militarization. The Taskforce for Chittagong Hill Tracts Refugee Rehabilitation Affairs estimated that there were some 128,364 internally displaced families in the CHT (90,208 indigenous and 38,156 non-indigenous of settler origin). This number is still increasing. The inclusion of the Bengali set-

tlers among the internally displaced, a decision taken by the former chairperson, Mr. Dipankar Talukdar, has been criticized severely by the indigenous peoples who contend that since a major reason for their displacement has been the settlement programme, the settlers should not be labelled as “displaced”. This issue has not yet been resolved, although the PCJSS has indicated its opposition by refusing to participate in the Task Force meetings. A meeting in January 2004 with the new chairperson, Mr. Samiran Dewan, failed to take any decisions, and was boycotted by the PCJSS and refugee leader Santosit Chakma.²

On 20 January 2004, the CHT Returnee Jumma Refugees Welfare Association organized a peaceful demonstration to demand that they be properly rehabilitated as agreed, and that they too receive regular food rations from the government – they had been stopped some six months ago. In contrast, the plains settlers have received rations since their arrival in the CHT, and continue to do so today - an act which is described as discriminatory by the internally displaced indigenous. The Jumma refugees’ protest march was in conjunction with the road blockade and strike action called by the PCJSS and other indigenous organizations to press for full implementation of the 1997 Accord.

Development cooperation

Donor interest in the CHT remains high, with the Norwegian Ambassador stating in October 2004 that Norway was keen to take up development projects either independently or jointly with United Nations Development Programme (UNDP). The World Food Programme (WFP) also announced in October 2004 that it was to expand its Rural Road Maintenance programme (RRM) for another three years. The European Union is engaged in water resource management, the Danish International Development Agency (DANIDA) and USAID in infrastructure development, the United Nations Development Program (UNDP) in the environment, UNICEF in integrated community development through village centres, and the United Nations Food and Agriculture Organisation (FAO) in agricultural/horticultural development. The Asian Development Bank conducted an in-depth study of

the situation in the CHT and helped develop a regional development plan. Its priorities include: primary and secondary education, urban infrastructure, forestry and the development of a regional development plan and development project.

The US\$4.3 million UNDP programme on sustainable environment and poverty alleviation that started in 2003 has been severely criticized by the indigenous peoples and their representatives for not giving due recognition to the indigenous peoples of the CHT as the primary beneficiaries and for having included settlers instead. As a result of the concerns raised, UNDP sent a review team to the CHT from 4-19 January 2004, and is currently considering remedial measures aimed at resolving the situation, including enhanced consultation mechanisms with the Regional Council and the Hill District Councils.

Threats from eco-park and social forestry projects

In the northeast of Bangladesh, the 25,000 Garo of Modhupur Forest are still under threat of forcible eviction from their land due to the planned establishment of an eco-park. They continue to suffer serious human rights violations such as killings, torture, oppression through the filing of false cases, detention, rape etc.

On January 3, 2004 thousands of Garo staged a peaceful protest rally against the government's eco-park project in Modhupur Forest. For years, the Garo have been struggling to stop the eco-park. At Jalabada, a remote village in the forest, police and forest guards opened fire on the indigenous inhabitants, killing one Garo and injuring 25 others, including women and children.

The Khasi and the Garo in Moulvibazar district too are facing the threat of eviction from their ancestral homeland by the eco-park project, which will take up more than 1,500 acres of adivasi land for tourism. Seven indigenous hill villages will be affected and 1,000 Khasi and Garo families will face forcible eviction.

In the north Bengal region, the Santal, Oraon and other indigenous peoples are also facing eviction from their land in the name of a "social forestry" programme in Dinajpur. Indigenous peoples have been ex-

cluded from the income from such “forests”, and the forest department has filed false cases against them.

The struggle of the Bangladesh Adivasi Forum

The Bangladesh Adivasi Forum has been struggling to establish the constitutional rights of indigenous peoples since 2001. It has involved many intellectuals, professors, writers, journalists, political leaders, social and cultural activists, women leaders, civil society members and student leaders in its programme. The Forum is working to raise the collective voices of indigenous peoples to protect their rights to land, forest and natural resources. On 9 August 2004, they observed the International Day of the World’s Indigenous Peoples at national level. The theme of the Day was “Our Land, Our Life”. More than 5,000 indigenous peoples attended the programme and demanded the constitutional recognition of the indigenous peoples. □

Notes

- 1 See Report of the PCJSS: Human Rights Situation in the CHT 2004.
- 2 *The Daily Star* 4, no. 236, (Internet edition of 22 January 2004): CHT taskforce meets after 4 years, winds up without success.

NEPAL

Indigenous peoples are called indigenous nationalities in Nepal. There are 59 such indigenous nationalities widely distributed throughout the Mountain, Hill, Terai (lowland) and inner Terai regions. Geographically, more indigenous peoples are found in the hills and mountains than in the Terai. According to the latest national census, indigenous peoples constitute 37.2% of Nepal's 23.4 million population.

Until 1990, indigenous peoples were subject to the domination of Hindu culture. Because of the state's policy of one nation, one language, one religion, one culture and one national identity, indigenous peoples could not promote their cultures, nor could they form their own organizations or coordinate among themselves, through fear of state punishment.

With the democratic movement and the introduction of multi-party democracy in 1990, it became possible for indigenous peoples to develop their own ethnic organizations. Leaders and activists from various indigenous communities realized that, unless united, ethnic organizations working independently would not be able to create any pressure on the government to promote their socio-cultural and political rights. For this reason, they should unite and coordinate responses and strategies in order to challenge their shared problems of culture, language, religion, economy and politics. In 1990, they thus formed a common organization called the Nepal Federation of Nationalities (NEFEN), with eight member organizations representing the Sherpa, Tamang, Magar, Gurung, Newar, Rai, Limbu and Sunuwar. The Fifth National Congress of NEFEN, held in September 2003, added the qualifying term "indigenous" to "nationalities" so the organization is now known as the Nepal Federation of Indigenous Nationalities (NEFIN).¹



The armed conflict

The armed struggle between the Maoists and the Royal Nepalese Armed Forces intensified during 2004. The conflict began in 1996, and up to now more than 11,000 people have lost their lives. By far the most affected communities are the indigenous peoples. They have been killed, abducted, disappeared and displaced from their lands and territories. Indigenous women and children have become victims of the conflict. Peace negotiations have become the rhetoric of both government and Maoists. But the warring parties do not appear to be serious about peace.

NEFIN and other indigenous organizations have been advocating for peace building in Nepal by organizing various talks and peace marches in collaboration with other human rights organizations and civil society. A two-day national conference on ILO Convention 169 and its potential role in a peace-building process is scheduled to take place in January 2005. The conference will focus on how the Convention was used in the Guatemala peace process, and analyze the extent to which the same could be pursued in Nepal.

Agitation against “regression”

Throughout 2004, Nepal’s major political parties agitated jointly against the “regression” following the King’s unconstitutional dissolution of parliament and the democratically elected government. Since October 2002, the king has gradually taken more and more executive powers into his own hands. Protests were organized in the capital and throughout the country, and NEFIN actively supported this mobilisation.

With its distinct identity and independent demands, NEFIN organized two huge protest demonstrations on April 25 and May 15, 2004, mobilizing indigenous peoples through their organizations. The main objective of NEFIN’s protest demonstrations was not to install any political parties in power but to show solidarity with political parties that are struggling for a democracy that would provide indigenous peoples with socio-political and cultural rights. Many indigenous leaders and activists, including the author of this article, were arrested by the security forces and taken into police custody.

Advocacy agenda

NEFIN’s priority concerns include recognising cultural pluralism as a means of national integrity and unity and striving towards achieving a secular state. This implies acknowledging all languages and cultures of the indigenous nationalities as equal, providing education in indigenous languages, establishing regional autonomy on the basis of ethnicity, language and territory, affirmative action for the development of indigenous in education, government services and other economic and employment opportunities, proportional representation of indigenous peoples in national politics and decision-making processes at all levels and recognising the rights of indigenous peoples to their ancestral lands and natural resources.

In order to liberate indigenous peoples from political oppression, economic exploitation and socio-cultural discrimination, NEFIN has

been demanding the establishment of national regional autonomy ever since it was established in 1990. It is, however, only recently that indigenous peoples in the regions have taken this issue up as a priority concern. Indigenous peoples have now become very assertive with regard to their political rights and the rhetoric of national regional autonomy is on everybody's tongue. The rulers and political parties have also openly admitted that the structure of the Nepali state is not inclusive. It has excluded indigenous peoples from national political life and mainstream development processes. Indigenous peoples have no access to resources such as material wealth, social opportunities or political power. Discrimination occurs in every field of national life in terms of ethnicity, language, religion, sex and territory. As a way of preventing social exclusion and various forms of discrimination, indigenous peoples are demanding proportional representation in national politics, education, public services and other employment opportunities.

But the present constitution does not ensure the representation and participation of indigenous peoples in national politics and decision-making processes at all levels. To achieve this, a new constitution is required. NEFIN is therefore actively taking part in the national debate that is taking place between political leaders, constitutional experts, lawyers, human right activists and civil society on the need for a constitutional assembly and a restructuring of the state. This issue was raised loudly during the celebration of the International Day of the World's Indigenous Peoples on August 9, 2004. Until indigenous peoples are capable of competing with the non-indigenous peoples of Nepal, NEFIN is also demanding that the state government should make special arrangements for their participation and representation in political bodies, education, public services and other employment opportunities. In response to strong pressure from indigenous peoples, the government was forced to declare a positive discrimination policy that allocates 10% of public service positions and 15% of places within the education system to indigenous peoples. NEFIN has welcomed the government's policy of positive discrimination for indigenous peoples but it has strong reservations concerning the actual percentage allocation as it is minimal and the processes for implementing it are defec-

tive. Moreover, the government is only poorly committed to its implementation.

Linguistic and religious rights

May 31, 2004 (or *Jeth* 18 according to the Nepali calendar) was marked by NEFIN as "Black Day", commemorating the Supreme Court ruling of 1999 prohibiting the use of local languages in the official proceedings of the public administration at municipality and district level.² To protest against this discriminatory decision, NEFIN organized an enormous protest rally and demanded that the government overturn the court's decision. The 1991 Constitution of the Kingdom of Nepal recognizes Nepal as a multi-ethnic, multicultural and multi-linguistic country. It is thus ironic that the state recognizes only the Nepali (*khasa*) language as the language of the nation, thus discouraging the protection and promotion of various indigenous languages.

Similarly, NEFIN also organized several demonstrations in Kathmandu to protest at Nepal's official designation as a Hindu kingdom. It has challenged the hegemony of Hindu religion and culture and demands that Nepal be proclaimed a secular state. But this call for a secular state that would no longer legitimise the Hindu castes' dominance over indigenous peoples has fallen on deaf ears.

The International Day of the World's Indigenous Peoples

To mark the International Day of the World's Indigenous Peoples, NEFIN organized a week-long program of celebration in August 2004. The program included seminars, food festivals, archery games, cultural programs, an exhibition of indigenous art, dresses and ornaments and a cultural rally. Since it was the last year of the International Decade of the World's Indigenous People, much effort was put into mobilizing as many indigenous peoples as possible throughout the country. The week-long programme was financed entirely by the government. The week's activities were very successful and indigenous participa-

tion was surprisingly encouraging. On August 9, Prime Minister Sher Bahadur Deuba was chief guest at the main event. During his speech, he made a public commitment on behalf of the government to ratify ILO Convention 169. □

Notes

- 1 NEFIN now has 48 member organizations representing the Majhi, Bote, Magar, Gurung, Darai, Chepang, Lapcha, Dhimal, Limbu, Walung, Rai, Yakkha Rai, Tharu, Yolmo, Santhal, Tajpuriya, Kisan, Shingsa, Kumal, Jhagad, Chhantayl, Gangai (Ganesh), Dura, Sunuwar, Newar, Dolpo, Mewche, Sherpa, Danuwar, Thami, Hayu, Tingaule Trhankali, Marphali, Tangbe Tani, Rajbansi, Larke, Topkegola, Siyar, Raji and Bar-am.
- 2 Read more about linguistic rights and the Supreme Court ruling in *The Indigenous World 1999-2000, 2000-2001 and 2001-2002*. —Ed.

INDIA

In 2004, India's more than 70 million adivasis (indigenous peoples), or tribals as some of them prefer to call themselves, faced the usual problems of dispossession of livelihood in connection with development projects and resource extraction, militarization of their areas, etc. At national level, the government has drafted important policies (Draft National Policy on Tribals and Draft Environmental Policy) and adivasi organizations have submitted responses presenting their demand for consultation on policies dealing with their concerns. The following provides an overview of the main developments in 2004 at national level, as well as brief reports on the main events in Jharkhand, Orissa, Kerala and the North-East.

Policy developments at national level

The forest eviction issue

As reported in previous editions of *The Indigenous World* (2002-2003 and 2004), more than 1.5 million adivasi families have, since 2002, been threatened by eviction from their homes in the forests where they have lived for centuries. In response to this, hundreds of organizations working with forest people throughout India joined forces and launched the "Campaign for Survival and Dignity". During 2004, brutal evictions of indigenous forest-dwelling families took place in Rajasthan, Orissa, Uttar Pradesh, Gujarat and Madhya Pradesh. Houses were set on fire, crops destroyed, women molested and a number of people beaten up. But more positive developments were also noted:

In July 2004, for the first time in history, in a sworn statement to the Supreme Court the Ministry of Environment and Forests admitted to

the "historical injustice" meted out to the tribal peoples in the process of consolidating forests in the country, wherein the tribals with rightful claims and entitlements had been categorized as "encroachers" and threatened with eviction because of the failure of state officials to recognize and record their rights and entitlements. In December 2004, the Campaign for Survival and Dignity organized a two-day national convention on "Defense of the rights of forest dwellers". The Convention resulted in a declaration demanding that Parliament rectify the admitted historic injustices and pass a law to recognize the rights of forest dwellers. Another demand is for action to be taken against those officials who have been involved in forcefully evicting forest dwellers from disputed lands. On December 21, 2004, the Ministry of Environment issued a circular to the states urging them not to evict tribals and forest dwellers until a survey to identify encroachers on forest lands had been completed. This is a respite to the forest dwellers, who have been spending their days in great apprehension. Draft legislation recognizing the rights of Scheduled Tribes and Forest Dwellers in forests and providing a procedure for verifying and recording the rights of members of the Scheduled Tribes and Forest Dwellers is currently under discussion and is scheduled to be tabled during the next session of Parliament

Observers see three possible scenarios for the coming years: the first is in line with the demands of the above mentioned national convention, namely an immediate stop to evictions followed by promulgation of a new law conferring rights on the tribal and forest-dwelling people. The second is the proposal of S. R. Sankaran, the chief mediator between the government of Andhra Pradesh and the armed Peoples War Group (now known as the Communist Party of India (Maoist)). His recommendation is that central government should instruct the governors of states to withdraw the applicability of the 1980 Forest Conservation Act to the Vth Scheduled Areas,¹ thereby eliminating the basis for the eviction order in these areas. He is arguing that the ban on forest dwelling imposed by the *Forest Conservation Act* is a cause for extreme distress and discontent in the tribal areas, and that this provides fertile ground for underground armed groups. The third scenario is that of more violence in the name of a continued struggle for free-

dom from the oppression of the new environmentalism that has reduced the forests to a "wilderness" devoid of human presence, and conferred a status of "encroachers" on forest dwellers who are actually the only proven "conservationists" of the forests.

Draft National Environmental Policy

The draft National Environmental Policy (NEP) that was published in 2004 falls seriously short of the fundamental changes needed in terms of development and economic planning, governance or decision-making regarding natural resources that would put India on a path of sensitive, sustainable development. This is perhaps not entirely surprising, given that it has been formulated in an essentially non-participatory manner, failing to involve the most important sections of Indian society, especially the tribal peoples that depend on natural resources for their direct life and livelihood.

Its diagnosis of environmental problems in India contains a fair assessment of the institutional, policy and other failings that have brought about these problems. For instance, it rightly points to the fact that the government has been responsible for the alienation of tribal and other communities from their common lands, thereby undermining the sophisticated traditional systems of resource management that these communities practised.

The action plan under the new policy envisages an increase in forest cover from the existing 23% of the country's land area to 33% by 2012, and priority will be given to setting up public-private partnerships for implementing various schemes, including the management of national parks and wildlife sanctuaries. The minister for Environment and Forests claimed that efforts would be made to ensure the livelihood of the tribal peoples and non-tribal forest dwellers while at the same time taking care of conservation needs. The process of settling tribal peoples' claims to forestland and the conversion of forest villages into revenue villages will be speeded up ("forest villages" are denied basic facilities until they are reclassified as "revenue villages").²

However, in the context of natural resource management, the only concrete proposals are (a) universalization of Joint Forest Management (JFM), (b) some vague expressions about peoples' participation in Conservation Reserves and Community Reserves, and (c) giving legal recognition to the traditional rights of forest-dwelling tribes. There is, however, ample evidence that the JFM programme, in spite of all the hype surrounding it, has performed way below expectations. In fact, it has often produced socially and environmentally perverse outcomes as it results in the forest departments colluding with village elites to grow commercially important species on lands that earlier provided subsistence benefits, while leaving lands with better forest cover unprotected.

The problem lies not just in lackadaisical implementation by the forest departments but also in the basic concept itself. Incomplete coverage of resource use areas and inadequate rights to forest produce, together with a lop-sided distribution of power between the department and the village institution, make "joint management" a parody of the principle of decentralized resource management. And the continued operation of JFM under Government Orders ensures a lack of statutory support and security of resource tenure for the village institutions.

The sudden interest shown by the draft NEP in recognizing customary tribal rights in forests is indeed laudable. But it rings hollow, both because it is not grounded in any larger framework and also because the draft ignores the only existing window for truly decentralized governance, viz., the *Panchayati Raj (Extension to the Scheduled Areas) Act* (PESA). PESA was aimed at legislatively transferring powers related to resource management and development planning to the *gram sabhas* (village councils) in notified tribal areas. However, a number of hurdles, ranging from state governments diluting the Act to making the Act subject to other rules or acts in force, have got in the way of it becoming an effective piece of legislation.

Draft National Policy on Tribals

In early 2004, in the run-up to the parliamentary elections in India, the Bharatiya Janata Party-led Hindu nationalist government came up

with a Draft National Policy on Tribals (DNPT). This draft was circulated by the Ministry of Tribal Affairs via its website.

The draft provoked a massive uproar and condemnation from tribal groups and human rights organisations throughout the country. The DNPT, promoted only through the website, was considered to be unilateral and ethnocentric, and prepared without any consultation with the tribal and adivasi peoples of India. The draft policy was severely criticized for promoting mainstreaming of tribal society, thereby charting a course for destroying the identity and culture of tribal society in India.

In response, various consultations and seminars were organized, and individual responses to the draft were submitted to the ministry. A group of tribal and indigenous organisations and support groups initiated a coordinated national process of discussions in order to produce a critical response and discuss possible alternatives to the policy. Regional consultations took place in the North East and the eastern, southern and western parts of India, and in September 2004 a massive National Assembly of Tribal and Indigenous Peoples took place in Delhi. Various tribal groups and organisations participated in the national process and unequivocally rejected the DNPT, calling for a more consultative and participatory drafting process with tribal and indigenous people at its core.

The National Assembly criticized the draft policy for negating the rich expressions of adivasi culture and life and trying to portray tribals as a homogenous group. It is based on the ideology of the current development paradigm with its principle of individual rights, not community rights, and treats land, water and forests as commodities.

After three days of deliberations, the National Assembly of Tribal and Indigenous Peoples formulated and finalised a Declaration called the "Delhi Declaration of the Tribal, Indigenous and Adivasi Peoples of India", which was handed over to the guest ministers of Tribal Affairs and Panchayati Raj of the new Congress-led central government. While appreciating the spirit of the Delhi Declaration, Mr. P R Kyndiah, the minister of Tribal Affairs, assured the National Assembly that due respect would be accorded to the life and vision, identity and culture of the tribal people of India and that the DNPT would be finalised

only after due and proper consultation with the tribal and adivasi people of India.

Jharkhand

Legal action for forest rights

On November 9, 2004, under the banner of the Jharkhand Save the Forest Movement, the Mundas of Ranchi District of Jharkhand gathered in Ranchi town to register their legal protest at the alienation of their forest rights. A large number of the Uraons, Santals, Hos and some artisan communities who live among them attended the protest march in solidarity. About twenty thousand participants marched to the High Court of Jharkhand State in Ranchi and handed over a writ to their lawyer to file a case demanding the restoration of the ownership and management rights of the *Mundari Khuntkattidars* to their ancestral forests. Mundari Khuntkattidars are the descendents of the original settlers of the Mundari Khuntkatti villages, who enjoy a special status under the *Chotanagpur Tenancy Act 1908*. The Act was the outcome of a hundred-year-long revolt of the indigenous peoples of the region against British colonialism. Under this Act, the Mundari Khuntkattidars are the absolute owners of the land, forests and water resources of their villages. The government usurped their rights to forests in 1953 illegally, in the name of managing them “scientifically” and with a promise to share the profit. The Forest Department neither shared the profit nor protected the forests. The people, whose economy was largely dependent on the forest, today find their forests totally degraded and, as a consequence, the cultivable land less fertile.

Struggle against the army’s firing practice

The 23rd Artillery Brigade of the Indian Army has been using Netarhat and other areas within the adivasi-dominated districts of Gumla, Palamau and Latehar, in Jharkhand, for Heavy Artillery Firing Practice

since 1965. During the firing drills, the local population are asked to vacate their houses or stay indoors. This goes on for periods of ten days at a time, during which people either have to flee to the jungle or look for alternative shelter while their habitat is bombarded with shells, often wounding and killing people. The firing drill also causes enormous damage to the standing crops, fields, houses, trees and live-stock in the region. According to activists of the Jan Sangarsh Samiti (People's Struggle Committee), there have even been instances of rape and sexual harassment of women by the army. The "inconvenience" caused to the locals is compensated with the meagre amount of Rs. 1 per day (or US\$0.80) by the government. The damage to wildlife, forest vegetation and the local ecosystem is not even considered.

The Jan Sangarsh Samiti was formed in the 1990s to coordinate and represent the interests of the people on the field firing range issue. 78% of those living in affected villages are adivasis. Over the years, protest demonstrations have been held in the region and in the state capital, and memoranda have been submitted to ministers of the central government as well as to state officials.

On January 26, 2004, the Army arrived in Netarhat to carry out its firing drill without prior notice to the people, violating the Manoeuvres Field Firing and Artillery Practices Act of 1938. However, it had to leave in the face of determined and fierce opposition from the local communities. A peaceful demonstration was held by the people under the banner of Jan Sangarsh Samiti, stopping the army from entering the area. The army resorted to violence but people continued their non-violent protest until the army was forced to leave on January 30, 2004.

Orissa

Mining in tribal lands

The state government of Orissa has unleashed a reign of terror against the indigenous and dalit people of Orissa in order to facilitate the entry of mining companies into bauxite-rich forestlands.³ Utkal Alumina In-

ternational Ltd (UAIL) plans to take over their lands and forests for a 100% export-oriented alumina mining and refinery project. The 45 billion rupee UAIL is a joint venture between the Indian company HINDALCO (55% share) and a Canadian company ALCAN (45%). TATA (Indian), HYDRO (Norwegian) and ALCOA (American), who were all previously part of the venture, decided to withdraw from the project after mass protests and opposition from the villagers.

The project will source bauxite from a 195 million ton deposit in Baphli Mali, a sacred hill for the adivasis. The promoters also plan to set up an alumina refinery near Kucheipadar, from where it will be exported. At the refinery's consumption capacity of 9 million tones of bauxite per year, the Baphlimali deposit will be exhausted within two decades. The employment potential is estimated at around 1,000 jobs, again only for two decades.

The mines and refinery are slotted to come up in adivasi-majority areas that are protected by the Fifth Schedule of the Constitution. The Fifth Schedule guarantees the right of land to adivasis, and prohibits the transfer of these lands to non-tribals for any purpose. The project will lead to destruction of fertile agricultural land, forest, mountains and perennial water streams – the very basis of the adivasis' livelihood. Thousands of families could furthermore be displaced from their lands. Activists comment that the government of Orissa is in the hands of the mining companies.

On November 25, 2004, Orissa Chief Minister Naveen Patnaik was quoted as saying that anti-mining struggles would be firmly dealt with. Since late November, villages that are protesting at the proposed Utkal Alumina project on their lands have been under siege by the police.

On December 1, 2004, the state police launched a brutal *lathi* charge (beating with sticks) on 400 adivasis, mostly women, who had gathered to protest at the inauguration of a road to a proposed bauxite mining site in Baphli Mali owned by ALCAN. As a result, 16 people were critically injured and three women were beaten unconscious. The critically injured persons were denied medical care and sent to Rya-gada jail. Since this incident, platoons of armed police with firing orders have occupied Kucheipadar village, the center of the adivasi

struggle. Eighteen activists of Prakrutik Sampada Surakshya Parishad (PSSP), the umbrella organization of adivasis spearheading the struggle against bauxite mining, have been picked up from their villages - mostly at night - in separate incidents and are now in jail without access to bail.

The situation in the rest of Orissa is not very different. As many as five bauxite mining and alumina projects are in the pipeline, covering 5 blocks of 3 districts. Great profits are expected for the investing companies, and the government will receive billions of rupees in royalties. The adivasis and dalits of these villages, on the other hand, will receive state repression and a lifetime of misery and poverty.

Kerala

Land rights struggle continues

On October 18, 2004, the Central Bureau of Investigation (CBI) filed three charge sheets as an outcome of its investigation into the police's violent repression of landless adivasis' occupation of land in the Muthanga Wildlife Reserve in early 2003.⁴ The adivasi occupation was a response to the government's failure to comply with an agreement made to provide 53,000 landless adivasi families with up to 5 acres of land and include these areas under the Vth Schedule of the Constitution, thereby providing for the adivasis' right to self-governance. On the first charge sheet, 21 people are charged with murder. The second relates to trespassing in the reserve. The third is regarding the forest officials' detention when they and others were caught red-handed setting fire to the forests so that the blame could be put on the agitating adivasis and this could then be used as a pretext to forcibly evict them. In total, 184 people have been charge-sheeted.

The CBI investigation came about after persistent protests at the police's violent behaviour. The report that came out of it, however, absolved the police, forest officials and the mafia of any crime or human rights violations. The CBI has stated that the agitation was initially peaceful. Later, erecting check-points and not allowing forest officials

entry into the forest placed impediments on the normal functioning of forest officials. The resistance resulted in the use of force, including firing, on February 19, 2003, at Thagarapadi and Koundanvayal. The CBI stated that the use of force by the police was after all legal formalities had been observed. This outright bias has come in for sharp criticism and protests. The High Court has been approached by C.K Janu, the adivasi leader, to appoint a special investigative team to unearth the truth.

Meanwhile, the allotment of land to the landless has been caught in the bureaucratic web and, even after three years, the promised allotment is nowhere in sight. The occupation of land and the allotment of meagre lands by the government are in fact taking place simultaneously. Nor has the cabinet resolved to include adivasi habitation in the Vth Schedule.

Coca-Cola struggle

At the end of 2004, the adivasi struggle against Coca-Cola was approaching its 1,000th day. Since April 2002, adivasi protesters have been picketing outside the Coca-Cola factory in Plachimada (see *The Indigenous World 2004*) with the stated goal of preventing the reopening of the factory at all costs. They are outraged by the depletion of groundwater resources and pollution of agricultural lands caused by the factory's operations.

On March 9, 2004, the Coca-Cola factory suspended production. The High Court had earlier ordered an expert committee appointed by the Court, along with the Perumatty Gram Panchayat (local elected body), to monitor the plant's water consumption. Based on the committee's findings, in February 2004 the Kerala government banned the factory's use of groundwater until June 15. The ban was limited to four months as the monsoon was expected to set in by June. The High Court then granted Hindustan Coca-Cola Beverages Limited one month to close down its wells and find an alternative source of water. The official report of the expert committee concludes that there is enough and more groundwater for the Coca-Cola plant to extract and that the plant

is not to be blamed for any deterioration in the quality of groundwater. The company is all set to reopen the plant with the completion of the effluent water treatment plant and waste disposal and storage system.

The Supreme Court Monitoring Committee (SCMC) on hazardous waste visited Plachimada on August 10-13, 2004. Relying upon a Supreme Court order dated May 7, 2004 that required water to be supplied to communities affected by industrial waste, the committee directed the state government and Hindustan Coca-Cola to ensure that a piped water supply was delivered to the houses of all the affected communities in the vicinity of the production units within six months. It found the present arrangement of delivering water in tankers or in a few public locations through public taps unacceptable. Coca-Cola has yet to comply with this order.

The anti-Coca-Cola struggle has generated immense interest, making Plachimada a much-visited place and a location for numerous events. However, for the adivasis of Plachimada, the day-to-day struggle, the reality of polluted water, the depleting groundwater and grinding poverty continue.⁵

The North-east

Protests against Indian military excesses and human rights violations, conflicts between ethnic groups sharing a scarce resource base, agitations for inclusion in positive discrimination regimes and the threat of being displaced by development projects marked the political landscape for the indigenous peoples of North-east India in 2004.

Militarization and resistance

Counter-insurgency operations continued throughout the states of Assam, Twipra (Tripura) and Manipur. The army was deployed to counter activities of the United Liberation Front of Asom (ULFA) and National Democratic Front of Boroland (NDFB) (both armed opposition



groups engaged in conflict with the state), leading to extra-judicial killings and disappearances. In addition, several civilian lives were lost in anonymous bombing campaigns in Assam and the state of Nagaland. Although security agencies attributed these blasts to the rogue actions of armed groups, their claims have not been verified by commissions of inquiry.

The killing of several schoolchildren following a bomb explosion during Independence Day (August 15) celebrations in Dhemaji, upper Assam, drew widespread criticism of the low-intensity war being fought by the government and rebels. In Manipur, the brutal death-in-custody of a young woman initiated widespread protest at the draconian *Armed Forces (Special Powers) Act 1958*, a security law that offers

impunity from prosecution to army personnel throughout the state and region. Thirty-two organisations formed a committee to bolster the campaign begun by human rights groups for repeal of the Act. Some conciliatory gestures on the part of the government and the formation of a commission to look into the impact of the Act were undertaken. These meagre measures were further stalled by the army's recalcitrance and rejection of any discussion on repeal of the Act. Instead, it has been reported that districts such as Chruachandpur (in Manipur) have been under siege from Indian army regiments engaged in counter-insurgency operations. Indigenous communities in the rural, impoverished district have managed to give the occasional statement to the local press. These statements speak of starvation, forced labour, use of civilians as human shields, defiling of places of worship and deaths.

Environmental concerns

The North-east region is an eco-sensitive zone. The government of India has embarked upon an ambitious plan to build several mega hydroelectric dams. In 2004, the region was also affected by floods that took a severe toll on human lives and livelihoods. However, the draft of the National Environment policy 2004 (see above) failed to reflect the diversity and complexities of the situations of indigenous and tribal peoples in the North-east region of India and does not recognise issues such as militarization, conflicts over land resources and indigenous property laws. This development has a number of implications for indigenous land-holding systems in the region. Military installations on prime indigenous community lands, forceful extraction of indigenous resources such as water and timber and the deforestation of community forests in the name of counter-insurgency all need to be considered.

In Meghalaya, human rights bodies, students unions and other civil society organisations have been protesting at the proposed uranium mining project being undertaken by the government's designated authority, the Uranium Council of India Ltd. Moreover, in Assam

and Manipur, indigenous people who stand to be displaced by the Pagladiya and Tipaimukh dams have continued to protest against corruption and government apathy towards their plight. 90% of those likely to be displaced by the dams are local indigenous peoples.

Ethnic politics - hope and despair

Ethnic clashes between Karbi and Kuki militias in the autonomous district of Karbi Anglong (Assam) claimed several hundred lives amongst the members of the two communities. The clashes are the result of a tragic combination of plural politico-legal regimes and growing impoverishment of the rural sector in the region. The autonomous district has special provision for representation of indigenous groups. The district is also among the poorest in the region, with the added presence of armed ethnic militias providing security to otherwise vulnerable groups. Settlers, in this context, are seen as threats to small communities. The Kuki, a group that settled in the district in relatively recent times, have been seen as a political threat. In turn, Kuki militia have targeted members of the Karbi community in a bid to state the legitimacy of their presence in the district.

Micro-insecurities continued to haunt ethnic groups in different parts of the North-east. In Arunachal Pradesh, the Supreme Court's directive to grant citizenship (and voting) rights to Chakma and Hajong settlers resulted in a backlash from the dominant indigenous tribes of the state. The apex students union of the state issued a series of directives calling for a boycott of elections and the expulsion of settlers. Incipient protests against the incorporation of Naga-inhabited districts of Arunachal Pradesh into a cohesive Naga homeland were stymied by consultations between students, local representatives and the collective Naga leadership in December. Protests against Reangs and "Burmese Mizos" in Mizoram led to a polarisation of ethnic relations. The Reangs have mobilized to demand an autonomous council within Mizoram. The state government has not been open to this demand. The Reangs have therefore taken up arms. On the other hand, riots against non-Mizos and "Burmese Mizos" have also taken place,

and rights activists have cautioned against the official sanctions of the growing intolerance within civil society. In Assam, ethnic politics remained a contentious issue with the government declining to include the sizable adivasi community, many of whom are still housed in makeshift relief camps since 1995-96, in western Assam. To complicate matters, sporadic political violence - in the form of bomb explosions - accentuated the growing militarization of armed struggles in the state.

However, the year also saw ceasefire initiatives between armed opposition groups such as the United Peoples Democratic Solidarity (Karbi Anglong Autonomous District), Dima Haram Daoga (North Cachar Autonomous District) and the government of Assam. In addition, the proposed talks between the National Democratic Front of Boroland, the United Liberation Front of Assam and the government are still in a state of suspended animation. In Tripura, a section of the National Liberation Front of Twipra (NLFT) has disengaged from the peace negotiations. Many of the organisation's cadres allege that they are being ill-treated in the camps that were set up for their rehabilitation and have rioted on more than one occasion. Civil society initiatives have underscored the need for political negotiations to end the cycle of violence. Such commendable initiatives have been instrumental in encouraging people-to-people dialogue, especially on unresolved issues such as the boundary dispute between the states of Nagaland and Assam. At a time when the overwhelming thrust of civil society initiatives has been for peace and justice, the government has embarked upon an ambitious "Look East Policy" to accentuate trade between India and its South-east Asian neighbours. The fulcrum of such policies, however, is concomitant with a greater role for the military. With a state-of-the-art counter-insurgency school already operational in Vairangte (Mizoram), the army's role in controlling the parallel structures of administration and governance seems to acquire a veneer of respectable inevitability. With protests against such policies becoming fragmented, issues affecting the indigenous peoples of the North-east are quickly being relegated to a nationally sanctioned zone of silence.

Andaman and Nicobar Islands

Tsunami wreaks havoc

In the aftermath of the tsunami that hit South-east Asia on December 26, 2004, many mixed reports have come out regarding the situation in the Andaman and Nicobar Islands. Everybody seemed to be asking the same question - what effect had this enormous disaster had on the already threatened indigenous groups on the islands? Now, as we go to print, there seems to be general agreement that the four remaining indigenous groups of the Andamans (the Sentinelese, Jarawa, Onge and Great Andamanese) were not as badly affected as first feared. In fact most of them seem to have survived. On the other hand, reports indicate that the indigenous Nicobarese have suffered heavy losses, perhaps far worse than have thus far been documented.⁶ Nicobarese organizations estimate losses to be up to 10,000 people out of a total population of 30,000.

Government claims to be in control

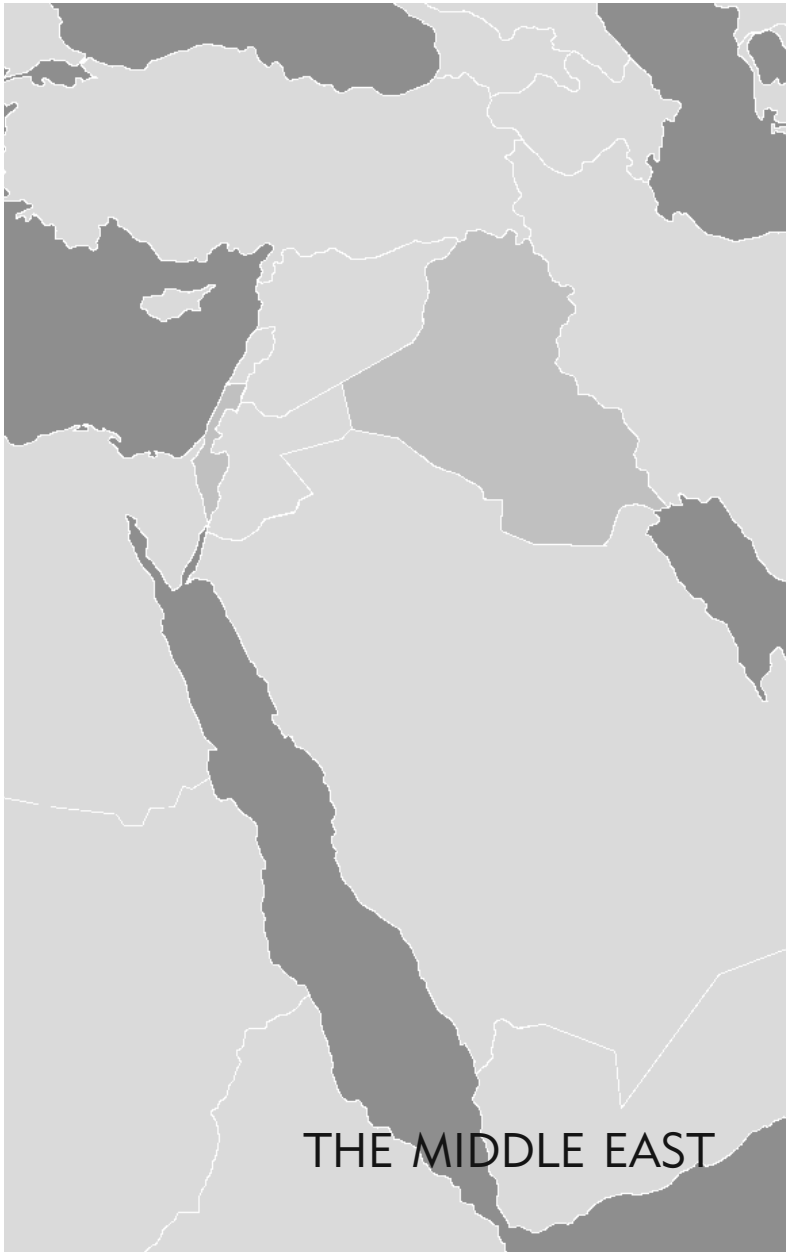
The government figure is, however, far lower than this. Activists are denouncing this as unrealistic, aimed merely at concealing the severity of the situation and projecting an image of being in control. Eyewitness accounts state that, on some of the islands inhabited by the Nicobarese, practically all the villages have been swept away. Some are criticizing the administration for failing to address the indigenous Nicobarese needs during early relief operations, concentrating rather on civil servants and settlers.

In the aftermath of the disaster, a number of indigenous rights activists have become deeply involved in monitoring and documenting the situation, as well as keeping an eye on government relief efforts. The Andaman and Nicobar Administration, for its part, was quick to decide that no outside help was needed. In response, activists point to the irony of the fact that an administration that has for so many years proved incapable of protecting the tribals and securing their survival

is now claiming to possess skills and material to attend to their needs in this direst of situations. □

Notes and references

- 1 Vth Schedule areas are tribal areas with special legislative status. Land falling within scheduled areas cannot be transferred to non-indigenous persons. —Ed.
- 2 Forest villages are settlements of people, mostly indigenous, whom the British government brought into the forests as workers for the implementation of their forest “working plans”, especially logging and thinning. These villages were not recorded by the surveyors as revenue (tax) paying villages. Therefore, the inhabitants of these villages do not to this day receive any civic amenities such as power, drinking water, schools, health care centres, etc.
- 3 Bauxite is used for aluminium production. —Ed.
- 4 Read more about the adivasis’ struggle for land rights in Kerala in *The Indigenous World 2002-2003*.
- 5 **Bijoy, C.R. 2004.** Coca-Cola: The Sparkle of Death. *Combat Law* 3, no. 2:48-51.
- 6 For updated information, please refer to the Andaman Association’s web-site: <http://www.andaman.org/book/news/textnews.htm>.



THE MARSH DWELLERS OF IRAQ

The Mesopotamian marshlands historically covered over 20,000 km² of interconnected lakes, mudflats and wetlands within modern-day Iraq and Iran, and its inhabitants – the Marsh Dwellers¹ - lived in harmony with the environment, constructing artificial islands made of layers of reed and mud on which they built their homes using woven reeds. They fed the sprouting reeds to their water buffaloes and they used the dung of the water buffalo for fuel. They depended on fishing and hunting, and they planted rice and tended date palms along the margins of the marshes.

Following the end of the Gulf War in 1991, the Marsh Dwellers in Iraq took part in the rebellion against Saddam Hussein's regime and as a consequence were severely repressed. To control the region, the Iraqi regime implemented a program for the systematic desiccation of the marshes by diverting the water, burning the reeds and poisoning the waters. Many of the Marsh Dwellers died during that time and, by the beginning of 2003, only 85,000 out of an estimated population of 250,000² (1990) remained in the marshlands, while 50,000 were internally displaced in the Basrah governate and 20,000 had fled to Iran. Less than 10% of the Mesopotamian Marshlands remained, the rest having been turned into wasteland.

Returning home

As soon as Saddam Hussein's regime had been removed, the Marsh Dwellers immediately began to request the return of water flow, and the local water authorities complied. By early 2004, 40% of the marsh-



lands had been re-flooded. All of the re-flooding has occurred as a result of the direct actions of the Marsh Dwellers and of the Ministry of Water Resources, at the request of the local populations. In some instances, the locals took things into their own hands and pooled their resources to hire backhoes to breach the embankments holding back the floodwaters; they opened sluice gates, stopped pumping operations and re-directed water flow back to where it was wanted – in the marshlands. And the water complied, slowly yet faithfully flowing back along its ancient pathways.

Where water has returned, desert vegetation has begun to die. In some places, regrowth of vegetation has been remarkably fast – within months, thick stands of reeds rose 10 feet tall. In other areas, regrowth

has been slow, with reeds propagating through roots. And some areas remain barren. Fish have returned in abundance, fed from the rivers, and followed quickly by the fishermen. Birds, seeing the water from above, have re-established their populations in the marshlands. In March 2004, an avian survey noted over 40 species of bird, many of them in a breeding state. The Iraq Babbler, an endemic species, was observed, but not the Basrah Reed Warbler. The noise of frogs can be deafening.

With the return of water, the people too have come back. More than 40,000 Marsh Dwellers are estimated to have returned within the last year. The returnees have rebuilt their villages with reed huts and exquisite *mudthifs* (guesthouses). Where reeds have not regrown, they have begun to replant by hand. They are harvesting reeds, and fishing and hunting.

Future challenges

But the humanitarian situation in the marshlands is still grim; basic human needs such as clean drinking water and sanitation facilities are almost absent. A few schools and clinics have been established, but proper facilities are rare. The returning Marsh Dwellers have brought cattle from the pasturelands where they had been eking out a dry living; they need capital to restock the water buffalo that died when the marshlands were drained.

There will also not be enough water to restore all of the former marshlands, and a procedure for addressing equitable distribution of water resources amongst the competing interests still needs to be developed. Land ownership is also a potential issue that will eventually have to be dealt with. The Marsh Dwellers traditionally held the land communally; later, sheikhs were given title over their tribal territories. In the 1990s, members of the former Iraqi regime were granted deeds to large areas of the dried marshlands. Beyond tribal and family affiliations, there are only a few newly organized indigenous groups.

While much remains to be done, steps are being taken to deal with the problems. The Iraqi Ministry of Water Resources has formed the

Center for Restoration of the Iraqi Marshes, which is charged with creating a plan for the restoration of the marshes in cooperation with international conservation agencies, donor countries, and other interested Iraqi government institutes and non-governmental organizations. The plan is currently being compiled and should be unveiled in the early part of 2005.³

The Marsh Arabs themselves are also organizing to achieve both restoration of the marshes and development projects that help their communities. In December 2004, the newly formed Marsh Arabs Forum held its first two-day meeting in Al Islah, Iraq, located on the headwaters of Abu Zirig Marsh. Tribal leaders, university professors and municipal officials all came together to develop a series of recommendations that should help guide future restoration/development efforts in the Marshlands. □

Notes

- 1 The dwellers are also known as “Marsh Arabs” or “Ma’dan”. The former specifically refers to Bedouin groups who moved into the marshes perhaps only 500 to a thousand years ago; the term Ma’dan is a pejorative term in Iraq but some believe that the Ma’dan are the truly indigenous people. The term Marsh Dweller is used here as it is more inclusive of the cultural values that are consistent between the two (or more) groups that live in the marshes.
- 2 According to some sources, the number may have been as high as 500,000. —Ed.
- 3 For more information on the Marshes: <http://www.iraqfoundation.org> and www.edenagain.org.

THE BEDOUINS OF ISRAEL

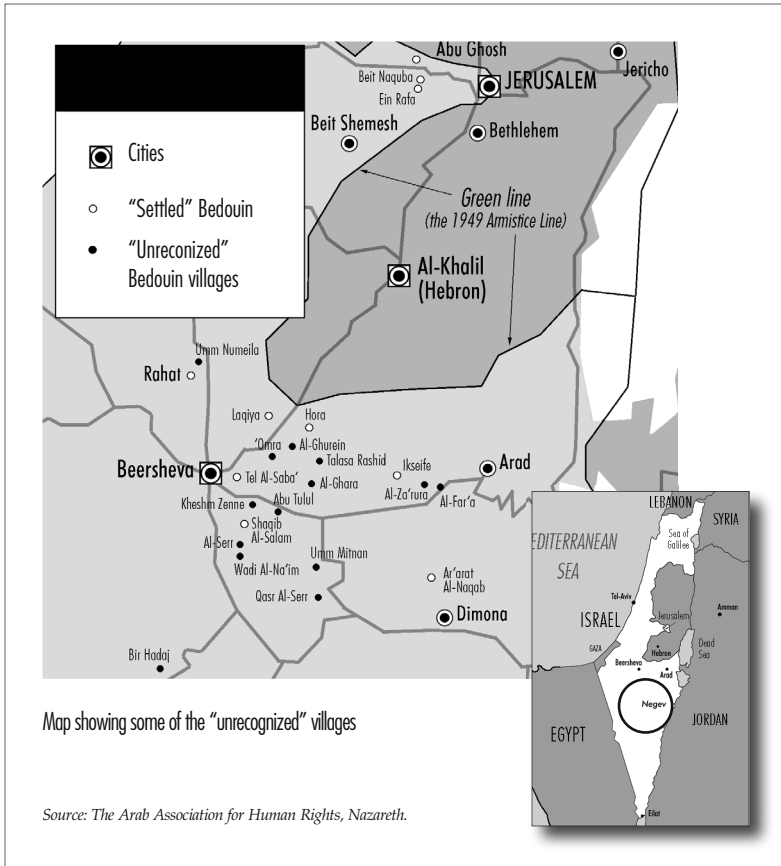
In 2004, as the Sharon Development Plan for the Negev Desert ran into its second year, the Bedouins in the “unrecognised villages” continued to suffer the demolition of their homes and the destruction of their crops, in what the Government of Israel called “redeeming land” for new Jewish settlements. This happens despite the fact that the Bedouins are citizens of Israel.

The geography of politics

The Negev desert is home to some 130,000 Bedouins, of whom 55,000 reside in seven recognized “townships” and 77,000 in “unrecognised villages”. These villages lie either on land that the Bedouins inhabited before the 1948 war or within the so-called Siyad (Reservation) Zone,¹ to where many Bedouins were relocated in 1966. Although some of these villages have several thousand inhabitants, they do not officially exist - i.e. they do not appear on maps, are denied adequate access to a host of basic rights such as electricity, water and health care, and all constructed structures are considered illegal and therefore susceptible to demolition.

The Sharon Negev Development Plan is a comprehensive strategy to relocate and concentrate these 77,000 Bedouins into five government-planned townships within a five-year timeframe. The vacated land will then be converted into new Jewish neighbourhoods and dozens of new heavily subsidized single-family farms.² The Plan is primarily designed to break up Arab continuity within the state of Israel and create a buffer zone between the Bedouin in the Negev and the Palestinians in the Mount Hebron area.

2004 started with the establishment of Giv’ot Bar – the second Jewish settlement to be erected as part of the Sharon Plan. Through fear of



opposition from the local Bedouins, the installation of what was still no more than a group of mobile homes took place in the dark of night. Giv’ot Bar is located south of Rahat, on land to which the el-Ukbi tribe claims to hold ancestral rights dating back to the 17th century. For years, the tribe has been through extensive litigation and negotiations to obtain rights to resettle this tract of land from which they were evicted in 1951. But earlier government plans to create an agricultural Bedouin village at this location were replaced with plans to establish Giv’ot Bar, and a petition by the Association for Civil Rights in Israel asking the

High Court to halt construction until the el-Ukbi appeal had been adjudicated was ignored.

Giv'ot Bar is slated to eventually host some 600 families and is but one of dozens of new communities planned for the Negev. The Negev comprises 60% of the land of Israel yet only 8% of the Jewish population resides there.³ It has therefore become a priority and, throughout 2004, further plans for its development were presented to the public. Thus in March 2004, the Jewish National Fund (JNF)⁴ presented a five-year fundraising plan - the JNF Blueprint Negev - that will bring 250,000 new residents to the Negev and develop 25 new commuter communities.⁵ The new communities will include new housing, reservoirs, community parks and the amenities necessary to meet the quality of life needs of young families. Or as JNF president Ronald S. Lauder said, "Our aim is to transform the Negev into a region where people choose to live and choose to work."

In July, the Israeli newspaper, *Ha'aretz* reported that the Housing Ministry had begun plotting out new territories for the establishment of four communities in the central Negev. "Most of them are rural townships, limited in size, but also in the pipeline are cities, Nahal settlements,⁶ a number of agricultural communities and rehabilitation villages for distressed youth or drug rehabilitation. In addition, another 30 isolated farms and eight Bedouin communities are planned for construction or official recognition." It is believed that the plans of the Israel Defence Forces to move some of its bases to the Negev, as well as the lengthening of the Trans-Israel Highway, will provide enough residents.⁷

Redeeming land for Jewish settlements

To carry out these plans, the Israeli state needs land that is not occupied by others. Therefore, as Deputy Prime Minister Ehud Olmert put it, "The state will empty the Bedouin villages, enabling us to settle thousands of Jews."⁸ So, while Jewish settlements continued to sprout in 2004, the demolition of homes in the "unrecognised" villages also continued.

In March, the Building and Planning Committee issued 70 demolition orders for houses in the unrecognized village of Wadi el Na'am. In May, twelve homes near the new Jewish settlement, Giv'ot Bar, were demolished. In August, the Israel Lands Administration (ILA) sent eviction notices to hundreds of residents of an unrecognized village near Hura and adjacent to the Green Line. These notices demanded they leave their lands "vacant - without a person, object or animal in the area". In December, after having received "pre-demolition warnings" in June, the villagers of Al-Sidr received "their orders" for demolition of all the houses in the village. These are but a few examples and, in December, hundreds of new demolition orders and evacuation orders were received: 50 in Al-Sidr, 140 in Um al-Hiran and dozens more in Tel-Arad.⁹ As early as January 2004, the Director of the Mossawa Center Jafar Farah had called "on the Government of Israel to stop this policy of home demolitions and removal of the Bedouin community from their traditional lands while they aid in the construction of new Jewish settlements in the Negev". According to Mossawa, no compensation or alternative housing has been offered to the families.¹⁰

The other tactic used by the Government of Israel to force the Bedouins to leave their villages has been the destruction of their crops. In order to "redeem" land which the Israeli authorities consider to be illegally cultivated by the Bedouins, the Israel Lands Authority (ILA) uses a fleet of crop-duster planes to spray with Monsanto's Toxic Roundup. Spraying takes place in spring, when the fields are turning green. In 2004, three unrecognized villages in southern Negev had their fields sprayed for the seventh time in two years, and the unrecognized village of Al Araqeeb had some 1,400 dunams¹¹ of wheat crops fumigated during the sixth ILA operation. Twice in February, fruit trees (olives and dates) were uprooted from Bedouin villages, each time some 50 trees.

The crops are part of the food consumed by the inhabitants and their livestock in the "unrecognized" villages. As one of the affected villagers explained, "Two hundred people live off this land. We have no other choice than to plant again. I hope enough rain falls for the wheat to sprout."¹² It is believed that at least 30,000 dunams of wheat,

barley, and some vegetables have been sprayed in 12 villages over the past two years.¹³

Bedouins protest against destruction

In February 2004, dozens of Bedouin residents of "unrecognized" villages in the Negev Desert demonstrated in Be'er Sheva against the Interior Ministry's and Israel Lands Administration's (ILA's) policies of home demolitions and crop destruction in their villages. The demonstrators carried signs reading "The destruction of croplands is terror" and "The state is using weapons of mass destruction against the Bedouins".¹⁴

In answer to the Bedouins' protests against the harm done to the people, pasture lands and livestock by the spraying, the spokesperson for the ILA, Ortal Tsabar, stated that the chemical used to spray the agricultural fields - Monsanto's Roundup, a toxic defoliant used to kill weeds - did no harm to animals or people. However, small organic farmers, health professionals and activists world-wide maintain otherwise, and the agro-chemical Monsanto Corporation itself, producer of Roundup, warns consumers, "After spraying on windless days, people and animals are to avoid the affected area for two weeks." To date, no Bedouin has been warned to stay off their lands for two weeks following an operation. And as one of the residents of Al Araqueeb explained, "The spraying attack was done without giving us any advance notice. With a force of some 150 police, border guards and Green Patrol,¹⁵ the planes circled above our fields at 10:30 a.m. and turned green into yellow."

The ILA finds it sufficient to bring police and an ambulance, and close the area off during the operations, for as Tsabar explains, "It's only a fluid, not a gas. We take all the necessary precautions." The indiscriminate wind drifts resulting from aerial application has carried the defoliant much further than perhaps even the authorities had planned, subsequently affecting people, fields and third parties in a significant radius from a spraying site. "Even the mosquitoes and flies around me died," said Abu Gharibiyya, a Bedouin from a village some

15 km from a spraying action in April. Twelve people were subsequently rushed to a medical clinic near Mitzpe Ramon after the third ILA operation. A coalition of organizations represented by the Legal Center for Arab Minority Rights in Israel, Adalah, is prosecuting the ILA, and the legality of such operations will be examined in Israel's High Court early in 2005.

This legal struggle finds support among many Israeli NGOs, lawyers and activists who support the Bedouins not only in court but also in their daily life, assisting them for example to rebuild their homes and providing social services such as sponsoring and helping build a clinic in the unrecognized village of Wadi el Na'am. The Israeli media has also become less vociferous and the voice of the Bedouins and their supporters is more often heard in the mainstream media. □

Notes and references

- 1 The Siyag covers about 2% of the northern Negev and is located between Be'er Sheva, Arad and Dimona. Most recognized townships and unrecognized villages are located within this reservation.
- 2 One of PM Ariel Sharon's more provocative land holdings is such a farm, the 5,000 dunam Sycamore Farm in the Negev.
- 3 In fact, 8% still represents 75% of the total Negev population.
- 4 The JNF was founded in 1926 as part of the Zionist World Organization to raise funds to purchase land in Israel. JNF holds in property together with the Israeli state 93% of the land in Israel. This land, which is in "public ownership", can be leased. While the ILA, which manages the state property, leases the land to Jews as well as to non-Jews (concession for Jews: 47 or 98 years, non-Jews 1 year), the JNF leases the land only to Jews.
- 5 See JNF's web site for more information: www.jnf.org.
- 6 Settlements for military/security purposes. A system widely used in the occupied territories post-1967 whereby soldiers would create a new settlement, live there for their 3-year conscript period doing agricultural work in their spare time. When their time was over, the settlements were taken over by civilians.
- 7 *Ha'aretz* (Israeli national newspaper), July 2004.
- 8 *Ha'aretz*, February 2004.
- 9 See Negev Coexistence Forum at <http://www.dukium.org>.
- 10 For more information see <http://mossawacenter.org>.

- 11 4 dunam = 1 acre.
- 12 *Ha'aretz*, February 2004.
- 13 Estimates by the Legal Center, Adalah and the organization Bustan.
- 14 *Ha'aretz*, February 2004.
- 15 The Green Patrol is an "environmental" paramilitary unit created by Ariel Sharon in 1978. It is mainly used to help speed up the concentration of Bedouins in recognized townships.



THE AMAZIGH PEOPLE OF MOROCCO

In 2004, the Moroccan state continued the reforms initiated during 2002 and 2003. These reforms are part of a liberal policy aimed at promoting economic and social development. Many public bodies have been privatized and bought by multinational companies, the most important example being that of the Moroccan telecommunication company, Maroc Telecom, which in 2004 became part of the French media giant, Vivendi Universal. This latter now holds more than 51% of its shares.

Morocco also entered into a free trade agreement with the United States of America in 2004. This free trade agreement, which means that US-produced goods can enter Morocco free of duty, has generated concern within the farming sector in particular as it will open up the country to US agricultural products.

The draft law concerning the setting up, organization and management of political parties gave rise to much controversy. According to some people, it is aimed at “controlling parties” while others see it as bringing up “the problem of democracy within parties”. This draft law is still being reviewed by parliament.

But 2004 also witnessed many events and developments that have - or will have - a great impact on the indigenous peoples of Morocco.

The language issue

Despite the important efforts being made since 2002 by the Royal Institute for the Amazigh Culture, the Amazigh cultural movement has had to continue its struggle against the policy of containment adopted

by the Moroccan government in relation to the cultural identity of indigenous people. A key issue is the use of Tamazight (the Amazigh language) in primary schools. Although it was decided in 2003 to start teaching Tamazight in a number of pilot schools, the government did not allocate sufficient funds for training primary school teachers in how to teach in Tamazight. As the 2004/2005 school year started, parents in many places discovered that the number of Tamazight classes had been reduced or even, in some cases, withdrawn altogether, despite Tamazight appearing on the curriculum.

Throughout the country, the Amazigh associations repeatedly protested against the government's containment policy. Several meetings and seminars were organized with a view to coordinating efforts to get Tamazight recognized constitutionally as an official language. Constitutional protection of Amazigh identity and rights is essential to the existence of the Amazigh people and its struggle against adverse policies.

The land question

Another cornerstone of cultural identity is the defense of ancestral lands. A number of land and forest expropriation laws were passed during the French colonial regime. However, this did not prevent the Amazigh tribes from continuing to exercise their rights within lands and forests that had, since time immemorial and by virtue of Amazigh customary laws, been entrusted to them.

Since the 1990s, the government has been using these same French laws to evict Amazigh tribes from their ancestral lands and forests in order to create natural reserves. One example is the Souss-Masst National Park, best known for its large bird population, which was created in 1991 on land that traditionally belonged to the Amazigh people and still being used by them. Over the period 2003-2006, Morocco plans to create a network of protected areas that will comprise 154 parks and biological reserves, six national parks and 127 natural reserves. Much of this will be on indigenous land.

One of the affected tribes is the Aït Slimane tribe in the Middle Atlas Mountains. Under the pretext of protecting the local variety of wild

sheep, this tribe is being evicted from lands they inherited from their ancestors and have managed for centuries according to customary laws that protected human beings as well as animals. At the news of their eviction, both men and women have come out in protest at what they believe to be simply a clever manoeuvre to take over their land under the pretense of protecting the rights of animals.

In the regions of the High Atlas and Anti Atlas Mountains in the south of Morocco, the creation of nature reserves and hunting preserves covering around five hundred thousand hectares is planned. This will affect many Amazigh tribes, such as the tribes of Haha, Idaoutanane, Ait Baha and others whose lands fall within the boundaries of these nature reserves, which are being created without the tribes' permission and will be managed without the population's participation.

During 2004, young people from all these tribes met and coordinated in an effort to struggle for the lands and resources they have been using for thousands of years and which are now jeopardized due to the government's liberal reform policies and privatization.

The Justice and Reconciliation Commission

The Justice and Reconciliation Commission was set up at the initiative of King Mohammed VI and is chaired by a former political detainee. The Commission is in charge of examining past human right violations in Morocco from 1956 to 1999. By December 2004, it had already received thousands of cases and a series of public hearings commenced. These hearings will enable victims of the violations to give testimonies on their experiences when they were arrested, kidnapped and exposed to death. The hearings will also cast light on the many disappearances, arbitrary arrests and sometimes extrajudicial executions that occurred over the forty-year period. The Commission is hearing these cases in order to reveal the truth and bring about reconciliation, and at the end of its mission will submit recommendations to the king on future measures to be adopted in order to avoid such flagrant human rights violations from recurring.

Agadir Seminar on Regionalism and Federalism

The seminar on “Regionalism and Federalism” organized in Agadir in June 2004 by the Confederation of Amazigh Associations was a key event as it highlighted the need for Morocco to move from “administrative regionalism” to “political regionalism” and establish a federal government system. The seminar shed light on Morocco’s problems, which are basically the result of the centralized regional administration and, for the first time, the Amazigh cultural movement clearly expressed the need for a democratic constitution based on sharing, instead of monopolizing, authority, wealth and values.

The human rights situation

In spite of the improved situation in Morocco in recent years, human rights violations are still being perpetrated. According to defense lawyers and human rights organizations, 2004 saw many infringements of the law in the trials of those accused of terrorism. But many Amazigh associations and their subcommittees also saw their rights denied as they were deprived of the freedom to carry out their activities because the local authorities would not acknowledge receipt of their statutes. In April, a peaceful demonstration by Amazigh students in Agadir on the occasion of the Amazigh spring¹ was broken up by the police and some ten people were arrested. □

Notes

- 1 The Amazigh spring is the name given to the Amazigh demonstrations in Algeria in the spring of 1980, which are considered a turning point by all the Amazigh people in Northern Africa. For more information, see *The Indigenous World 2004*:343.

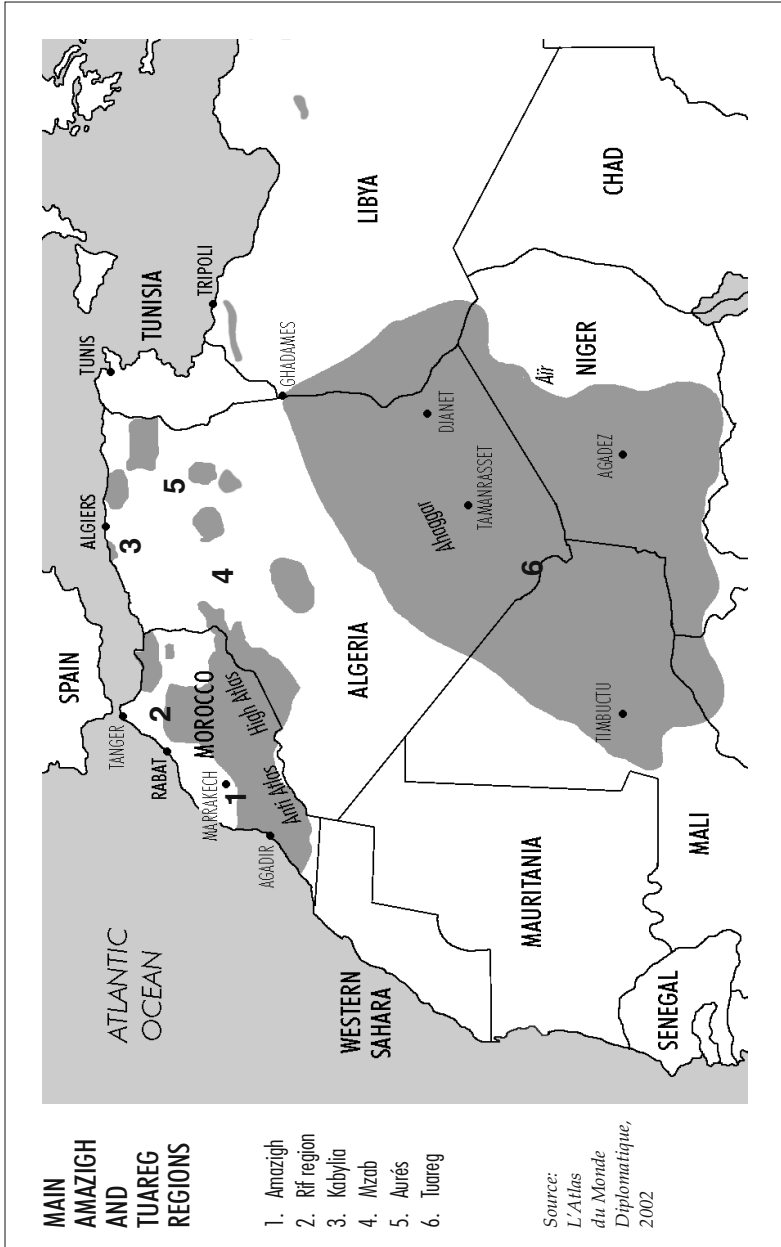
THE TUAREG OF SOUTHERN ALGERIA

The Tuareg country of southern Algeria comprises the Ahaggar (now Tamanrasset département or *wilaya*) with 170,000 inhabitants, of which around 25,000 are Tuareg, and the Ajjer (Illizi *wilaya*) with 40,000 inhabitants, of which around 18,000 are Tuareg. Internal migration of Algerians from the north and the hegemony of dominant cultures have meant that the demography of the Tuareg country has changed, and the indigenous have become a minority in their own land.

Election year

2004 was significant in that it was a year of presidential elections. The few votes available in the region did not stop the different candidates from showing an interest in the Tuareg country, most likely due to the natural wealth of its sub-soil and the different protest movements that have rocked it since 2000.

A pre-campaign wind blew through the region. A visit by the President of the Republic, Abdelaziz Bouteflika, was an opportunity for his supporters to show their respect to him. As a backdrop to the electoral canvas, the former single party, the FLN (*Fédération de Libération Nationale*), had split into two camps: on the one hand, those supporting a second term for the current president and, on the other, those supporting the candidacy of his outgoing (previously dismissed) Prime Minister, Ali Benflis. During the president's visit to Tamanrasset, capital of the Ahaggar, a number of local councillors and deputies declared their support for his candidacy, and this was also the case in Djanet and Il-



lizi in the Ajjer. During his first term, Bouteflika re-established the two *Amenukals* – supreme chiefs and traditional authorities of the Ahaggar and the Ajjer – in their posts and they were also appointed senators in the Council of the Nation (*Conseil de la Nation*). An additional development programme was awarded to the two wilayas although some consider that the amounts granted do not live up to the people's expectations. The public authorities should give more thought to this, particularly given the development lag these regions suffer. And it should also be recalled that these regions are home to a large proportion of the natural wealth from which Algeria as a whole profits, whilst they themselves are the last to benefit.

The electoral campaign was at times a stormy one, and brawls broke out between the president's supporters and those of his outgoing (previously dismissed) prime minister. In most cases, tribal allegiance was the real cause of the disputes. The Amazigh parties - *Rassemblement pour la culture et la démocratie* (Rally for Culture and Democracy - RCD) and the *Front des Forces Socialistes* (Socialist Forces Front - FFS) – put non-indigenous representatives in their local offices, which partly explains their lack of popularity in the region.¹

Human rights situation

In May, the Djanet representative and acting spokesperson for the *Mouvement des citoyens du Sud pour la justice* (Movement of Citizens of the South for Justice) was arrested and taken to Ouargla prison along with other of the Movement's activists. They were sentenced, several months later, to eight months in prison, charged with creating an unauthorized organisation and inciting people to boycott payment of their electricity bills. Some of the detainees were also accused of instigating public disorder. The Movement, which is run by the independent Algerian League of Human Rights (*Ligue algérienne de défense des droits de l'homme* - LADDH), was founded in 1999. In its platform of demands, the Movement denounces the marginalisation of the south's inhabitants, "considered second-class, even third-class, citizens and their appalling socio-economic situation characterised by the highest

rates of poverty, illiteracy and illness in Algeria". The Movement calls for respect for human rights, a true decentralisation that respects the specific nature of each region and an end to the state of emergency imposed in 1992. From a socio-economic point of view, it demands more particularly the implementation of a development and infrastructure programme, and the creation of jobs for young people in the region's oil and gas companies.

In Tamanrasset, a lawsuit pitted an eminent Ahaggar citizen against the *wali* (prefect) after a public altercation. The case is worth mentioning as it was the first time that the *wali* had been challenged in court. But whilst a large minority of the population consider him undesirable and abusive - some even complained to the President of the Republic during his visit - the *wali* plays on the opposing interests of certain tribes in the Ahaggar, and the eminent citizen in question is in fact running the risk of being prosecuted for slander and defamation.

"Terrorists", traffickers and tourists

Immigration from sub-Saharan countries has fallen considerably since the Maghreb states agreed to act as Europe's shield to stop, or at least reduce, the migratory flow. US cooperation with Sahelian countries was reinforced during 2004 in the context of the American war on terrorism. During September, following the flight of Tuareg rebels from the north of Niger towards Algeria, helicopters and night surveillance planes were immediately launched in their pursuit south of the Ajjer, where warning shots were fired on the outskirts of Djanet at a car returning from Ghat in Libya. During October, an armed group was located to the north of the Ajjer plateau. There was talk of Islamist terrorists, or of cigarette and drugs traffickers. Other indications confirmed, however, that they were Mauritanian rebels returning to Libya after a failed coup in Nouakchott some weeks earlier. The group was surrounded for more than two months, after which time they were quietly authorised to return either to Libya or Mauritania. The toll: ten or so deaths among the Algerian soldiers, including two indigenous guides.

The 2003-2004 tourist season was a meagre one because of the hostage taking that took place north of the Ajjer plateau in 2003, and also due to the collapse of the private airline Khalifa Airways, the main carrier of clients from the French agency, Point Afrique, which organises low-cost charter holidays. In contrast, the 2004-2005 tourist season has got off to a good start, despite travel restrictions in some areas considered unsafe. The case of the five Germans in November 2004 gained huge media hype because, in the beginning, everyone thought they had been taken hostage. They were found a week later in the Erg, on the outskirts of Djanet, with a number of archaeological pieces in their possession. They were taken before the Djanet court and sentenced to three months in prison plus a fine of 35,000,000 Algerian dinars (approximately 416,666 Euro at that time). Their lawyer intends to lodge an appeal before the Illizi court.

2004 was also the year of the desert locust. Some farmers were provided with free pumps and insecticides by the agricultural extension services. Many chose not to avail themselves of these, however, preferring to use traditional methods consisting of harvesting the locusts for consumption, provided they had not been treated with chemicals. And to rid their fields, they smoked the locusts out by lighting cut branches and anything else that came to hand.

Cultural matters

There is still little headway being made in the teaching of the Tamahaq (Tuareg) language as it is not a compulsory part of the Algerian education system. The few experimental classes that took place in the Ajjer four years ago have now completely disappeared due to the disinformation spread to convince parents to withdraw their children from them. In Tamanrasset and Tazrouk in the Ahaggar, the last Tuareg language classes, using Tifinagh characters, are also tending to disappear, the victim of well-organised sabotage on the part of the national education department.

In addition to Radio Tassili in Illizi and Radio Ahaggar in Tamanrasset, this year saw the launch of a Tuareg section within the national

Amazigh radio (Channel 2) broadcasting from Algiers. This section is run by a group of Tuareg students from Tamanrasset and Djanet. The launch of an Amazigh television channel is expected in 2005, and the Tuareg will undoubtedly have a place in this. The laying of a 400 km long fibre optic network linking Djanet to Illizi began in late 2004, which will enable this oasis to link with the digital highways of the rest of the world.

Djanet hosted the official celebrations for the Issayen festival – named after a battle that took place during colonial times. They were held on the Algerian/Libyan border in Ajjer country. These celebrations offered an opportunity to discuss cross-border cooperation between Illizi wilaya in Algeria and that of Ghat in the Libyan Ajjer country. Since the appointment of an indigenous governor – a friend of the Leader of the Libyan Revolution² – this region has attempted to intensify relations across the border. At the end of the year, the authorities of Illizi wilaya were invited to the Ghat tourist festival. In addition, Tamanrasset hosted a festival of Saharan tourism in which 14 southern Algerian departments were invited to demonstrate their tourist potential. □

Notes

- 1 President Bouteflika was re-elected with almost 85% of the vote, Benflis gaining only 6.42% and Saïd Saadi, the RDC candidate 1.9%. 58% of registered electors took part. In Kabylia, however, the rate of abstention was 83%. —Ed.
- 2 I.e. Col. Khadaffi. —Ed.

THE TUAREG PEOPLE

On virtually all fronts - environmental, political, security, human rights, economic and livelihood - 2004 has seen a marked deterioration in the overall situation of Tuareg groups in Niger, Mali and Algeria.¹

Deterioration in environmental conditions

On an environmental level, pasture has suffered from poor rainfall, winds and relative drought conditions, while the worst locust plagues to blight the region for at least fifteen years are threatening food security: Mauritania estimates that it will lose 40% of its 2004 harvest, while Mali reckons that a third of its grain crop will be wiped out. Locusts have also affected many parts of Niger.

These resource pressures have been partly responsible for an escalation in clashes between a number of different ethnic-tribal communities. In the southern Sahel, where there has been a long history of conflict between herding and farming groups, 2004 saw the worst clash between Hausa and Peul communities since 1991: 11 Peul were killed and 30 wounded near the village of Fassi in the department of Gaya (Dosso region, SW Niger) when Hausa attacked Peul herdsmen who were grazing their herds on their fallow fields. Most had their throats slit or were burnt alive, and dozens of animals were slaughtered.

Further north, it has been difficult to pinpoint the precise cause of local clashes as a deterioration in the environmental conditions has coincided with the increased destabilisation of the region as a result of the USA's Pan Sahel Initiative (PSI), now known as the Trans-Sahara Counter Terrorism Initiative (TSCTI) (see below). For instance, an attack by unidentified assailants on a humanitarian convoy near Bourem, 100 km NW of Gao in Mali in June 2004 was blamed on Tuareg. How-

ever, soon afterwards, a fresh outbreak of fighting erupted between Kounta and Arab tribesmen in the same region, with thirteen people killed at a fight at a well near Bamba. While this incident was part of a long-standing feud between Kounta and Arab tribes, it appears to have been associated with both a deterioration in resources and the increased political insecurity in the region.

Deterioration in the political situation

There was also a marked deterioration in the general political situation of all Tuareg regions during 2004 as a result of the USA's PSI/TSCTI, which has rekindled the discontent that underlay the Tuareg rebellions in both Niger and Mali in the 1990s.

At one level, it can be seen that considerable progress has been made in both Mali and Niger since the Peace Accords (1992 and 1995 respectively. see especially *The Indigenous World 2001-2 et seq.*): rebels have been integrated into the security forces, Tuareg were appointed to ministerial positions and more economic development projects and regional political autonomy have been introduced into the northern regions of both countries. However, on another level of assessment, and the one with which most Tuareg will agree, most of these measures have been inadequate. In the words of Hervé Ludovic de Lys, head of the regional office of the UN's Organisation for the Coordination of Humanitarian Affairs (OCHA) in Dakar, "The peace agreements signed after the Tuareg rebellions were not respected, reintegration was not implemented, the political systems did not take into account the aspirations of the inhabitants."² Several observers might quibble with this view and say that the situation in Mali is not as bad as in Niger. If this is true, it is possibly because the Tuareg of Niger, especially in the northern region of Air, have remained more politically organised than in Mali.

The situation amongst Tuareg groups in northern Niger at the beginning of 2004 reflected a mixture of feelings. While there was a general recognition that some progress, although not enough, had been made, there was also widespread frustration at the fact that they were still politically, economically and socially marginalized. Many Kel Air,

for instance, complained of a lack of investment in development projects and infrastructure in spite of the country's uranium wealth coming from their region.³ While some questionable development, financed predominantly by German agencies, has been undertaken to construct water barrages in Air, the requests of nomads in the north of the region for the installation of a few much-needed, low-cost wells have fallen on stony ground. Similarly, while the first municipal council elections were held in July 2004, the government's interference in press freedom during the course of the year merely reinforced a general mistrust of the state and is testimony to the fact that civic rights and freedoms are not wholly guaranteed. Indeed, in the presidential elections at the end of 2004, which for reasons made clear below aroused comparatively little interest amongst the Tuareg, the incumbent president's party was considered to have received around four times as much media coverage as the opposition parties.

In northern Mali there have been numerous projects to reduce poverty in rural communes. Funding for such projects has come from diverse sources, such as the EU, Islamic Relief, the African Development Bank, FAO, UNCDF (the UN Capital Development Fund) and numerous foreign NGOs. Many have been aimed at developing the sustainable administrative and political capacity of rural commune councils to represent their constituents and meet locally determined priorities, such as the need for water, sanitation, health, education and literacy, etc. Many of these projects, such as small-scale irrigation systems, gender-based initiatives, etc. have been reasonably successful at the local level. However, over the region as a whole, there has been a tendency for such projects to exacerbate existing - and create new - political and social divisions in an already politically fragmented and marginalized region. This has been encouraged by the weak overall coordination and integration of projects, especially on the part of international and bank-funded development schemes.

Tuareg pay the price of US imperialism in Africa

This generally more negative assessment of the situation of the Tuareg in Mali, Niger and Algeria during 2004 stems directly from the USA's intervention in the region, including Mauritania and Chad.

In traditional times, Tuareg named their years after major events. On this basis, 2004 might well be named the "year of the US invasion". This might translate as *Awétay ouan akafar* (The Year of the Infidel). America's "invasion" began on 10 January 2004⁴ when an "anti-terror team" of 500 US troops disembarked in Nouakchott, Mauritania. Since then some hundreds of US marines, Special Forces and contractors have been deployed throughout Mauritania, Mali, Niger and Chad. The initiative's specific purpose was to bolster local troops and train them in basic counter-terrorism.

The reason given by the US for its PSI/TSCIT was that the Sahara-Sahel region was becoming a haven for terrorists and potential terrorists. This claim was based on two highly contentious assertions. One was the American government's claim that its disruption of terrorist activities in Afghanistan and elsewhere in the Middle East had driven those terrorists into the "wide open" and "largely ungoverned" spaces of Africa, notably the Sahel. As the US European Command's (USEUCOM⁵) commanding officer General James L. Jones explained, "As we pursue the global war on terrorism, we're going to have to go where the terrorists are. And we're seeing some evidence... that more and more of these large uncontrolled areas – vast swathes of the Sahara from Mauritania to the Sudan – are going to be potential havens for that kind of activity."

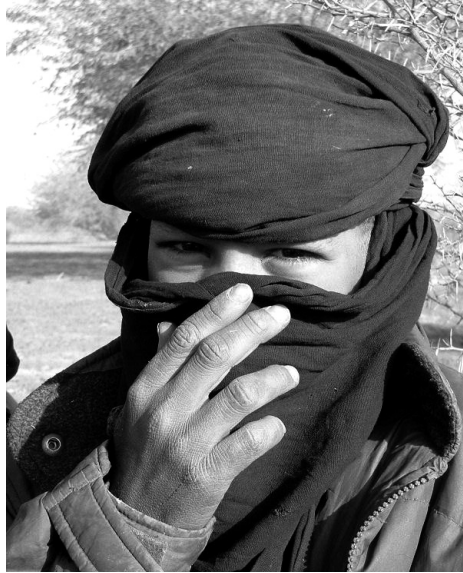
In fact, there is very little, if any, hard evidence to prove that this migration of terrorists from Afghanistan to Africa has actually happened. The reason the US argues so adamantly to the contrary is because it has relied on particularly bad intelligence, especially in the Sahel region where US intelligence agencies depend almost entirely on local government intelligence services, notably those in Algeria, Mali and Niger who, wishing to benefit from America's militarisation and securitisation of the region, have not only been "embellishing (and fabricating) the facts" but telling the Americans what they want to hear.

The second assertion is that the region has experienced a number of terrorist incidents. These alleged incidents relate, almost exclusively, to the sequence of events that began in early 2003⁶ when 32 European tourists were taken hostage in the Algerian Sahara by members of the *Groupe Salafiste pour la Prédication et le Combat* (GSPC) under the leadership of their supposed *emir* Abderrezak Lamari (generally known as *El Para* after his stint as a parachutist in the Algerian army). This was followed by the subsequent actions of *El Para* and his GSPC in Mali and Mauritania, their “break-out” from northern Mali in early 2004 and their much-publicised escapade through the Air region of Niger, across the Tenere and into the Tibesti mountains of Chad, where many were allegedly killed in skirmishes with Chad forces or captured by members of the rebel *Mouvement pour la Démocratie et la Justice au Tchad* (MTJD).

By mid-2004 the US, along with their allies in the region, notably Algeria, was able to portray the Sahara-Sahel zone as a major front in the “War on Terror”, in which hyperbole is the order of the day: the mountains of the Central Sahara, notably Tibesti, are now referred to as the “Saharan Tora Bora”, while General Wald, USEUCOM’s deputy commander, refers to the Sahara as “a Swamp of Terror – the world’s largest wasteland”. And swamps “infested with terrorists” have to be drained.

A series of articles in the *Review of African Political Economy* (ROAPE) during the course of 2004 showed that America’s “War on Terror” in the Sahara has been based on a huge deception, organised by Algeria’s DRS (*Direction des Renseignements et de la Sécurité*),⁷ in collaboration with US military and intelligence services.⁸

From America’s standpoint, the deception has been designed to create the ideological conditions for the US’s “invasion” of Africa and to secure US strategic national resources, notably oil. The development of a new and secondary front in the “War on Terror” in the Sahara-Sahel provides the US with legitimacy for its current militarisation and securitisation of the continent as a whole. For the Algerians, aside from a number of internal intrigues amongst the political-military elite and certain regional interests, this strategy has been designed to establish a new alliance with the US, which the Algerians hope will enable them to acquire the modern, high-tech weapon systems they are lacking. Their lack of weapons is due to the fact that, as the violence of Algeria’s internal strife intensified dur-



Young Tuareg, Agadez - Photo: Nigel Crawhall



Tuareg and Bororo activists meeting in Niger with IPACC (Indigenous Peoples of Africa Coordinating Committee) representatives. Photo: Nigel Crawhall

ing the 1990s, Western countries increasingly kept their distance, with both the US and EU countries reluctant to sell arms to Algeria for fear of Islamist reprisals and criticism from human rights groups.⁹

The implications of this US-Algerian intervention in the Sahara-Sahel for the people of the region are profound. The most serious consequence is that the Americans have branded the region a "terrorist" zone and a front in the "War on Terror". Any hint of political opposition, especially if linked to the earlier Tuareg and Tubu rebellions, as well as various forms of banditry, criminality and smuggling, are likely to be categorised as manifestations of potential "terrorism".

US intervention fuels political instability and insecurity

One outcome of America's PSI has been to increase the political instability and insecurity of this region. In spite of the claims of the US administration and its intelligence services, this region has not been the home or refuge of "terrorists". An increasing number of the region's inhabitants are now coming to believe what has already been documented in ROAPE,¹⁰ namely that the reported "terrorist" activities across the region over the last two years have been largely fabricated by the US-Algerian intelligence-media services. This has had one very serious consequence, namely that the weak and dictatorially-inclined governments of the region (Chad, Niger, Mali and Mauritania) - not to mention America's key regional ally, Algeria - are all benefiting from US financial and military support and consequently have a vested interest in both generating and maintaining the new climate of "terror" that now pervades their desert regions. Since around early 2003 in southern Algeria, and around early 2004 in the Sahel, the local and indigenous peoples of the region, notably the Tuareg, have become increasingly aware and fearful of their governments' attempts to provoke unrest and "incidents" in order to justify both the US intervention in the region and their own alliances with the US in the so-called "War on Terror". During the second half of 2004, this scenario of provocation became widespread.

Talk of a “new rebellion” in Niger

The most serious situation has developed in northern Niger, where the Tuareg have hitherto held to their side of the peace treaty, with the exception of occasional “bandit” hijacks and robberies of passing traffic and some indulgence in clandestine goods trafficking - actions that say more about their economic situation and political marginalisation than any prevalence of terrorism.

In early 2004, however, the region was thrust into the frontline of the “War on Terror” by *El Para*’s much publicised escapade through the Air Mountains and his hold-up of a group of European tourists. Since that incident, now believed to have been contrived by the US-Algerian security forces, Niger’s Tuareg have been increasingly fearful of their (and the US) governments’ attempts to incriminate them in the “War on Terror”.¹¹

The arrest in February 2004 of Rhissa ag Boula, leader of the rebel Tuareg’s now dissolved *Air and Azaouak Liberation Front (FLAA)*¹² and subsequent Minister of Tourism, in connection with the murder of Adam Amangue,¹³ an official of the ruling MNSD-Nassar Party, was the catalyst in bringing the Air Tuareg to what some media reports described as the brink of open rebellion. The reasons for Amangue’s murder are too deep-seated and complex to be explained in this short brief, except to say that Rhissa is almost certainly innocent of the charges levelled against him and is believed to be such by both his own Tuareg followers and many others in the country. Many believe that Rhissa’s arrest was a calculated move by elements within the government to provoke a Tuareg reaction and thus destabilise the northern regions for the purpose of securing more money and arms from the US.

The summer months saw an escalation of banditry in the region (the government insists on calling the gunmen “bandits” or “criminals”, not “rebels”), with attacks being reported on June 5, July 7, August 10, October 1 and December 2. On the day after the August 10 attack, a private radio station, Radio Saraounia, carried a telephone interview, reported to be with Mohamed Boula, brother of Rhissa ag Boula, in which he presented himself as leader of the reconstituted FLAA and claimed responsibility for the attack. Following the October

1 attack, *Radio France Internationale* (RFI) carried a similar interview in which Mohamed Boula said he was leading a 200-strong group fighting to defend the rights of the Tuareg, Toubou and Semori nomadic populations of northern Niger, and that he was personally responsible for the attack.¹⁴

Although the Niger government denies that the FLAA has reformed, the Niger army deployed a large detachment of its Rapid Intervention Company, the 150 troops recently trained by US marines as part of the PSI, into Air. Officially, the exercise was to hunt down “terrorists” who had allegedly moved into the region. However, the army admitted that the “terrorists” were better able to cope in the terrain (in spite of the US training!) and had escaped across the border into Algeria. This version of events lacks veracity, as does the statement from the army’s chief of staff that armed groups led by Mohamed Boula were holed up in the mountains of Air and encircled by regular army troops. Although there has been a marked increase in banditry in Tuareg regions over the course of 2004, the army’s incursions into Air are seen by many Tuareg as deliberate acts of provocation.

Misadministration and Tuareg harassment in Algeria

In southern Algeria, the government has adopted the more heinous strategy of personal harassment, involving the closure of businesses and litigation to quell any opposition from local Tuareg, especially those who run the local tourism agencies – the lifeblood of the indigenous economy - and who have been at the forefront of attempts to bring central government’s attention to the region’s bad governance. With the deterioration in the general situation in southern Algeria, in the wake of the supposed “terrorist” threat, there has been much debate amongst local Tuareg as to whether the government strategy in the Tamarasset *wilaya* has simply been a reflection of the *wali*’s¹⁵ malevolence, endemic corruption, the north’s jealousy of the south’s ability to attract foreign tourists (and their money) or a deliberate attempt to provoke a reaction from the Tuareg (as in Air) that would justify a larger and more repressive military presence in the south. Harassment of Tuareg by the government intensified during 2004, culminating in

certain Tuareg tourism agencies being prohibited from taking clients across the region, and in their Association's president being served with lawsuits by the *wali* and three other government departments. However, the submission to court of forged documents by government officials resulted in the first case being dismissed. The defendant was acquitted on two of the remaining charges, with the *wali's* personal case being taken to Algiers on appeal. Substantial damages are now likely to be claimed against the Algerian state. The ramifications of this and other such cases are likely to be profound, especially as most of the aggrieved Tuareg parties believe that the "War on Terror" that has engulfed their region and curtailed their livelihoods has been a deception engineered by elements within their own government.

The seeds of "blowback"

US rhetoric is that "the aim of the PSI/TSCTI is to enhance regional peace and security".¹⁶ However, an increasing number of regional experts, as well as local people themselves, believe that the US initiative will backfire in as much as the US-led crackdown on terrorism is likely, as we are already seeing, to simply fuel existing tensions in the region. As life in the desert has got harder, especially since the droughts of the 1970s and 1980s, nomads have become increasingly dependent for their livelihoods on tourism, state subsidies and, to a lesser extent, smuggling and banditry. All these forms of income have been decimated as a result of the PSI/TSCTI. In times of impoverishment, people resort to desperate means. As Amadou Bocoum, the deputy chairman of Mali's government commission to combat the proliferation of small arms, made clear, "Cigarette, fuel and weapon smuggling is carried out by the population (especially the desert nomads) and it is difficult to consider them as bandits as it is their only source of income and allows them to survive."¹⁷

In all of these desert countries, government actions against and provocation of its desert populations are fuelling resentment of both the local governments and the US administration that supports them. As most residents of the Sahel recognise, the increased impoverishment of the region is now such that if groups associated with al-Qaeda

did enter it, they would quite likely find support at the local level if they were able to provide resources. As Aboubacrim Ag Hindi, professor of law at the University of Bamako (Mali), noted, "The biggest danger in this region is not al-Qaeda. It is famine. If the development of these zones is not undertaken, we may see more rebellion there."¹⁸

Particularly pertinent for the USA's PSI/TSCTI is that it coincided with the worst locust plagues to blight the Sahel for some time. While the Bush-Blair axis has said much about the link between poverty and terrorism, they were singularly slow (as was the EU) in responding to appeals for funds and means to fight the locust plague. West African leaders tried to impress on Washington that the locust invasion should have been treated like a war, as its capacity for the destruction of human life was far greater than that of the worst conflicts. But, as some residents of the Sahel remarked, "If the US had spent the same on locust control as 'terrorist' control, we would not have this imminent loss of life."

Sadly for the people of the Sahel, America's PSI/TSCTI is not about saving human lives: it is about creating the ideological conditions for securing US strategic national resources. And with the US Congress being asked to increase the PSI/TSCTI budget from its original \$7 million to \$125 million, terrorism and associated political instability look like becoming big business for the Sahel's governments: the more they can provoke and hence portray these minority and marginalized populations as "rebels/bandits", or as arms, cigarette, drugs or people traffickers, or – better still – as putative "terrorists'", the more money and arms they are likely to receive from the US. □

Notes

- 1 The Tuareg live in the south of Algeria, the north of Mali and Niger with small pockets in Libya, Burkina Faso and Mauritania. Population estimates vary between 300,000 and 3 million.—Ed.
- 2 *IRIN* (UN Integrated Regional Information Networks) *News*. West Africa: 'Famine not fanaticism poses greatest threat in Sahel.' 14 October 2004.
- 3 The main uranium mines are at Arlit to the NW of Air. These are the same mines that were the subject of the fabricated evidence put forward by Tony Blair's British government to further justify the invasion of Iraq.

- 4 For the beginnings of this “invasion” and the background events leading up to it, see *The Indigenous World 2004*.
- 5 The area of responsibility of the USEUCOM includes 91 countries and territories. This area extends from the North Cape of Norway, through the waters of the Baltic and Mediterranean seas, most of Europe, parts of the Middle East, and 42 out of 54 Africa countries. —Ed.
- 6 See *The Indigenous World 2004*.
- 7 The DRS has been publicly accused by the MAOL (*Mouvement Algérien des Officiers Libres*) of being behind the assassination of Mohamed Boudiaf (Chairman of Algeria’s High State Committee) in 1992, the massacre of French monks at Tibehirine, near Medea in 1996 and many of the other “dirty tricks” used by the Algerian military in its “war” against the Islamists during the 1990s. The most extensive descriptions of these are in **Habib Souaidia. 2001.** *La Sale Guerre*. Paris: Editions La Découverte.
- 8 The key articles, in chronological sequence, are: **Mustafa Barth. 2003.** Sand-castles in the Sahara: US military basing in Algeria. *ROAPE* 30, no. 98: 679-685; **Keenan, J. 2004a.** Americans & ‘Bad People’ in the Sahara-Sahel. *ROAPE* 31, no. 99:130-139; **Keenan, J. 2004b.** Terror in the Sahara: the Implications of US Imperialism for North and West Africa. *ROAPE* 31, no. 101: 475-496; **Keenan, J. 2004c.** Political Destabilisation & ‘Blowback’ in the Sahel. *ROAPE* 31, no. 102: 691-703.
- 9 For more information, and in addition to the articles listed in note 8 see: **Volman, Daniel. 2003.** The Bush Administration and African Oil: The Security Implications. *ROAPE* 30, no. 98: 573-584; **Abrahamsen, Rita. 2004.** A Breeding Ground for Terrorists? Africa & Britain’s ‘War on Terrorism’. *ROAPE* 31, no. 102: 677-684; **Abramovici, Pierre. 2004.** United States: the New Scramble for Africa. *ROAPE* 31, no. 102: 685-690.
- 10 See Note 8.
- 11 For details of *El Para*’s activities in Niger, see **Keenan, J. 2004b** (note 8).
- 12 The FLAA was formally dissolved at a peace ceremony on 25 September 2000.
- 13 For details see **Keenan, J. 2004a** (note 8).
- 14 Mohamed told RFI: “We are defending our rights in Niger. The current government has not implemented the 1995 accords. Besides, we are demanding the liberation of all members of the ex-rebellion currently in detention”. *IRIN News*. (All Africa), 7 October 2004.
- 15 A *wilaya* is an administrative region. A *wali* is the governor of an administrative region (*wilaya*), equivalent to a French *préfet*. —Ed.
- 16 Senior official, US Central Command, Washington. Quoted in *IRIN News*. See note 11.
- 17 *Ibid.*
- 18 *Ibid.*

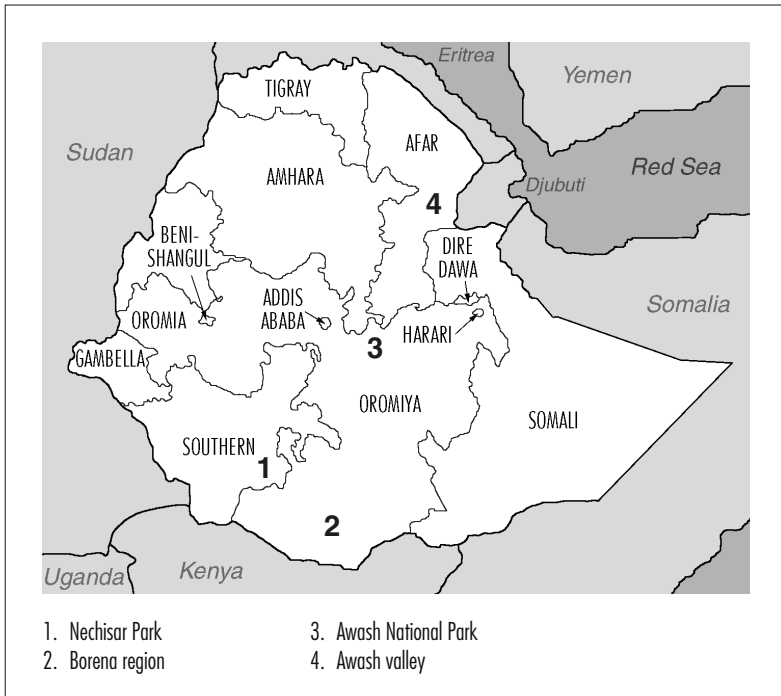


ETHIOPIA

2004 was no different for Ethiopian pastoral communities, who still face a life of drudgery and uncertainty. What made 2004 slightly different was that NGOs and the Pastoralist Forum Ethiopia (PFE) increased their advocacy work, and that government institutions made many promises - but nothing on the ground has changed and nothing concrete has been done to uplift the miserable life of pastoralists. As one Afar elder, tired of making demands to governments, put it: "If the government doesn't listen to us, we will march with our camels to the capital. Maybe that will make them listen." In particular, there was great optimism regarding the impact of a seven-point resolution passed by representatives of pastoral elders on the sixth Pastoralist Day. Unfortunately, the government took no heed of any of the points.

The sixth Pastoralist Day

The sixth Ethiopian Pastoralist Day was celebrated on January 25 in Borena region, a few kilometers outside Yabello town. It was organized jointly by the PFE, the Parliamentary Pastoralist Affairs Standing Committee and the Oromiya Pastoral Commission. Representatives from these three institutions held a discussion forum on the problems of pastoralists, which was broadcast on radio. Pastoralist Day was attended by the *Abba Geddas* (local pastoral chiefs from Oromiya), representatives from the rest of the pastoral regions of Ethiopia, member organizations of the PFE, the head of Oromiya administrative region and other leaders, along with many thousands of members of the Borana pastoral community. It was a very successful advocacy event on the pastoral rights of indigenous peoples.



One innovative component of the sixth Pastoralist Day was the pastoral elders' reflection session held the previous day, January 24. At this full-day session, pastoral elders from all the pastoral regions of the country, men and women alike, reflected on the plight of pastoral communities. At the end of the day, in the presence of the head of Oromiya administrative region, they produced a strongly-worded resolution for the government. The resolution included demands for an improvement in conditions affecting their lives and the introduction of new policies to improve their livelihoods, along with a halt to government practices and policies that are harmful to them. Access to water was raised as a huge problem and they demanded that the government assist them with water harvesting projects. The second major demand was for livestock marketing mechanisms through which they could gain access to local as well as international cattle markets, thereby earning a better income.

The most important and striking demand was to set up a ministry of pastoralism to deal with their problems, given that it was wrong to place pastoral issues under the Ministry of Agriculture or to append it to any other ministry. Pastoralism is a way of life based on a rich indigenous knowledge system that sustained it for centuries before the modern state arrived to undermine it. Pastoralism, they argue, is not just a production and farming system; it is a whole culture and system of governance, livestock production and management of the rangeland, with environmental protection based on a unique indigenous knowledge system. This is why it needs a ministry of its own.

The second most important demand was on the need to establish pastoral elders' councils to play a central role in the whole development process, and in conflict resolution in particular. The seven points of the resolution were passed unanimously and with acclamation. They were:

- Recognition of the pastoralist day as a national day of commemoration;
- Establishment of a high-level government authority or ministry to deal with pastoralism;
- Establishment of elders' councils;
- Development of a land-use policy based on a pastoral constituency;
- Introduction and expansion of social services (health, education, ...);
- Establishment of a livestock market mechanism and use of livestock as collateral for bank loans;
- The seventh pastoralist day to be jointly organized by PFE, the Ministry of Federal Affairs and the Parliamentary Pastoralist Affairs Standing Committee.

For the first time, a video on Pastoralist Day was produced by the Pastoralist Forum Ethiopia (PFE) with the help of Oxfam GB. The 15-minute video depicts the major problems of Ethiopian pastoral communities and their concerns. It has interviews with key pastoral elders, NGO leaders and government pastoral commission bureau heads.

The PFE and the Parliamentary Pastoralist Affairs Standing Committee have developed a good working relationship. They have agreed to jointly organize briefing sessions for parliamentarians on pastoral issues with the aim of developing a culture of enacting laws and policies on the basis of accurate information and knowledge. The standing committee, for its part, sent copies of the resolution from the 6th Pastoralist Day to parliamentarians.

Government and pastoralism

The government's view on pastoralism remains largely the same although, at the level of rhetoric, the reference to pastoral community development is now often heard. However, this verbal "commitment" is a reflection of the government's two-track approach: issues of democracy, freedom, gender equality and sustainable development on the one hand and a strict one-party system and command economy on the other. The first track is for donor consumption while track two represents its true beliefs and the path it follows.

Though the government claims to have done several things for pastoral communities, the World Bank is disappointed at the performance of the "Pastoral Community Development Programme" – a US\$60 million plus World Bank financed programme being implemented by the government. It is now more than two years since the programme started, and nothing seems to have got off the ground yet. The government's own so-called "pastoral development" activities are all geared towards sedentarizing pastoralists and turning them into agriculturalists in an environment that is ecologically unsuitable for crop cultivation.

On track two of its approach (the real policy), the government is out to further marginalize pastoralists and aggravate their pauperization. During 2004, this happened on two levels. The first was the infamous case of the Nechisar National Park in southern Ethiopia. Ten thousand Guji and Kore Oromo pastoralists were evicted from the area to make way for the park, without any compensation. The park was leased out to a Dutch company called the African Parks Foundation.

Refugee International, an advocacy group, protested to Africa Parks Foundation but the Dutch company instead placed the blame on the Ethiopian government.

Tourism is promoted in pastoral regions, particularly in the south. This is accompanied by the commercialization of cultures and traditions on the assumption that tourists will flock to witness “early human civilization”. Just as the Maasai culture fell prey to capitalist vultures in Kenya and Tanzania, the culture and traditions of the Hamar and other Omotic pastoral communities are being promoted to attract tourism. The national parks and game reserves also constitute the backbone of tourism promotion. But at whose expense? Do pastoral communities who are evicted from their lands for game reserves receive compensation? Of course not, and this is precisely what caused the conflict between the Afar/Kereyou pastoralists and the government when the controversial Awash National Park was reserved as a game park.

In Afar, 7,000 hectares of rangeland have now been allocated to expanding the sugar plantation in Metehara, Awash valley, eastern Ethiopia. This decision follows the fierce confrontation between Afar and Kereyu pastoralists and the government – a confrontation that took place on the rangeland the pastoralists were evicted from. With the past wound not yet healed, this latest decision left the area aflame. With conflict in the offing, social development, and pastoral development in particular, will have no chance at all. The call of pastoral communities has fallen on deaf ears many times before.

Oromo pastoral elders rally in Borena

Elders from four major clans of the Oromo ethnic group, namely Borana, Guji, Gebra and Marian of the Liben region, held a joint rally in Borena in June to discuss common problems and arrive at demands. The elders discussed and enumerated the problems each pastoral community is facing and finally passed resolutions in the form of demands. The group came up with a twelve-point resolution that was passed to the government authorities.

Awareness raising activities

One of the Pastoralist Forum Ethiopia's (PFE) major areas of work is that of raising the public's awareness of pastoral issues. One such activity was a workshop it co-organized for Addis Ababa university students. Students of anthropology with an interest in pastoral issues asked the PFE to organize a workshop at the university. The one-day event was very informative and students expressed an interest in further such workshops. This has been noted by the PFE.

In November, the PFE organized a three-day pastoral training course for civil servants from pastoral regions. The training was designed to fill the knowledge gap that civil servants in pastoral regions have about such issues. It was attended by more than thirty civil servants, who benefited a great deal from the training.

Severe drought in Afar and Somali regions

A prolonged drought has once again caused severe damage in the Afar and Somali regions. Before pastoralists had even managed to restock the animals lost during the 2002-3 drought, another one hit the two regions, killing the only wealth pastoralists have – their animals. Time and again, they have asked for a livestock market mechanism to be set up through which they could sell their animals, particularly when drought occurs. Despite the relief and emergency work of NGOs, the current drought is already killing animals in the thousands. Such is now the precarious life of pastoralists. Pastoralists inhabit a harsh environment and have to move from place to place in search of watering points and pasture, trying to make a living by rearing livestock but, before they can accumulate anything, drought comes along and takes their animals away. Meanwhile, NGOs alone try to support them by various methods. Major initiatives such as the initiation of market mechanisms need to be undertaken by government but nothing seems

to be in the offing. In the meantime, pastoral animals perish, and the community becomes poorer by the year.

Pastoralism and the 2005 parliamentary elections

If anything, Ethiopian political society is totally ignorant of pastoralism and the place it could occupy in the country's development process. The government officially classifies pastoralism within agriculture and/or rural development. However, for administration purposes, within the ethnically based federation it places pastoralism under a new ministry called the Ministry of Federal Affairs, whose deputy minister was the notorious Gebreab Bernabas. He was later removed in connection with the Gambella massacre. A Pastoral Development Department has been established within this ministry to ensure that government policy on pastoralism is implemented. The government's official policy on pastoralist development is nothing less than sedentarization, which is vehemently opposed by pastoral communities.

In 2004, as a prelude to the 2005 elections, the government held a number of referenda in pastoral regions to "enable people to decide on their borders". It is widely feared that these referenda will cause huge conflicts that will be difficult to resolve. As in many parts of the world, there have always been migrations and resettlements of people from one place to another, often from the highlands to the lowlands. The lowlands are largely inhabited by pastoralists but settlers from the highlands are always welcome provided they do not interfere with the social and cultural life of the region. In some parts of Ethiopia, settlers now form the numerical majority. This still does not bother the indigenous people. The problem begins when these regions are officially designated to one particular ethnic group or another. The referenda are supposed to do just that and the pastoralists detest them. Such controversy also exists in adjacent pastoral regions, between Somali and Oromiya regions for instance. When such matters are "settled" by referenda, the damage outweighs any of the administrative advantages they were originally designed to have.

Amazingly, this grave matter has not been raised by the opposition parties, who are now on the campaign trail. Avoiding a discussion of pastoral issues is not a deliberate strategy on the part of the opposition but stems from ignorance. Only in one of the debates did one political party, a new coalition formed along the lines of the Kenyan Rainbow Coalition, raise the issue of pastoralism during a debate on rural development. The Rainbow Coalition is the only political party so far to have a good position on pastoralism. How consistently it will pursue its line remains to be seen.

2004 saw a return to the pre-Constitution situation on the part of the government. It came up with very restrictive draft laws on the private press and NGOs. This sparked huge debates and international opposition. Ethiopia is now at a crossroads: either the government will go ahead with the draconian laws it has drafted and return the country to the period of the military dictatorship, or it will heed the demands of civil society and the international community and come up with enabling laws that pave the way for a deepening of the democratization process. But it is unlikely that it will table its draft laws to Parliament for adoption before the May elections. The trend towards "unfreedom" will definitely harm the cause of pastoralists, which is part and parcel of the general struggle for democracy. "Unfreedom" means more restrictions and therefore more poverty and destitution, particularly for pastoralists, the most marginalized population in the country. □

KENYA

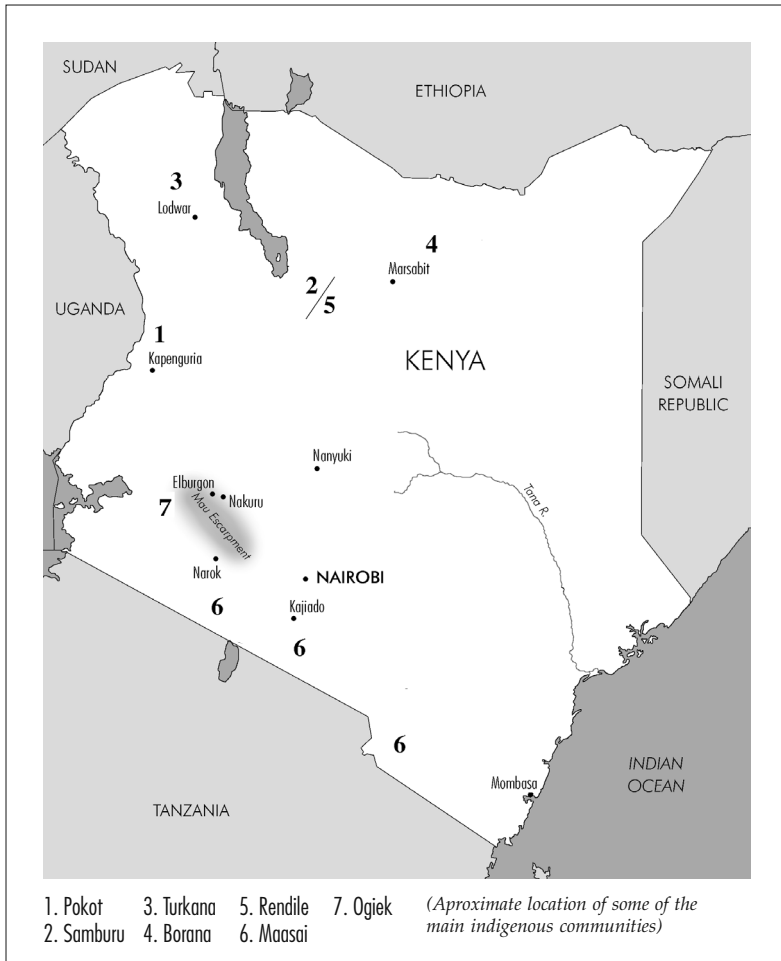
It is difficult to estimate the number of people who identify themselves as indigenous in Kenya. Because of a lack of information on the indigenous movement, many marginalized communities are unaware of indigenous issues. This is the case even now that we have the UN Permanent Forum on Indigenous Issues. However, it is generally understood and somewhat accepted (albeit in some instances with a degree of mockery) that pastoralists and hunter-gatherers, both of whom are highly marginalized, have always identified with the indigenous peoples' movement.

In terms of numbers, according to the 1999 national population census these peoples comprise approximately 20% of a Kenyan population of 28 million. While pastoralists occupy predominantly arid and semi-arid parts of the north and south, hunter-gatherers are found in the more forested rural areas.

While poverty levels are generally high in Kenya, pastoralists and hunter-gatherers form the poorest communities. The deficient infrastructure in their areas denies them access to essential services, including the media, and this in turn also cumulatively increases their poverty.

General political and legislative developments

2004 was a frustrating year for Kenyans in many ways. The new government was expected to perform, but largely failed to do so. The promised and long-awaited new constitution was again not delivered and there seemed to be no plan in sight in this regard by the end of the year. The promise to rid the country of corruption was initiated but frustrated midstream by allegations of further corruption among the new government officials.



Against this background, indigenous peoples have found little space in which to achieve their aspirations.

The elusive new constitution

With the constitutional review process complete, all that remained was for Parliament to pass it into law. This did not happen, given the many

forces bent on frustrating the whole process. The government appears unwilling to adopt institutional reforms that would fundamentally limit the extensive presidential and executive powers it inherited. A reduction in presidential powers and a devolution of power have remained contentious points. Towards the end of the year, a meeting of members of Parliament was held to seek ways of arriving at a consensus around constitutional issues that had been dividing Parliament.

The significance of the proposed new constitution is that it is perceived as a symbol of Kenyan hopes and aspirations for a participatory democracy. According to a Human Rights Watch report, the proposed constitution represents the "most widely consultative rights document that Kenya has ever seen and contains better human rights guarantees than the current constitution".

The government's failure to get the new constitution adopted has been a cause of great disappointment for many people, including the indigenous. This is because the draft constitution held the promise of protecting and promoting rights to natural resources. With devolution of power to the district or regional levels, more political space would be created both for autonomous decision-making as well as control of productive resources. This would in turn allow all communities to self-determine their own future and development.

A reinstatement of donor assistance was touted for a while; some was forthcoming but the rest denied on account of corruption. Any misuse of public funds is bound to affect service delivery and increase poverty for all, including indigenous people.

Poverty Reduction Strategy Programmes (PRSP) have continued into their second round. While the first round came and went with little or no popular participation, the second was completed with a great deal of participation, even on the part of indigenous communities, but with little confidence that poverty - both as discussed in the PRSP and in the Millennium Development Goals - could be reduced while productive resources were still controlled centrally by the national government. To many indigenous peoples, hopes for poverty reduction lie mainly in the principles of decentralization and devolution of power and a rights-based approach to development, hence the desire to have the new constitution adopted.

The Ndung'u Land Commission Report

The report of the Ndung'u Land Commission was released on December 10. The report is the result of work undertaken by the commission of inquiry into the unlawful allocation of public lands. Its release came following sustained pressure from politicians, lobby groups and professional bodies. The report names top government officials in the current and previous regimes as being among the major beneficiaries of illegal allocations of public lands. Those implicated in the report include government ministers, permanent secretaries and provincial and district commissioners.

One important recommendation of the report was that a Land Titles Tribunal should be established to address the issue of vindication, revocation or cancellation of fraudulently acquired titles. The tribunal would give the title owners a chance to defend themselves. The commission also recommended the establishment of a national Land Commission vested with the power to allocate public lands and supervise the management and allocation of trust lands.

The fact that no date has been set for the establishment of the Land Titles Tribunal or the National Lands Commission has raised doubts as to whether the government actually intends to implement the Ndung'u Report's recommendations.

The minister for Lands and Housing has claimed to have cancelled thousands of illegally acquired land titles. Yet, according to the law, this minister has no power under the statutes governing land management (issuance and cancellation of titles) to cancel land title deeds. Currently, only a court of law can cancel land title deeds, not a government minister or even the president. And even then, the courts can only cancel certain titles provided they do not involve first registration.

Prior to the release of the report, there were rumors that the government was to return fraudulently acquired land. But these soon died down. Increasingly, more farmers are acquiring land in pastoralist areas south of Nairobi and fencing it off. This process has serious conse-

quences for the Maasai. First, it drastically reduces the land available for livestock grazing, which means that people have less food per household, and so poverty is increasing. Secondly, private schools have mushroomed all over the area, and besides contributing to decreased land availability, they also compete unfairly with children in state schools for national secondary school places. Thirdly, and most seriously, it tips the political scales against indigenous peoples such that people cannot elect their own representatives into the Legislative Assembly or even the local councils.

Ethnic clashes

The drought caused by the failure of the short rains toward the end of the year resulted in pastoralists trying to move to new farming areas, some of which were originally theirs, in search of water and pasture for livestock. But they soon realized that most of the areas they were moving to were inaccessible because of fences or irrigation furrows. In one incident, furrows were destroyed and there ensued serious clashes between the Maasai and Kikuyu. It was reported that fifteen farmers were killed and, in retaliation, three Maasai travelling from Nairobi towards the conflict zone were removed from public transport vehicles and killed. A solution to resource-based ethnic conflicts and the government's failure to protect indigenous peoples from further land losses has yet to be found.

Disappointed at the government's performance, pastoralists have made verbal statements threatening to form a pastoralist party because, as the Maasai Member of Parliament for Kajiado Central put it, "We are fed up of being tossed here and there like slaves." It is possible that this will remain no more than a verbal threat because pastoralists themselves are not homogenous and are dispersed over a large arid and semi-arid territory with poor infrastructure, hindering effective communication.

Spread of religion

Over the past few years, we have witnessed a serious growth in new religious denominations, especially the Pentecostal churches. This has led to the conversion of many indigenous people to this new religion. The direct consequence is family splits whereby some members have shunned indigenous rituals such as rites of passage on the advice that they are un-Christian. The fundamentalist form of this religion has also tended to discourage people from wearing indigenous attire and accompanying artifacts. While some have succumbed to the pressure, others have resisted although they have continued to remain Church members, albeit “rebellious” ones.

In the meantime, Kenya has over the past year come up with a much touted national dress. This has been “created” officially from a mixture of local styles. However, most people have not taken it too seriously, and it seems to appeal only to a few politicians on national holidays. Indigenous people have largely rejected it for both aesthetic and political reasons. They see it as an ugly patchwork of mismatched pieces put together in the name of nationalism, with the sole aim of discouraging indigenous forms of attire.

100 years of the Anglo-Maasai “Agreements”

The Maasai made the news a great deal in 2004 with regard to their land claims in many different places, from Naivasha to Magadi (in the Rift Valley). Although these were different claims undertaken by different Maasai sub-communities, the one that united them all was the one that touched on the Anglo-Maasai Agreements of 1904.¹

Around mid-year, some large ranches in Laikipia District were invaded by herders from the Maasai community. Simultaneously, around 100 members of the Maasai community organized a demonstration on the streets of Nairobi and continued on to the British Embassy to deliver a proposal demanding the restitution of their lands following expiry of the Agreements in August 2004. Another demonstration was

organized in Laikipia. One person was killed by police and several others injured. Many people were imprisoned for several weeks and later released on bail, their cases pending. The international press took notice at once because the ranches claimed by the Maasai were owned by white Kenyans, descendants of European settlers, giving the claims a semblance of the Zimbabwe problem.

The government immediately denied that the Maasai had any right to the lands in question and insisted that it could not address such an age-old problem between the Maasai and the British colonial administration. And anyway, it reasoned, the land in question now legally belonged to other people. Both sides have stood their ground but the case has not been resolved, nor will it go away. A Maasai minister urged the government to initiate dialogue on the Maasai demands for restoration of lands lost through the spurious Anglo-Maasai Agreements. The media highlighted the issue mainly because, at the time, the British Ambassador was at loggerheads with the Kenya government over allegations of corruption. As it happened, the way in which the colonial government conducted itself over the agreements was equally corrupt. So highlighting the issue was a way of telling the British that they were the ones who taught Kenya corruption in the first place and that they should not speak about it. At any rate, the matter received good media coverage, although it will be a long time before it is solved. This is because Kenya does not have any clear policy on land or on affirmative action. It has not even begun to admit that there are certain communities that need special attention.

Settling slum dwellers in Maasailand

Two determined women (one German and one of Swedish origin) are pursuing projects that place them in an antagonistic position as to what kind of living beings (wild animals or poor people) should inhabit the vast Athi-Kapiti Plains of Kajiado District, and part of traditional Maasai land. The two women are clashing over the Jamii Bora project, an ambitious scheme to house 30-50,000 of Nairobi's poor in a brand new settlement in Kajiado – land that lies in the middle of a



Maasai demonstration in Nairobi. Photo: MPIDO

game migration corridor and part of the Nairobi National Park's wildlife dispersal area.

While the Swedish woman is a conservationist, and concerned with wildlife preservation, the German philanthropist is responsible for the rapid success of the resettlement scheme over the past few months. However, this success is causing concern that:

- A housing scheme of this magnitude could have serious effects on wildlife dispersal in an area called the Kitengela Triangle;
- Such a large group of urban poor slum dwellers could irrevocably upset the wildlife habitat by engaging in poaching;
- They would eventually change the entire area by creating new social relations that would eventually displace the local Maasai community;
- The scheme might cause increases in crime and put an excessive strain on services such as water, roads and electricity supply.

To lessen conflicts between the largely pastoral local community and wildlife, the Friends of the Nairobi National Park (FONNAP) initiated an "easement scheme" under which consolation fees are paid for live-stock killed by carnivores in the region. However, from some quarters, FONNAP's campaign is seen as an unrealistic attempt to rescue a wildlife habitat under severe threat from increasing demand for land for sprawling farming concerns.

Local politicians, on the other hand, have another approach to the urban resettlement scheme – they say that the project will lead to an invasion of other ethnic groups into the Maasai-dominated area. They fear that such a large group of urbanized newcomers would politically marginalize the local electorate and possibly deny local people the right to leadership.

In December 2004, a public hearing was held by the National Environment Management Authority (NEMA) at the site of the project. The public meeting brought together the affected parties and communities to explain the project and its effects, and to receive their oral or written comments. NEMA is expected to take a decision in early 2005.

Indigenous movements

There has been little progress among Kenya's indigenous people in organisational terms this year, except for among the Ogiek who have remained steadfast and have kept up the pressure. They continued to demonstrate for restitution of their land, which was finally granted in the Mau forest. Although the resettlement did not include all the Ogiek, they managed to exert enough pressure to ensure that all Ogiek were resettled.

The Maasai, on the other hand, have mobilized to start yet another organization called the Civil Society Forum, which provides a platform for publicizing some land claims. The Maa Pastoralist Council (MPC), however, held few meetings and seems to be slackening. The cultural festivals that seemed to bring people together and offer the possibility of discussing, deliberating and planning for the future have not been held by any indigenous people this year due to lack of funds.

New visibility and acceptance of indigenous issues

Increasing numbers of indigenous people are attending the meetings of the African Commission on Human and Peoples' Rights (ACHPR) and this has raised awareness in the Commission and among indigenous peoples themselves. A number of groups have been granted observer status, which means that they have a greater opportunity of speaking during meetings. NGOs have become indigenous peoples' partners.

The African Commission's adoption of the report of the Working Group on the Rights of Indigenous Populations/Communities in Africa was welcomed by many indigenous peoples as an important landmark. The next two years will be telling in terms of what governments will do to implement the report's recommendations, including inviting the Working Group to visit their countries. So far, the plan for the Working Group to visit Kenya and Tanzania has fallen through, possibly due to the short length of time allotted to preparing for the visit. Although two months' notice was given, part of this fell during holiday time. More time will need to be allocated when the visit is rescheduled.

African Protocol on Violence Against Women

Women's voices and activities during 2004 brought the continent together around a call for an end to violence against women. The Campaign on Violence Against Women has found encouragement in the African Union's Protocol on Violence against Women. Although only five countries have ratified it (Comoros, Rwanda, Libya, Botswana, Namibia and Lesotho), it is possible that more will do so soon. While Kenya, Uganda and Tanzania have signed the protocol, their presidents have yet to ratify it. The protocol provides a comprehensive mechanism for implementing legal and policy actions that could lead to the elimination of gender-based violence. It gives the region's governments several important guidelines on eliminating gender violence

that should provide important protective measures, particularly for indigenous women.

Female Genital Mutilation (FGM) was also in the limelight at a national conference held in September. At this, some Tanzanian Maasai women were able to share their experiences with their Kenyan counterparts across the border. More cross-border initiatives have been encouraged for other activities. Despite its lethargy, it is still hoped that the East African Community will some day realize meaningful cross-border programs. □

Note

- 1 The Anglo-Maasai “agreements” were signed in 1904. According to the Maasai, the British colonial government used all shameful means to grab the “sweet grazing lands” of the Maasai people. See Memorandum of August 13, 2004 prepared by Maa-speaking communities in Kenya and presented to the Office of the President and other relevant authorities.
www.iucn.org/themes/ceesp/WAMIP/MEMO%20Maasai.pdf.—Ed.

TANZANIA

2004 was a particularly challenging year for the indigenous peoples of Tanzania. As in previous years, they experienced drought, livestock diseases and loss of land, as well as a loss of leadership positions as the result of village elections held towards the end of the year. Poverty levels continued to rise among the indigenous peoples and various of their livelihood sources came under pressure. Vulnerability, food and livelihood insecurity increased, with some communities receiving food aid as the only option for their survival.

The national context

At the national level, macro-economic indicators showed steady growth from 2003 to 2004. Growth was recorded mainly in the mining sector. Various economic programmes were implemented, some of which have had a bearing on the lives and identities of indigenous peoples, and public utilities were further privatised as globalisation and market economics made new inroads into various sectors of the Tanzanian economy. Market liberalisation opened up more avenues to foreign investors, increasing the insecurity of land tenure.

In 2003, the Government of Tanzania undertook a review of its Poverty Reduction Strategy (PRS) phase I, and Poverty Policy Week (PPW) was celebrated in Dar es Salaam from 1 to 5 November 2004 as part of the Poverty Monitoring System. A series of regional workshops followed the national celebrations throughout the country in order to give different stakeholders an opportunity to learn more about the National Strategy for Growth and Reduction of Poverty (NSGRP), comment on the document and provide input into the way forward. The national coordinating secretariat under the Vice President's Office is-

sued guidelines on how PPW regional workshops should be organized.

The Arusha Region organized its workshop as part of the PPW reflection on poverty reduction initiatives under the theme: *Improve your life: fight poverty*.

The workshop was held on 10 and 11 November 2004 in Arusha, and it brought together a total of 39 participants from Arusha Regional Secretariat, the districts of Ngorongoro, Karatu, Aru-meru, Arusha and Monduli, and two participants from the NGO sector. The co-ordinator of CORDS (Community Research and Development Services) and author of this article facilitated the workshop.

The main objectives of the Regional PPW Workshops for 2004 were:

- To foster ownership of the second PRS process¹ among Regional and Local Government Authority officials as key stakeholders in the implementation of the PRS II and provide a forum to reflect and exchange views on the implementation and monitoring arrangements;
- To build consensus around the proposed strategies among the stakeholders;
- To share information on expected follow-up to resource allocation and implementation;
- To disseminate other information, particularly from the Poverty Monitoring System (e.g. the Third PRS Progress Report,² the Poverty and Human Development Report 2003, the Poverty Participatory Assessment, the Zonal Workshop Report on the PMS, Census and Survey Reports).

Several recommendations came out of the Arusha Regional Workshop, including a recommendation that livestock policy should be reviewed to ensure that it supports pastoralism as an economic system instead of focusing only on livestock productivity without considering pastoralists.

The situation of the indigenous peoples

The situation of indigenous peoples³ continued to deteriorate, with hunter-gatherer communities such as the Hadzabe and Akiye suffer-



ing in terms of loss of access to hunting resources, berries, honey and roots. The Maasai and Barbaig pastoralists - on both traditional territories and new lands - continued to lose lands, stock routes, water resources and minerals.

Hadzabe and Akiye hunter-gatherers

The Hadzabe and Akiye experienced serious food shortages in 2004. This was caused by drought but also by the legislation that bans subsistence hunting as a livelihood system. The Hadzabe were increas-

ingly marginalized, with pressure coming from farmers, commercial hunters, conservation organizations and pastoralists.

The Akiye people faced a number of difficulties and challenges. The Akiye of Napilukunya sub-village in the Kiteto District of Man-yara region, for instance, were hit by a drought considered to be the worst in living memory, and famine forced the usually self-sufficient community to rely on food aid from development organisations⁴ working in the area. The Akiye also reported that pressure from both farmers and pastoralists was posing a serious threat to their livelihood as hunter-gatherers. Environmental degradation, mainly caused by shifting cultivation and other land use forms unsuitable for fragile ecosystems, is destroying the wild berries and roots that are critical for their survival, as well as plants and flowers that wild bees depend on for making honey, an important nutritional and economic resource for hunter-gatherer communities.

In the recent past, some safari hunting companies have employed young Akiye men as trackers and professional hunters because of their indigenous skills in tracking wild animals. These young men, who work on a seasonal basis, make a lot of money and their attitude towards the Akiye way of life has changed. Most of these young men move out of their community once they can afford to live in urban areas. This trend was raised by the community as a real concern.

By contrast, while the Akiye had previously been assimilated into the Maasai, who are the majority in Kiteto District (the Akiye are only found in two villages while the Maasai are in more than 40), there has been an attempt by a few young men to learn the Akiye language as a way of re-affirming their identity. A young Akiye man decided to study the Akiye language and when asked why he had decided to do so, he had this to say:

I have decided to learn my language because my mother never taught me. My mother hid among the Maasai because she was ashamed of being identified as an Akiye hunter-gatherer. Now that I am an adult and have learnt who I am, I have decided to learn my language, which is what tells people who I am.

Ole Miintoi, Napilukunya sub-Village, August 2004.

The Maasai pastoralists

Throughout 2004, the Maasai continued to face threats to their primary means of production, with large and small-scale farming, wildlife conservation, mining and mushrooming peri-urban centres taking more and more land from pastoralism.

In 2004, the gazettement of Mkomazi as a Wildlife National Park was celebrated as a victory by the conservationists. Mkomazi had formerly been a game reserve in which people, livestock and wildlife shared access and use of the multiple resources. Now, the local Maasai were evicted along with their livestock to make room for an exclusive wildlife sanctuary. The original residents of Mkomazi were resettled elsewhere, but the proposed new resettlement sites are unsuitable for people or livestock as they lack water and are heavily infested with tse tse flies.

As far as the government is concerned, the resettlement plan has been completed. The Mkomazi Maasai, however, believe that they have yet to be compensated for their forced removal from the Mkomazi area. If this means going back to court they are prepared to do so. According to some local leaders, however, the residents of Mkomazi will have difficulties in doing this as they claim their lawyers have been intimidated by state authorities and may not be willing to continue with the court cases related to Mkomazi. The Maasai argue that the status of Mkomazi should not have been changed from game reserve to National Park.

Village elections

2004 was village election year and villages throughout the country elected their village chairpersons and village government officials. These elections were marred by controversy, claims and counter claims and, in several villages in Kiteto village, resulted in clashes. In the village of Olpopong'I, the controversy started well before the elections were actually held. Election officials disqualified a candidate who was the people's choice and manipulated the system to ensure that a candidate of their own choice - a migrant from outside the village and dis-

trict – would win. On polling day, more than 460 people voted for their preferred candidate and only 63 voted for the preferred candidate of the election officials. When the results were declared and the candidate with fewer votes had won, violence broke out between the migrant farming community and the pastoralists. The Maasai warriors came off best, with 20 non-Maasai sustaining minor injuries. Election officials reported the matter to the police, however, and twelve young Maasai were picked up by the police and detained for three weeks without bail. The case is still in the Primary Court in Kibaya. Two non-Maasai were locked up but released the next day. The case clearly showed differential treatment, with farming communities favoured by the establishment and the pastoralists discriminated against.

Land issues

The Maasai of Ngorongoro are still facing the threat of eviction from Ngorongoro Conservation Area Authority (NCAA). Conservationist organizations argue that increases in livestock numbers and human activities within the NCAA are threatening the beauty and integrity of the virgin lands. Arguments such as overstocking, overgrazing and environmental degradation, whether real or imagined, are used to justify the exclusive use of Ngorongoro by wildlife alone.

2004 saw serious conflicts between the Loita Maasai and the Sonjo⁵ in Ngorongoro District. At the beginning of the year, tension between the two communities was already running high. There were reports of people being killed on both sides. The conflict has moved through stages of confrontation and crisis to the point of violence, with both sides accusing each other of encroaching onto their lands.

Both the Loita Maasai and the Sonjo reported that fragile ecosystems, with variable rainfall, climate and vegetation, coupled with the population increase and the new forms of land use, were intensifying competition over land and natural resources, leading to conflicts.

Poverty and conflict feed on each other due to competition over livelihoods, resources and opportunities, with each side acknowledg-

ing that the indigenous institutions that mediate such conflicts have been weakened.

The level of tension decreased following a series of mediation meetings organised by two consultants with extensive experience in the field of conflict and pastoralist development. These were supported by the Tanzania Pastoralists and Hunter Gatherers Organisation (TAPHGO), with funding from the Irish Embassy.

The pastoral Barbaig

Land alienation pushed many Barbaig families to migrate to the south in 2004, to Dodoma, Iringa and Morogoro regions. In this migration, many families lost animals through theft and exhaustion due to the long distances covered. Migrating Barbaig were also forced to sell some of their animals in order to pay for water, grass and escort help from young local people in order to avoid attack.

Hundreds of thousands of acres of traditional Barbaig territory previously alienated through a wheat scheme and subsequently taken over by the National Agriculture and Food Corporation (NAFCO) are now being privatized. A decision was recently reached that half of the land would be sold to investors and the remaining half would be given back to the Barbaig people. There are doubts, however, regarding the mechanisms that are supposed to ensure that this 50% share actually goes to the Barbaig and not to other people who may claim land through allocations.

Indigenous peoples and civil society organisations (CSOs) will lobby the government to ensure that part of the 50% of the land that is returned to the Barbaig includes holy sites, ancestral graves and sites of deep spiritual and cultural significance for the Barbaig community.

Loss of primary resources impacts on culture

The loss of primary resources on the part of Tanzania's indigenous peoples continued unabated during 2004, with land use conflicts in-

creasing in frequency and intensity. Recent field observations also show that there has been a substantial long-term decline in the Maasai herd composition, with livestock holdings increasingly dropping to levels that cannot support households, regardless of household size. (The Barbaig seem to have retained higher livestock numbers compared to the Maasai.) The Maasai herds have been eroded through a combination of factors - not least high endemic disease levels compounded by the absence of veterinary services.

The significant decline in livestock numbers among the Maasai who migrated to areas south of their traditional territories has been intensified by new labour demands for animal husbandry, as small pockets of grazing area surrounded by crop gardens demand more labour in comparison to former Maasai rangelands where animals moved around with ease. Newly established relationships with farming communities are also thought to have impacted on the Maasai livestock holdings, with increasing sedentarisation forcing the pastoralist Maasai to diversify as they rely increasingly on the cash economy in their new places in order to secure their livelihoods.

One result of these changes is that indigenous patterns of resource utilization are rendered less effective, coping strategies are undermined, with food insecurity becoming recurrent and in some cases chronic, and food culture (diet composition, eating habits and nutritional levels) changed.

Increasing poverty levels, loss of livestock, game and other wild resources made it difficult for some indigenous communities to observe their religious rituals or perform some spiritual ceremonies. Some Maasai groups resorted to selling important cultural ornaments and artifacts to obtain an income for their households.

Regional initiatives and processes

During 2004, two regional initiatives took place that deserve a mention. These were the global conference organized by UNDP under the auspices of the Global Pastoral Programme and the training pro-

gramme organized by the UN Institute for Training and Research (UNITAR).

In April 2004, UNDP held a workshop in Nairobi to brainstorm on and formulate the Global Pastoralist Programme (GPP). Although the focus of the workshop was on coordinating pastoralist initiatives worldwide, in the African context pastoralist groups were considered the same as the mobile indigenous peoples of Africa.

A network called World Initiatives for Sustainable Pastoralism (WISP) emerged out of the UNDP workshop. Among other things, this particular network has been informing advocacy groups in Africa that involve members of Parliament in Ethiopia, Kenya, Uganda and Tanzania in issues related to policy and pastoralism. Herder associations are also linked to local pastoralist networks through a national, regional and global lobbying framework in order to promote the cause of pastoralists worldwide.

From 13 to 17 December 2004, UNITAR organized a training course to enhance the conflict prevention and peace-building capacities of African indigenous peoples' representatives. This course was held in Arusha and brought together 32 participants from different countries in Africa. The training covered issues such as: the concept of conflict, types, levels and indicators of conflicts, resources and conflicts, and indigenous peoples' involvement in peace and political processes, conflict mediation methods and the work of the African Union's Commission on Human and Peoples' Rights with Africa's indigenous peoples.⁶ □

Notes and references

- 1 **United Republic of Tanzania. 2004.** Poverty Reduction Strategy II.
- 2 Launched during PPW 2004.
- 3 This article deals with the Hadzabe, the Akiye, the Maasai and the Barbaig. An analysis of other groups in Tanzania that may claim the identity of indigenous peoples is beyond the scope of this article.
- 4 CORDS secured support for famine relief for the Akiye community for a period of 14 months as part of their Kiteto Resource Utilisation and Management Programme.

- 5 The Sonjo are a small tribe of settled agricultural people that have long lived in Maasai country. —Ed.
- 6 **African Commission on Human & People's Rights. 2003.** Report of the Working Group on Indigenous Populations/Communities in Africa. Adopted during the 34th Ordinary Session of the Commission in Banjul, Gambia. Unpublished.



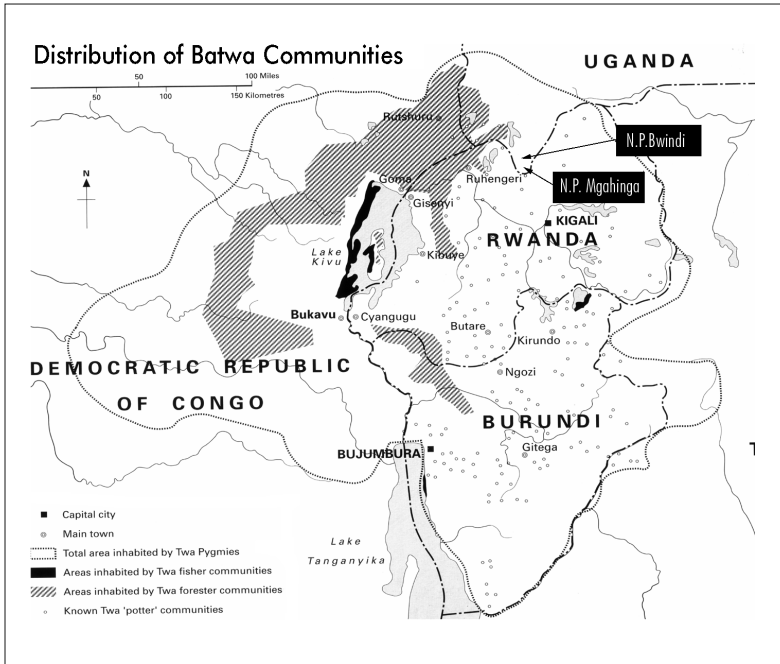
GREAT LAKES REGION

Political overview

At the International Conference on Peace, Security, Democracy and Development in the Great Lakes region in November 2004, 11 heads of state signed an agreement to end conflicts in the region, although the strategy to implement the declaration has yet to be agreed in inter-ministerial meetings during 2005. Despite this, conflicts continued to rage throughout the region, particularly in eastern DRC.

There were signs of improving regional relations when the Congolese authorities signed separate joint verification mechanisms to improve border security with Rwanda and Uganda while, in August, DRC, Rwanda and Uganda agreed to disarm groups operating within their territories within the year. Nevertheless, hostilities resumed in November when Rwanda's President Kagame announced they would invade DRC again to disarm and repatriate Hutu militia, known as *Interahamwe*, because the Congolese authorities were not acting quickly enough to do so.

In August, Burundi confirmed it had repelled an attack from Rwandan *Interahamwe* militia at its border. MONUC (the UN mission in DRC) verified it had seen suspected Rwandan troops in DRC and that it had foiled an attack by armed men from Rwanda on the eastern town of Bukavu in December. DRC responded by deploying more troops along its border. Following reports of incursions into the country by insurgent groups based in Congo, Uganda deployed more troops along its border. By the end of 2004, tens of thousands more civilians were forced to flee the renewed fighting, leading many to believe DRC was on the brink of a major war. The violence and insecurity in the region are continuing to affect indigenous communities, as described below.



Uganda

Instability in northern Uganda due to brutal attacks from southern Sudan on the part of the Lord's Resistance Army (LRA), and ongoing political tension around DRC borders, continue to dominate Ugandan political discourse. In spite of several ceasefires and various offers of presidential pardons for those leaving the rebel army, no final settlement with the LRA has been reached, so thousands of people and an entire region of northern Uganda are still in crisis. In south-west Uganda, the situation is complicated by the continued instability in eastern DRC and the alleged involvement of both Rwandan and Ugandan forces in this area of proven oil reserves. The uncertain security in the area has prevented many tourists from coming to see the mountain gorillas, impeding the flow of this crucial stream of income. President Museveni, who has been in power since 1986, is due to step down be-

fore the next elections although many believe that his one party "Movement" system will enable him to get around constitutional restrictions to secure yet another presidential term, and there is strong debate about this issue through an active national press. Uganda has some of the most progressive policies related to land and poverty alleviation in the region, and this should also apply to indigenous Batwa, but implementation is still ineffective.

Due to increasing competition for land from immigrants, and the impact of some conservation projects which have taken over their remaining traditional lands since the early 1990s, several thousand indigenous Batwa peoples in south-west Uganda have become landless and lost access to their traditional semi-nomadic hunting and gathering lifestyle. Most Batwa livelihoods have long been linked to the forests, and as forests have disappeared or been taken away for conservation, their livelihoods have become extremely insecure, and now many face extreme poverty. Their continuing social marginalisation, lack of access to adequate compensation for their lost forest access, low literacy rates, lack of access to social services and chronic poverty has led to a serious threat to Batwa's livelihoods, and to the survival of their culture. However so far, government, donors and NGOs have failed to address Batwa needs or deliver fully their promises to address their poverty. Batwa have therefore decided to work to promote the acquisition of land for themselves, while also securing education, training and income generation opportunities for Batwa communities.

The Batwa get NGO support

During 2004, Ugandan Batwa and the national Batwa organisation UOBDU (United Organisation for Batwa Development in Uganda) conducted an extensive series of community consultations as the basis for the development of UOBDU's new work plan. This plan was presented to donors in July and then UOBDU completed a Batwa census of three south-west districts. UOBDU is now developing a formal agreement with a national conservation NGO over management of the Echuya Forest, in addition to establishing alternative income-generating activities with communities. These and other developments have enabled Batwa and UOBDU to remain at the centre of donor and NGO

efforts to address the problems Batwa face, including landlessness and the loss of their forest-based culture. National government recognition of UOBDU was signalled by its invitation in 2004 to join national celebrations in Kampala. The significant shift in the attitudes of NGOs working in south-west Uganda towards supporting Batwa has been a very favourable result of the work of Batwa community activists, and they are continuing to build recognition and further links with other indigenous groups in Uganda and the region. However, much work remains to be done, especially given that many Batwa remain landless and without access to forest resources, partly due to a lack of resources in the Mgahinga and Bwindi Impenetrable Forest Conservation Trust (MBIFCT), and to land price increases around some of the major towns. Securing land remains the top priority of Batwa from southwest Uganda.

Rwanda

2004 marked the 10th anniversary of the genocide, during which an estimated 937,000 died, according to a census published by the Rwandan government. Commemoration events included an international conference on genocide prevention.

Following a two-year trial period, the traditional *gacaca* village courts system was formally introduced throughout Rwanda. At least 80,000 prisoners await trial, although that number is expected to rise. A number of genocide suspects have been sentenced to death or life imprisonment for killing genocide survivors who were due to testify at *gacaca* trials. In an attempt to further relieve congestion in prisons, the government announced that it would free 4,500 common law criminals and at least half of the country's prisoners who had confessed to their role in the genocide. In April, around 4,000 genocide suspects were released after undergoing a one-month rehabilitation course.

Following a report by a parliamentary commission which accused several civil society organizations, schools and churches of promoting "genocide ideology and ethnic division" among Rwandans, the independent human rights organisation, LIPRODHOR (League for the

Promotion and Defence of Human Rights), which has been critical of the government's human rights record, was banned and six of its officials fled the country in fear of their security and arrest. The dissolution was widely condemned by the international community. The EU called on the government to ensure that those accused were deemed innocent until proven guilty, and asked for further clarification of the terms "ideology of genocide" and "divisionism", urging the government to allow freedom of expression. Under Rwandan law, advocating ethnic differences is a crime; however, critics believe the government has used the excuse of ethnicity to suppress freedom of expression and political opposition.

The situation of the Twa

The Rwandan authorities refused to legally register the national Batwa organisation, CAURWA, until it amended its name and objective, which is to promote the rights of Batwa people. These were deemed to be unconstitutional and undermining the unity and reconciliation process. CAURWA ("Community of Indigenous People of Rwanda") is awaiting further clarification but it appears the authorities want all references to "indigenous" removed. CAURWA's director, Zephyrin Kalimba, was verbally criticised by officials during the national consultation process on the land law, and during a session of the African Commission on Human and Peoples' Rights. CAURWA is carrying out a nationwide consultation with the Batwa on whether to comply with the authorities' demands to remove the words "indigenous" and "Batwa" from its name and statutes.

The situation of the Twa remains dire, as shown by a national socio-economic survey published by CAURWA. Of an estimated 33,000 Twa now living in Rwanda, 20% live in "houses" built of straw or plastic sheeting, and only 7% are members of health insurance schemes, which form the essential means of accessing healthcare in Rwanda. Thirty-five percent have no latrine, compared to a national average of 5%. Fifty-one percent have never attended school, compared to a national average of 25%, and the net primary school enrolment rate among Twa children is only 48% compared to a national figure of 78%. Only 23% of

Twa adults are able to read and write compared to a national average of 52%.

The survey, which was carried out in association with the statistics department of Rwanda's Finance Ministry, was officially launched at a national round table, attended by officials and representatives of the international donor and NGO community, national civil society and Twa communities. As the Rwandan government has no policy for tackling the disadvantaged and inequitable situation of the Batwa, and donor agencies also lack comprehensive programmes for them, CAURWA has taken up this task. CAURWA is working with over 120 Twa cooperative associations in eight of Rwanda's 12 provinces to improve livelihoods through increasing food security and incomes. Activities include agriculture and small animal husbandry, as well as setting up a Twa-led Fair Trade commercial enterprise to promote and strengthen the traditional Twa culture of pottery and dance. With financial support from the EU, CAURWA has been advocating on behalf of Twa rights; further lobbying was done on the land law and policy and land restitution. Some of CAURWA's efforts appeared to have borne fruit when President Kagame announced in a newspaper article that the Batwa had been historically marginalised and that he would be appointing a Batwa senator. President Kagame also appointed CAURWA's Director to Rwanda's NEPAD Sub-Commission on Democracy and Good Political Governance.

Burundi

The transition period, due to end in November 2004 with national elections, was extended due to continued disagreement between transitional leaders over power-sharing arrangements. A referendum on the constitution was postponed from October to December, and then again to 2005, with no date for a referendum yet agreed. Presidential elections fixed for April 2005 will be delayed again if no agreement is reached, although transitional leaders did adopt laws creating a Truth and Reconciliation Commission. The National Independent

Election Commission blamed delays on technical problems; however, there have been accusations that delays are being caused by the political leanings of the Commission itself. Others claim transitional leaders are delaying the elections to hold onto power for as long as possible.

Despite a ceasefire in the rest of the country, western Burundi remains unstable, particularly in Bujumbura province, where a faction of the FNL (*Forces nationales de libération*) led by Agathon Rwaswa – the only insurgent group not to join the transitional government – continues to fight for control of the area, despite a ceasefire agreement with the transitional government. UN troops, which had replaced the peace-keeping forces of the African Union, were also deployed to the region.

The FNL claimed responsibility for a massacre of 160 Tutsi refugees from eastern DRC in the Gatumba refugee camp but, according to various reports, the perpetrators also included Congolese and Rwandan Hutu *Interahamwe*. The Burundian army was accused of standing by while the massacre took place.

The situation of the Twa

The situation of the Twa in Burundi remained poor due to the ongoing conflict and political uncertainty. In October, the Twa MP Liberate Nicayenzi said that Twa families in the northern province of Kirundo had been made homeless after their homes were burnt. In its statement to the UN's Working Group on Indigenous Populations in Geneva, UNIPROBA (*Unissons-Nous pour la Promotion des Batwa*) decried the complete absence of Twa women from further education.

UNIPROBA hosted a workshop in November to train Batwa youth on human rights and indigenous peoples' rights. Twenty participants from the Great Lakes region included representatives of AIMPO and CAURWA (Rwanda), UNIPROBA (Burundi), and AAPDMAC, CAMV and PIDP (DRC). Participants called on their respective governments to ensure they get equal access to land, education and health with other ethnic groups in these countries.

The UCEDD (*Union Chrétienne pour l'Éducation et le Développement des Déshérités*) carried out an evaluation of its work over the past eight years. UCEDD is supporting around 100 Twa community develop-

ment associations in agriculture and animal husbandry projects, and supporting a nursery and primary school for 139 Twa children. The projects are reaching an estimated 10,000-15,000 people (about 3,000 households).

Democratic Republic of Congo (DRC)

Violent conflicts continued throughout 2004, particularly in eastern North and South Kivu provinces and Ituri district, bordering Burundi, Rwanda and Uganda. Ceasefire agreements between the Congolese authorities and rebel groups were signed and broken within weeks, and even the UN offices in Kinshasa were attacked by civilians accusing the UN of allowing armed rebels to occupy the eastern town of Bukavu. The International Rescue Committee announced that, as a result of the conflict, over 31,000 people are dying every month, with a total death toll of 3.8 million between August 1998 and April 2004, many as a result of disease, hunger and lack of medicine caused by displacement. Increasing attention was drawn to the habitual use by many parties in the conflict of sexual violence as a weapon of war. MONUC civilian and military personnel were also accused of 150 cases of sexual exploitation and abuse of civilians.

MONUC's mandate was extended to March 2005 and, by the end of the year, there were 12,642 peace-keeping troops in DRC. A MONUC report stated that violence and human rights abuses in Ituri would continue unless the authorities could gain control of the extraction of natural resources there. Another MONUC report noted that prison conditions were so bad that a sentence of 1-5 years was tantamount to a death sentence. There were continued concerns about freedom of expression when journalists were attacked by police and imprisoned for reporting allegations of police violence and ministerial corruption.

Following a request by President Kabila, the International Criminal Court (ICC) launched an investigation into alleged war crimes committed since 2002, including links to businesses operating in Europe, Asia and North America, and an international criminal court is expected to be established in 2005. The UN appointed an Independent Expert

on the situation of human rights in the Democratic Republic of the Congo, Titinga Frédéric Pacere (of Burkina Faso), to replace the Special Rapporteur Ms Iulia Motoc.

The situation of the indigenous peoples

Indigenous Batwa and Bambuti communities in north and south Kivu and Ituri district continued to report instances of abduction, cannibalism, murder, rape and looting throughout the year. The attacks were routinely publicised by indigenous organisations, NGOs and INGOs. The indigenous organisation CAMV (*Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables*) gave an oral intervention at the UN's Working Group on Indigenous Populations denouncing the violence. In January, the World Food Programme was forced to stop distributing essential food aid to vulnerable Bambuti communities in the northern province of Equateur after locals stole it. The local king (*Mwami*) of Idjwi Island has forbidden all inhabitants, including a sizeable Batwa community, from cutting down any trees until 2009 in an attempt to avoid desertification. As a result, many communities that rely on wood for heating and to make paddles to sell are in financial difficulty.

At a press conference organised by the MLC (Ugandan-backed rebels led by Jean Pierre Bemba, a vice-president in DRC's transitional government), Bambuti people who had accused MLC soldiers of cannibalism in 2003 retracted their statements, under what was widely believed to be duress. The cannibalism charges were confirmed in a MONUC report presented to the UN Security Council in July, and an international NGO mission to DRC coordinated by RAPHY (*Réseau des Associations Autochtones Pygmées – Network of Pygmy Indigenous Organisations*) submitted a dossier of written and video testimony of crimes committed against the Bambuti to the ICC. The Bambuti hunter-gatherers live deep within the forests in Ituri, and their unique knowledge of the forest combined with their hunting skills leave them vulnerable to exploitation and coercion by marauding rebel groups.

Indigenous organisations in eastern DRC continued their advocacy, education and livelihoods programmes with indigenous communities, although visits to communities in the east were difficult due to increas-

ing insecurity. RAPH produced guidebooks in local languages to inform local communities of the country's new mining and forestry codes and continued to document human rights abuses against Batwa and Bambuti communities in eastern DRC.

The work of the indigenous organizations

Indigenous organisations joined with other Congolese civil society and international organisations to oppose new laws and re-zoning (supported by the World Bank), which could result in 60 million hectares of Congolese rainforest being opened up to logging companies. At the UN Permanent Forum on Indigenous Issues, several indigenous organisations from DRC, including AAPDMAC (*Action d'Appui pour la Protection des Droits des Minorités en Afrique centrale*), CAMV, UEFA (*Union pour l'Emancipation des Femmes Autochtones*), PIPD-KIVU (*Programme d'Intégration et de Développement du Peuple Pygmée au Kivu*) and ACPROD made a joint statement on the rights of indigenous peoples to their traditional territories, and condemned the proposed forestry re-zoning. Also at the Permanent Forum, the president of the "Women, Family and Child" Commission of Congo's National Assembly denounced rights violations committed against indigenous women in her country and announced the revision of Congo's family code. She later met with indigenous representatives and encouraged them to participate in the revision process.

In April, CAMV participated in the second meeting of the Durban Process, a platform initiated by the Dian Fossey Gorilla Fund to highlight the negative impact of coltan mining on the flora and fauna of the Kahuzi-Biega National Park and find alternative income-generating activities for the miners. Following their expulsion from the park with neither resettlement nor compensation, and no longer able to enjoy their traditional hunter-gatherer lifestyle, Batwa peoples have been forced to resort to clandestinely mining coltan and cassiterite in order to survive. Far from markets, poorly educated and in desperate need of money, indigenous peoples are often exploited and under-paid for their work. CAMV has started an initiative called CECOMIFCO (*Centrale coopérative autochtone des produits miniers et forestiers* – Central Indigenous Cooperative for Mining and Forest Products) to help indig-

enous artisans and miners benefit fairly from the sale of their mining, forest and non-forest related produce.

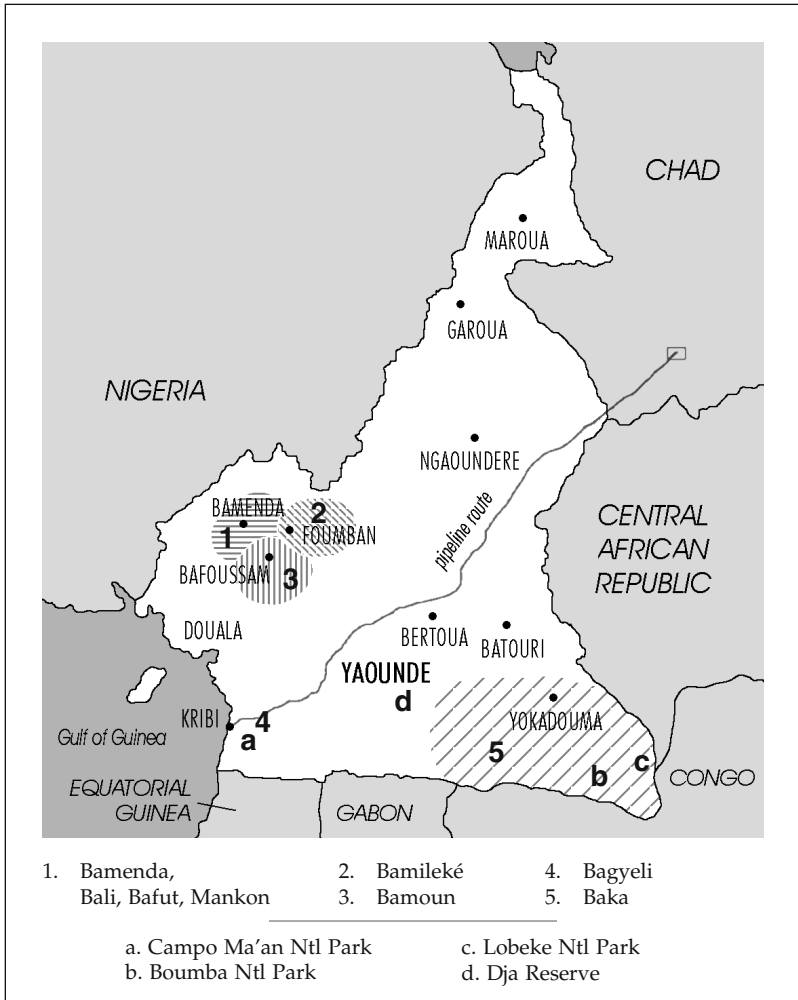
RAPY, which comprises 6 organisations – UEFA, AAPDMAC, ARAP (*Association pour le Régroupement et l'Autopromotion des Pygmées*), CAMV, CPAKi (*Collectif pour le Peuple Autochtone du Kivu*), and SIPA (*Solidarité pour l'Innovation des Peuples Autochtones*) – adopted its statutes and elected its office holders in October.

Cameroon

Despite allegations of widespread fraud, President Biya overwhelmingly won the vote in late 2004 for a new seven-year term, thus commencing his third decade as leader. Cameroon is a mainly peaceful country despite some conflict in the oil-rich Bakassi area near Nigeria; negotiations over this situation are currently going through the international courts. In recent years, control over some of the information media in Cameroon has been relaxed, and this is associated with domestic political moves in favour of more openness, partly inspired by donor pressure to reduce corruption in the forestry and natural resources sectors, central pillars of the economy, and to target more government funding towards the rural poor who, in most areas of the country, have little access to adequate health or education services. This affects particularly indigenous Pygmy communities from across the southern forest zone, whose livelihoods rely on forests. They remain socially and economically marginalised, and receive few benefits from the small amounts of funds which do eventually trickle down to the regions.

The issue of the national forests

The distribution of forestry revenues between central and local authorities and communities, and their respective role in the zoning of national forests, are the source of furious debates that are far from being



resolved in Cameroon. Communities continue to be marginalised in discussions over forest planning, despite the establishment of community participation as a central plank of government forest law. Logging companies and conservation organisations continue to dominate negotiations with governments over plans for the exploitation and conservation of forests. The allocation of forestry concessions is still an

opaque process which regularly conflicts with the rights of forest communities, especially since sanctions against rule-breakers are rarely applied. Some local communities are able to secure community forests for their own use and exploitation through special provisions of the 1994 forestry law, but the system is too complicated for many rural groups and always open to corruption, which is prevalent. This is especially true where management is weak, which is an unfortunately common situation.

The extreme poverty of the rural poor across southern Cameroon and the lack of investment in basic social services, coupled with growing rural populations and continuous growth of a national bushmeat trading network is leading to growing pressure on the rights of Cameroon's indigenous forest communities, such as Bakola, Bagyeli and Baka. The Cameroon government aims to protect 30% of its land from exploitation, and over the past decade international conservation organisations have been very active in supporting the Ministry of Environment and Forests (MINEF) to build up the network of national parks and reserves. Unfortunately, local communities were rarely consulted about these plans and, when they were, indigenous hunting and gathering communities were almost never involved. The result is that Baka and Bagyeli have little say in the management of their lands and, in many cases, are losing access to forests that they have been inhabiting for centuries. Their culture, and continuing dependence upon these forests to secure their livelihoods, combined with their lack of access to lands to cultivate, or a decent wage to do so for others, and their social marginalisation, means that most still have little access to formal schooling, or basic health services, and virtually no influence with government agencies or other civil society institutions.

The Campo Ma'an National Park

During 2004, Bagyeli and Bakola communities continued to complain about poor implementation, by FEDEC (Foundation for Environment and Development in Cameroon), of the Indigenous Peoples Plan (IPP), as well as promised regional compensation. This has been followed by

changes to FEDEC's management and initiation of new consultation measures by field staff. Growing protests by Bagyeli from around the newly-established Campo Ma'an National Park has led to an agreement by the Cameroon government, World Wildlife Fund (WWF) and FEDEC, to reconsider the park's draft management plan. Campo Ma'an National Park is one of the environmental offset projects for the Chad-Cameroon Oil Pipeline Project; its management plan has been under development for over three years and is now awaiting approval by the government. Once this is done, the project will be implemented by the WWF, using funding from FEDEC and WWF. However, up to now the plan has not adequately taken into account indigenous communities' views, despite the fact that park boundaries enclose lands which have sustained their livelihoods for aeons. In response to international pressure, the World Bank International Advisory Group has now called for the establishment of a multiparty commission to examine the specific issues faced by Bagyeli affected by the establishment of the park, and this will hopefully lead to a revision of the park management plan in their favour during early 2005.

The pygmies organize themselves

Baka and Bagyeli all over the southern forest zone are continuing to build the capacities and negotiation skills of their own support organisations in order to secure identity cards, to gain access to legal advice, to create their own land use maps and to develop alternative sources of income. However their incomes, institutional capacities and confidence still remain very low and long-term support from government and donors to promote their rights is still difficult to obtain. In spite of this, since 2001, Bagyeli and Bakola from the south-west have engaged directly with donors such as the World Bank over the project's impacts on their rights. Baka from the south and south-east now have their own, young NGOs and some indigenous communities are establishing their own community associations. Baka and Bagyeli are building up their links with international and national conservation authorities,

which are beginning to accept openly that their rights have been neglected in previous conservation plans.

New funding to the Cameroon forest sector from the World Bank has resulted in first steps towards the development of a new national Indigenous Peoples Development Plan by the Cameroon government. However, there is currently no established process by which indigenous communities' participation in the development of this plan will be assured, and much of the programme remains a theoretical prospect due to slow implementation.

Réseau Recherche Actions Concertées Pygmée (RACOPY), a network of organisations supporting indigenous hunter-gatherer communities in Cameroon, became much more active during 2004. Regular meetings between groups supporting indigenous forest communities are encouraging greater cohesion on the part of civil society organisations around issues such as the need for civil society participation in forest sector planning, and indigenous forest communities' rights in forests being taken over by logging and conservation.

Current plans in Cameroon are that IPDP arrangements will be formalised during 2005, during which the TRIDOM transboundary conservation project will be established on the ground by the government and WWF, using World Bank/Global Environment Fund (GEF) funds. The TRIDOM project is a new transboundary conservation initiative between Cameroon, the Republic of Congo and Gabon that will join together a tri-national "interzone" bordered by the existing Minkébé, Boumba-Bek, Nki and Odzala National Parks and the Dja Wildlife Reserve. All these parks overlap lands upon which communities rely, along with forests in the "interzone". The TRIDOM project is supposed to lead to the development of a regional land management plan that will govern access to and use of forests used by up to 40,000 indigenous forest peoples, mostly Baka Pygmies, so their participation in planning processes during 2005 will be crucial in order to protect their rights.

Regional events

The 2nd Heads of State Summit for the Conservation and Sustainable Use of Central African Forest Ecosystems was hosted in Brazzaville by the Republic of Congo in February. This meeting was a follow-up to the 1999 Yaoundé Declaration which enabled the Conference of Ministers in Charge of Central African Forests (COMIFAC) to establish a regional framework for the management of the biodiversity of the Congo Basin, now known as the COMIFAC Convergence Plan. This plan covers a diversity of region-wide initiatives to support better forest management and conservation, including the establishment of two trans-boundary protected areas between Central African Republic, Cameroon, Gabon and the Republic of Congo. Under the facilitation of the US, for the past several years a regional conservation initiative known as the Congo Basin Forest Partnership (CBFP) has been enabled through the COMIFAC framework. Funding for this has come mostly from the US and Europe, with Europe's proportion expected to rise now that the French government has taken over the facilitation role within the CBFP.

The CBFP facilitates the provision of financial support to extend the total area destined for protection in Central Africa through the establishment of 11 so-called landscapes or eco-regions covering up to 20% of the Congo Basin. The theory is that these landscapes will be zoned to accommodate a mixture of exploitation and conservation, with the involvement of local communities where appropriate. Experience elsewhere in the Congo Basin suggests, however, that the extension of conservation and logging will lead to increased restrictions on local communities, especially indigenous communities relying on hunting and gathering to secure their subsistence needs. This threatens to exacerbate the negative social and economic impacts on indigenous communities from conservation and logging. Communities' rights and roles in forest management have been persistently neglected by these processes, even though their rights to traditional, sustainable use are protected by the Convention on Biological Diversity, now signed by over 180 countries. In most forest planning, local and indigenous com-

munities have so far been unable to secure representation in discussions on new plans for forests, in spite of clear donor guidelines requiring this. □

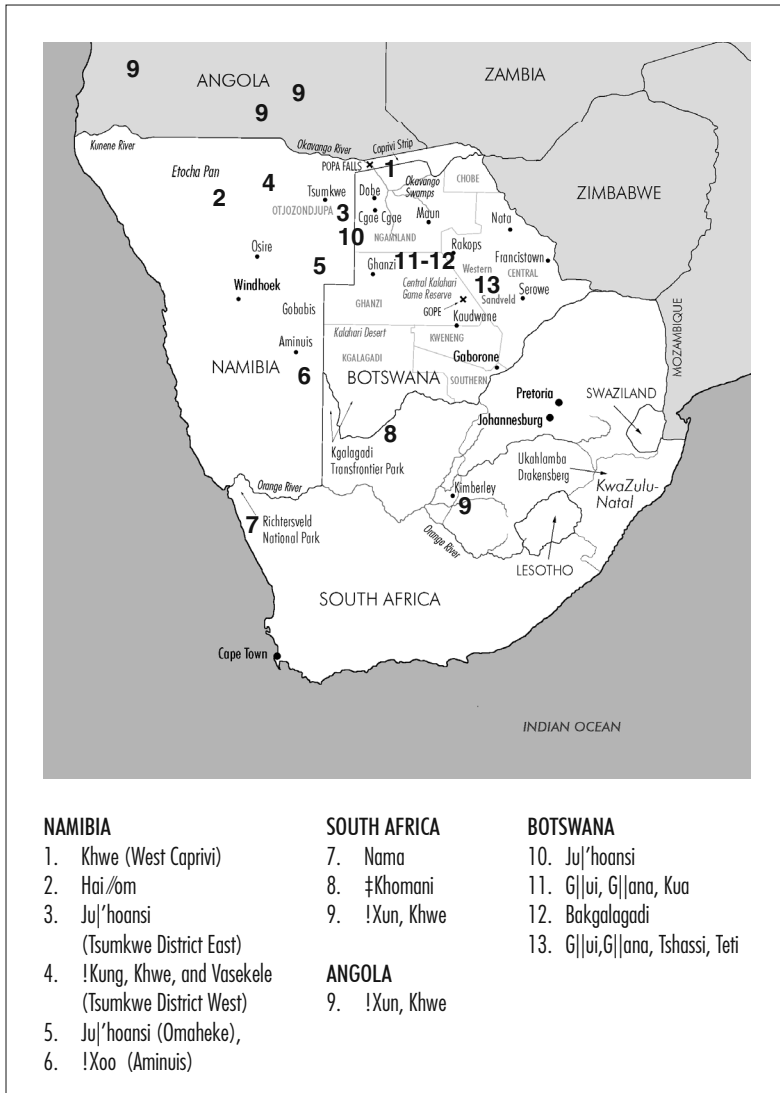


ANGOLA

The civil war in Angola meant that no contact was possible with the San living in that country for almost 27 years, and effective contact was not established until the 2002 ceasefire. However, a team of consultants¹ was able to visit Angola soon after the war ended. According to their estimation, some 3,400 !Xun San live in small groups, mainly in the provinces of Huíla, Cunene and Cuando Cubango.² Khwe San were found to be located more towards the east, and pre-war estimates indicate that similar numbers of Khwe live in that area.³ It was not possible to make contact with San living in the eastern areas at that point, due to the widespread prevalence of land mines.

San communities in Angola: “Where the First are Last”

In its assessment report – *Where the First are Last – San Communities Fighting for Survival in Southern Angola*, the team found that the San were highly vulnerable in terms of food security and were suffering from malnourishment. The San’s survival depended on the food they received in exchange for working in the fields of Bantu neighbours, although sometimes they were able to supplement this by gathering, hunting and the cultivation of small fields. In some communities, water was also scarce and a frequent source of conflict with neighbours. Access to adequate health facilities in all of the communities visited was very poor. Literacy levels were extremely low, with hardly any San children attending school. The assessment concluded that the Angolan San were suffering greatly from economic exploitation, social exclusion, discrimination and abuse of their human rights. Very limited land rights had also led to an erosion of the San’s former hunter-gatherer lifestyle. Consequently, the overwhelming majority of Ango-



lan San were experiencing an uneasy relationship of servitude and dependency upon their Bantu neighbours.

Despite this, one of the more positive findings of the assessment was that all of the San interviewed demonstrated a resilient attitude to

hardship and expressed a strong desire to move away from dependency and exploitation. The assessment report therefore focussed on the practical interventions needed to enable this process to occur. Its recommendations were both short and long-term. The short-term interventions focussed on an Emergency Project to ensure that food, seed, agricultural tools, clothing and blankets were received and to identify the most urgent water supply needs.

Longer-term recommendations for the San involved: working to improve food security; improving children's access to formal education; establishing programmes to raise public awareness of San human rights and lobbying the Angolan government in relation to the issues affecting the San; assisting communities to secure land rights and improving their development capacity, calling on Angolan and international organisations to raise awareness and produce joint strategies; and building the capacity of OCADEC⁴ so that it could become the development coordinating and implementing agency of the San in Angola.

The Angolan Emergency Project

During 2003/4, OCADEC implemented the first stage of the short-term Emergency Project, with the support of Trócaire Angola and WIMSA. The project focussed on aid to the San communities in the regions of Huíla, Cunene and Cuando Cubango and its key objectives were to reduce malnutrition, increase agricultural production, minimise the lack of clothing and blankets, reduce time spent on water collection and decrease dependency on the families of other ethnic groups and government hand-outs. Each San family received an allocation of food, seeds, tools, blankets, clothes and water containers.

Although it was not possible to monitor the planting and harvesting in all villages, the largest communities received a support visit from an agricultural technician and the other communities received assistance during the follow-up visits after the initial implementation period. This support aspect of the project contributed greatly to building trust and improving the fledgling relationship between OCADEC

and the San. Practical help is clearly the most important factor in assisting the Angolan San at this stage. In February 2004, a workshop organised by WIMSA, Tròcaire Angola and OCADEC was held in Luanda and a video report of the assessment was shown. The workshop reported back to Angolan society about the findings of the assessment, invited views and ideas on development and provided a lobbying platform for the San in Angola.

Following an evaluation of the first project phase carried out by OCADEC and an externally appointed consultant, the second phase of the Emergency Project commenced in 2004 and will continue into 2005. The evaluation looked at the project outcomes that were deemed to have been a success, both in terms of crop yield and in increasing the confidence and determination of the San themselves. During 2004, more crops were planted than in the previous year and the rains in the region were also better. It is hoped that the crop yields for 2005 will therefore be greater than those achieved in 2004.

Future plans

A visit by WIMSA, Tròcaire Angola and OCADEC representatives to the province of Huíla has been planned for February 2005. The idea is to spend time with various San communities so that an update on their situation can be gained.

This visit will provide inputs for a long-term three-year intervention programme to be developed by OCADEC, WIMSA and Tròcaire Angola. The overall aim behind this development work is to assist the San in their efforts to become fully independent from the other ethnic groups. It is also hoped that the next few years will see attention turning to securing funding so that Angolan San can improve their health, access to education and can build their organisational capacity.

All three partners have been inspired by the hard work and commitment the San in Angola have displayed in relation to agricultural production and in considering plans for their future. In many parts of southern Africa, the racial origin of development and support workers is a sensitive issue and both anti-white and anti-black attitudes can

prevail within San communities. However, the San of Angola have proved very positive in welcoming assistance and support from outside agencies or individuals - regardless of their race or country of origin.

The San now need to unite in working towards achieving their primary aims and committing themselves to longer-term planning. One of the greatest challenges facing the San in Angola is their lack of assertiveness as a result of years of ill-treatment. Indeed, it is not unlikely that, as the San begin to assert their rights and increase their confidence, conflict and competition with other ethnic groups will escalate. Development planning will need to take account of this problem and discussions are now taking place with new partners ZOA Refugee Care and OCHA.⁵

In relation to the situation of the Khwe San living in the eastern part of the country, the presence of landmines is still a major barrier to working effectively with the communities. It will certainly take many years to make good the damage caused to the lives of the San and other groups by the long war in Angola. However, it is hoped that the experience of San organisations in neighbouring countries combined with generous funding from donors will ensure that, within a decade, the San will be able to build their capacity, acquire literacy skills and gain confidence in order to fight for their rights and improve their lives. □

Notes

- 1 The team was commissioned by Trócaire (Irish Catholic Agency for World Development) Angola and the Working Group on Indigenous Minorities of Southern Africa (WIMSA).
- 2 **Pakleppa, Richard and Kwononoka, Americo.** 2003. *Where the First are Last – San Communities Fighting for Survival in Southern Angola*. WIMSA and Trócaire Angola, in collaboration with OCADEC.
- 3 **Pakleppa and Kwononoka** op. cit. The assessment was also reported on fully in WIMSA's Annual Report 2003-4, WIMSA, 2004. See also *The Indigenous World 2004*, IWGIA.
- 4 OCADEC: *Organização Cristã de Apoio ao Desenvolvimento Comunitário* (Christian Organisation Supporting Community Development).
- 5 ZOA Refugee Care: Interdenominational Christian Foundation. OCHA: the United Nations Office for the Co-ordination of Humanitarian Affairs.

NAMIBIA

The San – sometimes still referred to as “Bushmen” - are the “first people” of southern Africa. They once led a peaceful hunting and gathering lifestyle but are now one of the most marginalized and poverty-stricken ethnic groups living in the southern African region.

The Working Group of Indigenous Minorities in Southern Africa (WIMSA) – an advocacy and lobbying NGO of San communities and organisations established in 1996 - estimates that there are around 33,000 San currently living in Namibia, belonging to the Ju|’hoan, !Kung, Khwe, Naro, Hai||om and !Xóó language groups. They are widely dispersed across the country but the majority of groups are concentrated in the central and northern areas. Over the last decade, development initiatives undertaken by and with the San have intensified within Namibia, largely as a result of the work of WIMSA and, since 2003-2004, many positive achievements have been experienced.

Organisational capacity building and networking

In 2004, the Omaheke San Trust (OST), a San-led Community-Based Organisation (CBO) based in Gobabis, established a San-majority Management Team amongst its employees to take responsibility for both major and minor day-to-day management decisions.¹ Ironically, the main challenge now is for the Management Team to take difficult and sometimes unpopular decisions and for the San in Omaheke to accept these decisions, taken by members of their own community. This move towards “building organisational capacity” has provided the organisation with essential learning experiences but has also ensured personal development opportunities for the individuals involved.

During 2003-4, WIMSA itself expanded its support activities to the San by establishing the "WIMSA Support Unit". This provides practical advice and hands-on experience to San organisations in Namibia that wish to build their capacity. Networking between the Nyae Nyae Conservancy, Integrated Rural Development and Nature Conservation (IRDNC) and WIMSA will continue and all organisations are committed to working with the San in terms of fostering both national and international relationships with NGOs, governments and UN agencies.

Land and human rights

Following Namibia's independence in 1990, the government introduced communally owned "conservancies" where communities can achieve a level of control over some of the natural resources and thereby generate income from game management and tourism. In 2003, the !Kung of Tsumkwe District West were granted their Nǀa Jaqna Conservancy by the Namibian government. Overgrazing and illegal occupation by other ethnic groups have been a problem but a Development Planning Team, supported by WIMSA, assisted the !Kung to take decisive legal action against these abuses. Elections were held for the Conservancy's District Committees and the 21 communities were consulted regarding the planned utilisation of the land. "Natural Resource Zoning Maps" were produced in order to plan for the future development of the Conservancy and, during 2004, an application for a community forest was made in order to protect the existing forest areas.

Although there is much to be positive about for the San living in the Nǀa Jaqna Conservancy, a number of human rights abuses have occurred over the last two years. These include the illegal seizure of land, denial of access to water, assault, unlawful arrest and detention, and police corruption. Work is currently being undertaken by WIMSA's lawyer, in cooperation with the Namibian Legal Assistance Centre (LAC), to challenge these abuses. The San living at the Donkerbos/Sonneblom San Project in the Omaheke Region have also suffered severe bullying and harassment from other ethnic groups and even

members of the Namibian police force, and their case has been taken up by the Omaheke San Trust's Community Rights Team and the LAC.

Leadership

In 1998, the Ju|'hoansi and !Kung Traditional Authorities of Namibia's Tsumkwe Districts East and West achieved formal recognition of their status as traditional authorities and were permitted to enter the Council of Traditional Leaders, an advisory body to the government on the control and utilization of communal land. In 2004, the government also recognised the Hai||om Traditional Authority, although this representation is disputed by many of the Hai||om community who feel that the decision was based upon political party allegiance. The Ju|'hoansi of Omaheke North, !Xóó of Omaheke South and Khwe of West Caprivi, on the other hand, and despite many similar attempts, have not yet gained government support for their recognition. One of the major frustrations facing San communities in Namibia has been that the recognition of a traditional authority is all too often seemingly tied to the political affiliation of an individual rather than the legitimacy of their application. It is hoped that the Namibian San Council, which was recently established with the support of WIMSA and met for the first time in March 2004, will provide an additional and robust structure for leadership and decision-making amongst the san.

Heritage and culture

In November 2004, the Hai||om San celebrated the launch of a publication dedicated to their oral history and based on interviews undertaken by the San themselves.² The launch took place in Outjo at the official opening of the Hai||om Cultural Centre. This was organised by the Hai||om Youth League Network and the WIMSA Educational Programme. The Hai||om book was also launched at events in Cape Town, South Africa and Windhoek, Namibia in partnership with the launch of another new pan-southern African San oral history book.³

Despite this new cultural revival and reclamation of cultural identity, many San still suffer from “intellectual hi-jacking” of their traditional knowledge and culture – often by individuals and companies involved in the tourism industry or as a result of well-meaning researchers. In order to fully enable the San to defend their rights, a “Media and Research Contract for the San of southern Africa” was drawn up. This contract means that all researchers and media representatives who work with the San must undertake to respect the heritage of the San peoples and agree not to use any research or information obtained from them without their express permission. By 2004, this contract had been honoured by the majority of researchers and media workers. A “Handbook on San Intellectual Property Rights” was also produced and distributed to San communities, academics and university libraries.

The San experienced much media attention in 2004 in relation to their involvement with “P57”, a *Hoodia gordonii*⁴ based appetite-suppressant that will be marketed by international companies as an anti-obesity drug. Although the South African San Council has been mandated to deal with this issue on behalf of all San, the Namibian San are now involved in many new government-supported initiatives and projects dealing with the issue of Hoodia and the use and development of other plants and natural resources within the country. Intellectual property rights continue to be an issue of great importance to the San, culminating in the publication of an informative booklet on the subject in 2004.⁵

A series of Annual San Regional Craft Workshops involving a group of partners who work with San-produced crafts was organised in 2002 in order to empower the San to manage and market their craft products. Mickael Kra, a jewellery designer from Paris visited Namibia and held several workshops on craft innovations with the San culminating in a San jewellery fashion show, “The Pearls of the Kalahari”, which was held in Windhoek, Namibia in 2003. Mickael returned to Namibia in 2004 and continued to conduct workshops in order to develop the range, quality and production methods and to plan international marketing. At the same time, the Omaheke San Trust constructed

a new craft shop in Gobabis, Namibia that opened for business in 2004 and is aimed at tourists travelling the Trans-Kalahari Highway.

Education and youth

At least 60% of San in Namibia are non-literate. Illiteracy rates amongst adults are as high as 90% in areas such as Omaheke. A high drop-out rate amongst San school children still exists due to poverty, bullying, discrimination, travelling distances, difficulties in registering for school and a culturally inappropriate curriculum in which mother tongues are not taught. Despite this, WIMSA's Education Programmes have now been running for several years and have made great inroads into assisting San of all ages. The development of San languages has also flourished, with the pan-southern African "Penduka II" San Language Workshop being held in Namibia in 2004. Every year, WIMSA also employs San trainees from across southern Africa and, since 1996, 12 of the 22 trainees have been Namibian.

Despite the Namibian government's "Affirmative Action" policy in the area of education, the San still do not experience anything like equal access to educational opportunities in Namibia. Indeed, in some areas – such as West Caprivi – other ethnic groups are becoming more hostile towards the San as a result of perceptions in relation to government "Affirmative Action" policies, even though the policies are not actually working in practice for the San. However, WIMSA and the San have been tackling this problem by working hard to mobilise San youth. During 2004, a San "Youth Mobilisation and Training Programme" became firmly established, along with Hai||om Youth Leagues in Otjiwarongo, Outjo, Oshivelo and Otavi. A "Hai||om Youth League Network" was set up, with over 60 Namibian Hai||om youth now being actively involved in their communities. A Hai||om Youth Festival was held in Outjo in 2004 and Khwe Youth Leagues were established in Caprivi. This mobilisation of young San at the grassroots level has been pivotal in increasing the number of children registering for school. San youth have also committed themselves to setting up Early Childhood Development resource centres, kindergartens and af-

ter-school clubs. Significant educational achievements for the San during 2004 also included the first San student to enrol at pre-medical school, the first law student and the first to enrol on a journalism course. □

Notes

- 1 The San's Nyae Nyae Conservancy in Namibia also has San employees on its Management Committee. The Nǀa Jaqna Conservancy also has a Management Committee, which comprises elected, not paid, San representatives.
- 2 **Longden, Christina, ed. 2004.** *Undiscovered or Overlooked? The Hai||om of Namibia and their Identity.* Windhoek: WIMSA.
- 3 **Le Roux, Willemien and Alison White, comps. 2004.** *Voices of the San,* Cape Town: Kwela Books.
- 4 A desert succulent used by the San as a thirst and appetite suppressant.
- 5 "Biopiracy in the Kalahari?" by WIMSA and one of its donors, Evangelischer Entwicklungsdienst/ Church Development Service (EED).

BOTSWANA

There are approximately 50,000 San in Botswana, found primarily in seven districts (Chobe, North West, Central, Ghanzi, Kgalagadi, Kweneng, and Kgatleng). There are also San living in the major cities, including Gaborone, Molepolole and Francistown. The San are divided into a number of different groups each with their own name, language and cultural traditions (e.g. the Ju|'hoansi of Ngamiland, the Nharo of Ghanzi District, the Khwe of Ngamiland and the Tyua of Central District, Ngamiland and Chobe).

The Nama (Khoikhoi) are found in southern Botswana in Kgalagadi and Ngwaketse (Southern) districts. They are largely pastoral people, some of whom live on cattle posts and freehold farms. They number in the hundreds.

The Bakgalagadi are Tswana-speaking peoples. They number some 100,000 and have lived in the Kgalagadi (Kalahari) Desert for hundreds of years, some of them as neighbors of the San in the Central Kalahari Game Reserve.

The court case

A major focus of concern regarding indigenous peoples' issues in the Republic of Botswana in 2004 was the question of whether or not the people of the Central Kalahari Game Reserve (CKGR), the largest conservation area in Botswana, would be allowed to reclaim their land and resource rights in the Central Kalahari.

When the Botswana government decided to remove the Central Kalahari people from their homes and dissolve their hunting and gathering rights some of the residents, together with the two San organizations, First People of the Kalahari (FPK) and WIMSA Botswana, sought

the assistance of lawyers to file a legal claim on their behalf. When the case was first filed, in February 2002, it revolved around the issue of the Botswana government's decision to cut off access to services, especially the provision of drinking water, in the Central Kalahari. After a Botswana High Court judge, the Hon. Judge Dibotelo, dismissed the case on a technicality in April 2002, the legal team for the San and Bakgalagadi (the residents of the Central Kalahari) appealed the dismissal. The High Court ruled that the case could be heard, and the new trial opened in July 2004. After some delays and two recesses, the case was still ongoing at the time of writing (January 2005).

The issues in the CKGR court case are complex. The government's position is that the people moved out of the Central Kalahari voluntarily. The position of the San and Bakgalagadi who brought the complaint to court is that they were involuntarily relocated. Some of the testimonies in the court case addressed the issue of the pressure that was brought to bear on the residents of the reserve by government officials and others. The government argues that it provided compensation to people for loss of assets such as homes and other facilities. Some people were paid as much as 72,767 pulas (US\$ 16,000) for their losses. In addition, the government provided people with five head of cattle in order to help facilitate their transition to agro-pastoralism. However, some of the people who were relocated claim that they were not provided with compensation or that the animals they received either died quickly or were taken by predators. They also complain that they are prevented from, or even arrested for, going back to their former homes in the reserve to visit the graves of their ancestors or to bury people who had stayed behind and since died.

A crucial point of discussion in the case revolved around whether the San and Bakgalagadi were indigenous to the reserve area. The G|wi and G||ana San argued that they were indeed indigenous to the area, and that they had lived there for hundreds if not thousands of years. When travelers and explorers visited the Central Kalahari in the mid-19th century, both San and Bakgalagadi were living in the Central Kalahari. Oral history, archaeological and ethno-historic evidence all suggest that the people of the Central Kalahari had occupied the area for a substantial period and that they had not only foraged but also kept domestic animals, mainly sheep, goats and donkeys in the CKGR

for decades. The livelihoods of the Central Kalahari people were thus not based solely on hunting and gathering but on a mixed production system that involved pastoralism, agriculture, trade and periodic employment for people outside of the reserve.

And after the court case?

There is concern on the part of some San, Bakgalagadi and others that the legal strategy may not work, and that a court decision that goes against the people of the Central Kalahari will hurt them in the long run. Recommendations have been made that other strategies should be attempted, such as entering into binding arbitration with the Botswana government. Some non-government organizations, as well as individuals, have advocated that the people of the Central Kalahari Game Reserve should appeal to the International Court of Justice (ICJ) or that the San and other minority groups should seek the assistance of the United Nations. It has also been suggested that the CKGR residents should challenge some of the mining companies engaged in prospecting in the game reserve in court or put pressure on the shareholders of those companies. Some people from the CKGR have also suggested that a complaint should be filed with the governing bodies of agencies providing financial backing to companies engaged in mineral prospecting in the CKGR, such as the International Finance Corporation (IFC).

Efforts were made in 2004 to raise awareness about the human rights issues facing the San and their neighbors in Botswana. In August-September 2004, representatives of the San of the Central Kalahari and of the ǀKhomani San of South Africa toured the United States and paid a visit to the United Kingdom. In the U.S., the spokespersons for the San, Roy Sesana and Jumanda Gakelebhone, appeared before the secretariat of the United Nations Permanent Forum on Indigenous Issues. They also visited American Indians and activist groups in California, New Mexico, Washington D.C. and New York City, as well as the US Congress. As a result of the tour, the San received substantial international press coverage. Various organizations and individuals provided support to the San visit, which was coordinated by the Indig-

enous Land Rights Fund (ILRF), a recently established US-based indigenous support organization.

Subsistence hunting under the gun

In the latter part of the 1990s, the GOB ceased distributing subsistence-hunting licenses known as Special Game Licenses (SGLs). These, which had been in existence since 1979, had been available to remote area populations, who qualified on the basis of their dependence on wild animals. In 2002, however, at the time when the Botswana government relocated several hundred people from their homes in the Central Kalahari to settlements on the periphery of the reserve (New !Xade in Ghanzi District, Kaudwane in Kweneng District, and Xeri in Central District), SGLs were nevertheless given to people who had had hunting rights in the Central Kalahari and had been relocated to Ghanzi District. The possession of these licenses did not, however, mean that people were immune from being arrested for hunting violations. In 2004, a number of San and Bakgalagadi who were hunting in the CKGR and who possessed SGLs were arrested for contravening Botswana's wildlife legislation.

The Botswana government argued that the cessation of Special Game Licenses was justified on the basis that there would be functioning community-based natural resource management (CBNRM) projects in place in the new settlements. Whether or not this is indeed the case is open to debate. While there are certainly organized community-based natural resource management activities in some parts of Botswana, notably in Ngamiland (North West District), northern Ghanzi District (in the Groote Laagte Wildlife Management Area) and Kgalagadi District, CBNRM activities are functioning less in the three settlements near the Central Kalahari Game Reserve than in other places around the country. It is also not known whether the three resettlement communities have opted to set aside a portion of the wildlife quota they receive from the Department of Wildlife and National Parks for subsistence use, as some of the community trusts that have CBNRM projects do. If not, local people's access to wild meat will be seriously reduced, and they will be socio-economically worse off than before they were relocated.



Roy Sesana, the spokesperson of the San and the Bagkalagadi of the CKGR. Photo: IWGIA archive

The former residents of the Central Kalahari Game Reserve have also been unclear as to whether they can hunt inside the Reserve. Originally, the land use plan for the Central Kalahari and the adjacent Khutse Game Reserve specified that people could engage in natural resource utilization as long as it was done in a sustainable manner, using traditional weapons. People in and around the Central Kalahari were told in the late 1990s by the Department of Wildlife and National Parks that they had the right to hunt and gather in and around the CKGR. By 2004, the government's position on natural resource access had changed, and people can now be arrested for engaging in foraging inside the Central Kalahari.

The change in the hunting regulations also means that people are now permitted to hunt only during the regular hunting season (April-

September), and that they must obtain hunting licenses and modern weapons like other citizens of Botswana. The numbers and types of animals that can be taken on these hunting licenses are much lower than was allowed with the Special Game Licenses. The shorter hunting period also means that more meat has to be set aside for later consumption and that a lot of time has to go in to processing *biltong* (dried meat). People are also unclear as to whether or not they can use traditional weapons in hunting. Some Department of Wildlife and National Parks staff (e.g. the Regional Wildlife Officers) arrest people if they are found in possession of traditional weapons (bows, arrows, clubs or spears), while other DWNP staff allow people to hunt using traditional weapons as long as they are doing so within the boundaries of their community-controlled hunting areas and the community trust council has designated a portion of the quota for community use.

Other developments

Some communities with large numbers of San or Nama are engaged in activities that range from tourism to craft production and sale to work with private safari companies. Some community trusts, such as those around the Okavango Delta, have been making a fair amount of money from safari hunting and tourism. There have been problems in a number of cases, however, with the management of these funds. In some instances, the community trust council members paid themselves sizable sitting allowances, and funds were not distributed more widely to members of the community trusts. In 2004, calls came both from community trust members and from the government of Botswana for more transparent, accountable and responsible management systems.

The Botswana government, unlike the governments of Namibia and South Africa, still does not allow the teaching of San languages in schools. The languages used in the schools, in line with Botswana government policy, are Setswana and English. Nevertheless, on-going efforts to promote the learning of San languages, including Nharo, in Ghanzi District, continued in 2004 with the assistance of groups and individuals working with the Kuru Family of Organizations (KFO). In

Ngamiland, the Trust for Okavango Cultural and Development Initiatives (TOCaDI) helped produce a new book, *Voices of the San*,¹ which is a compilation of stories told by San people from South Africa, Namibia and Botswana. The Kuru Family of Organizations, including TOCaDI, worked closely with the Working Group of Indigenous Minorities in Southern Africa (WIMSA) on the documentation and promotion of San languages and cultures, as well as on land rights and development issues among San in Botswana. Efforts are also being made by San non-government organizations to work on issues relating to poverty alleviation, HIV / AIDS education and income generation programs.

Concluding remarks

Much rides on the success or failure of the Central Kalahari Game Reserve legal case. Many San and Bakgalagadi, as well as others, have pinned their hopes and dreams on the legal case, thinking that if it is won it will open up broad new horizons of human rights, development and social justice for indigenous minorities in Botswana. There are those who think that greater investment needs to be made in grass-roots development, working hand in hand with Botswana government institutions ranging from the Ministry of Agriculture and the Ministry of Local Government to the district councils and land boards. As one Ju|'hoan woman in Dobe remarked, "Without the support of both the government of Botswana and the non-government organizations working with and for the San people, we will not be able to make progress in development and human rights." And as DITSHWANELO, the Botswana Center for Human Rights noted, "For development to be effective, it must be people-centered." □

Reference

- 1 Le Roux, Willemien and Alison White, comps. 2004. *Voices of the San*. Cape Town: Kwela Books.

SOUTH AFRICA

The indigenous peoples of South Africa¹ have been locked in an eight-year process of negotiating constitutional and policy recognition from the government. Generally the government is open to this policy initiative but the particularities of apartheid (a policy of racial segregation that was in force from 1948 -1994) have left a complex legacy that requires clear leadership and clarity around principles of representation, governance and identity politics.

First steps towards a national indigenous policy

In December 2003, the South African cabinet looked at a memorandum that set out the policy process for recognition of indigenous peoples. This event was not only of great interest to indigenous peoples in southern Africa but would also permit the Department of Foreign Affairs (DFA) to play an active role at the United Nations during the last year of the UN International Decade of the World's Indigenous Peoples.

The first memorandum was sent back to the Department for Provincial and Local Government (DPLG) to address unresolved issues around traditional authorities and recognition of leadership. The issue of government recognition of indigenous traditional leaders (in contrast to the long-standing recognition of Black chiefs) is highly contentious and complex.

The memorandum was only adopted with modifications in late November 2004. In practice this limited the ability of the DFA to act decisively within the diplomatic corps during the 10th UN Inter-sessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples in September. Nonetheless, the final adoption of the

memorandum represents a long struggle on the part of indigenous activists to be recognised, and it creates the first definitive indigenous peoples' policy process in Africa. The DFA has continued to be as supportive as possible in the absence of a clear policy from the Cabinet.

The content of the final memorandum has not been released publicly. One of its components includes the formation of an inter-departmental working group on indigenous affairs. This will encourage co-ordination between government departments and will allow indigenous peoples to have a contact point for each of the national ministries (for example, Land Affairs, Arts and Culture, Justice and Constitutional Development etc).

The DPLG will remain the co-ordinating department, with its primary function being the preparation of a document on traditional leadership in Khoe and San communities as well as representation in government. A task team will then discuss this issue in a workshop with interested parties, including the government-initiated National Khoe-San Council. The approval of the memorandum opens up the possibility of South Africa being the first African country to sign ILO Convention No. 169.

Community structures

Most of the main national indigenous peoples' organisations remained active during 2004. The National Khoe-San Consultative Conference (NKCC) moved its offices to the University of the Free State, Bloemfontein. The NKCC co-operated with Professor Robert Gordon of the University of Vermont (USA) to host a symposium on indigenous identity and history. This symposium was attended by various heads of department at the University, representatives from the South African Heritage Resource Agency, the Bloemfontein Museum and the Sol Plaatjies Museum in Kimberley.

The South African San Council continued its work on intellectual property rights, mainly in relation to the benefit-sharing scheme for *hoodia gordonii*, a desert succulent used by the San as a thirst and appetite suppressant and which is being developed as a weight loss drug.

Pfizer pulled out of its partnership with the San Council and was replaced by Unilever.

The Nama people of the Richtersveld created a representative structure to represent their different villages and call for cultural and leadership recognition on the part of the province. The South African First Indigenous Human Rights Organisation (SAFHIRO) opened its doors in Kimberley and assisted in the co-ordination of indigenous organisations and government around the leadership issue.

Port Nolloth Workshop

In September, the Richtersveld Nama Traditional Council, in co-operation with the Indigenous Peoples of Africa Co-ordinating Committee (IPACC) and the Office of the High Commissioner for Human Rights (OHCHR) hosted a workshop on indigenous peoples' rights. The workshop brought together a representative selection of leaders from national structures to learn more about international mechanisms for indigenous rights, to review the South African constitutional and policy situation, and to set out a plan of action.²

The findings of the workshop included:

- Most rural Khoe and San people feel marginalised and are not sure about the mechanisms for negotiating with government;
- Issues of endangered cultures and languages are keenly felt but these cannot be addressed without dealing with the broader context of poverty and joblessness;
- Indigenous peoples need support to build effective leadership and representative structures;
- The UN Decade created a platform for action that has strengthened the solidarity of indigenous peoples;
- San, Griqua and revivalist Khoisan peoples have become empowered during the decade, but more attention is needed to support rural Nama herders to organise and represent themselves.



Adam Jacobs and his family in Sanddrift. Jacobs is a Nama and participated in the Port Nolloth workshop. Photo: Nigel Crawhall

Human rights issues

In December, the National Commission for the Protection and Promotion of Cultural, Religious and Linguistic Communities (also called “the Commission with the long name” or the CRL Commission) hosted a public consultation on its work and mandate. The CRL commission is a statutory body created by the Constitution (section 185) to deal with issues of conflict, tolerance, marginalisation and inclusion in the new democracy. Originally seen as a forum for negotiating with white separatists, it has become a forum for marginalised ethnic and religious groups. There was a strong Khoisan presence at the meeting, mostly representing revivalist organisations that are trying to negotiate their identity in the new South Africa. The CRL commission will be one of the fora where Khoe and San peoples can bring their concerns about marginalisation.

The South African Human Rights Commission (SAHRC) held a special hearing in the Kalahari Desert to investigate the circumstances of the killing of a leading San tracker, Mr Optel Rooi. The †Khomani man was shot dead in January 2004, allegedly by a white police officer. Trackers in the community reconstructed events to demonstrate that Mr Rooi, who was unarmed, had been shot at close range in the back. The event brought to national attention the bitter race relations in the Kalahari Desert, the issue of police corruption and ongoing human rights abuses, and the general chaos of the post-land claim situation for the †Khomani San. Members of the CRL Commission and the media attended the week-long event.

Commemorating the first UN Decade

On 12 December 2004, the Working Group of Indigenous Minorities in Southern Africa (WIMSA) and IPACC hosted a commemoration of the first UN Decade at Cape Town's Iziko National Museum. The event attracted indigenous leaders and activists from across southern Africa and included speeches, workshops, exhibitions and performances. Though for many the UN Decade may have seemed like a failure, for Khoe and San peoples, as for other Africans, the UN Decade was the start of a whole new phase of their struggle for dignity and survival. The Decade had focussed policy attention on the poorest of the poor and people were genuinely glad to celebrate the achievements of the past ten years. □

Notes

- 1 The indigenous peoples of South Africa are the Khoe, which include the Nama (5-10,000) and the Griquas (300,000); and the San, which include the !Xun (4,500), the Khwe (1,500) and the †Khomani (1,000). Revivalist groups include the Attaqua, Goringhaiqua, Outeniqua and others – numbers unknown at this stage.
- 2 The Port Nolloth report is available from ipacc@iafrica.com.

PART II

INTERNATIONAL
PROCESSES

THE SPECIAL RAPPORTEUR 2004 OVERVIEW

During 2004, Rodolfo Stavenhagen, the United Nations Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, continued to carry out a number of activities in the context of the mandate entrusted to him by the United Nations Commission on Human Rights in 2001, and extended in 2003.

These activities have focused first on advancing the conceptual development of some of the main issues of greatest concern to indigenous peoples around the world, second on carrying out visits to a number of countries to study the situation of indigenous peoples *in situ* and analyze the obstacles and challenges to full enjoyment of their human rights and third on making use of his good offices to call the attention of governments to the particularly dangerous human rights situation faced by a number of individuals and even entire communities, as well as to request they take steps to investigate allegations of human rights violations.

The Special Rapporteur furthermore continued to monitor developments in the United Nations system, participating in international and national-level conferences and research seminars, evaluations, training workshops and so on directly related to his mandate.

Protection gaps: an outstanding issue

Since his appointment in 2001, the Special Rapporteur has witnessed the immense obstacles indigenous peoples face in fully enjoying their human rights. 2004 coincided with the end of the First International Decade of the World's Indigenous People. However, despite the

achievements and efforts made over these past ten years, in many countries indigenous peoples continue to be the victims of extrajudicial executions, arbitrary detention, torture, forced evictions and many other forms of discrimination.

The Special Rapporteur has noted in a number of public interventions that when indigenous peoples fight for the promotion and protection of human rights, and claim redress for the violations they have been subjected to, they are, in many parts of the world, specifically targeted and subjected to threats, intimidation, reprisals and even attacks. This situation is particularly worrisome in the case of indigenous women and indigenous human rights defenders.

For this reason, on the occasion of International Human Rights Day, 10 December 2004, the Special Rapporteur, along with 27 other independent experts of the Commission on Human Rights, called upon governments, UN agencies and programmes, civil society and the private sector to strengthen their efforts to close the important protection gaps being faced by indigenous peoples around the world, a goal that should inform the activities to be planned in the context of the Second International Decade on the World's Indigenous People.

Main report on Education and Indigenous Peoples

The Special Rapporteur has focused his main report to be presented to the 61st session of the Commission (April 2005)¹ on the hindrances and inequalities that indigenous peoples face in relation to access to and quality of education systems. It gives examples of good practices and initiatives aimed at providing durable solutions to the education challenges facing indigenous peoples in different countries.

The report contains information received from different sources indicating that, even if the right to education has been universally proclaimed, indigenous peoples are far from enjoying it fully. Economic, social and cultural factors often impede the full participation of indigenous children in education. High rates of illiteracy, high levels of absenteeism and the deficient education services being provided in schools tend to be more prevalent among indigenous peoples than in

mainstream society. In his report the Special Rapporteur, while taking note of the significant efforts being made by a number of governments to reduce such differences, stresses the persistence of a number of obstacles to indigenous peoples' access to education services. Their demographic distribution and the lack of appropriate transportation facilities are often important constraints on indigenous children and on their access to the few schools existing in the areas in which they live. Schools in indigenous areas are normally badly serviced and lack a minimum of economic and didactic resources. In addition, discrimination practices against indigenous education persist in many countries.

The Special Rapporteur notes that the main obstacles to indigenous peoples' full enjoyment of their right to education are traditional assimilation practices and an ignorance and underestimation of indigenous languages and cultures on the part of mainstream education systems. Over the last few years, however, we have been witnessing changes and, in some countries, indigenous cultures have been given the benefit of official recognition within mainstream education. Some countries have also acknowledged that a bilingual and intercultural education is very much needed. However, indigenous peoples' aspirations go further than this: they are demanding the right to receive an education in their own language, adapted to their own culture.

Intercultural bilingual education is in fact facing numerous challenges, ranging from the lack of or deficient capacity of the bilingual teachers to the development of appropriate didactic and pedagogic methods and the active involvement of the communities in the design and management of their own education facilities at all levels. There have been some recent achievements in a few countries but their impact is limited to pre-school and primary education. The Special Rapporteur concludes by stressing that indigenous education, adapted to the cultures and values of the indigenous peoples, is the best way to guarantee the right to education.

Based on these conclusions, the Special Rapporteur recommends, among other things, that states should give priority to the purposes and principles of indigenous culture and provide agencies and both private and public institutions in charge of promoting indigenous education with the necessary material, institutional and intellectual re-

sources. He invites states to prepare specific programmes in close collaboration with the indigenous communities and train an adequate number of teachers for bilingual and intercultural education within the framework of the forthcoming Second Decade. The Special Rapporteur invites the United Nations Education, Scientific and Cultural Organisation (UNESCO), and international cooperation in general, to provide support to this effort. He also recommends that indigenous universities be expanded and consolidated.

The Special Rapporteur further recommends that physical education, special education for indigenous peoples in the criminal justice system, as well as education for indigenous girls and women, be strengthened. He recommends that the media regularly include references to indigenous peoples and cultures in their programmes, and that indigenous peoples and communities should have the right to freely access the wider media, including radio, television and the Internet.

Country visits in 2004

The Special Rapporteur carried out two official country missions in 2004² to observe the situation of indigenous peoples.

He visited **Colombia** from 8 to 17 March, and in his report the Special Rapporteur takes note of the progress made in recent years in terms of the constitutional recognition of the rights of indigenous peoples. He also informs the Commission of the government's determination to deal effectively with the socio-economic problems that face Colombia's more than 700,000 indigenous people. However, the Special Rapporteur found that there were still enormous challenges to be faced in the effective promotion and protection of indigenous peoples' human rights and fundamental freedoms. The lack of coherence between the constitutional order, effective implementation of the relevant provisions and proper functioning of institutions has limited the achievements of the 1991 Constitution.

In the Special Rapporteur's view, full application of the human rights provisions of the Constitution is essential, yet these may be at

risk from proposed new legislative measures. He also expresses concern at the possibilities being considered in the country to limit the powers of the Constitutional Court, in particular regarding the introduction of limitations on protection proceedings. This represents a serious threat to the effective protection of indigenous rights, since this mechanism has been seen to be the most effective way of protecting the rights of indigenous peoples.

The Special Rapporteur considers certain urgent issues to be of vital importance, including the internal forced displacement of numerous indigenous peoples, the exploitation of the existing natural resources in their lands, the spraying operations as part of the campaign against illicit crops and the lack of prior consultation on matters that affect indigenous peoples, notably in the area of economic development.

Of particular concern are the devastating effects of the armed conflict on the indigenous peoples. The Special Rapporteur includes in his report a number of references to the many accounts heard during the course of his visit concerning the situation of conflict currently gripping the country, such as murder and torture, mass forced displacements, forced disappearances, the forced recruitment of young people into combat units and the rape of women, along with the occupation of their lands by guerrilla, paramilitary and other illegal armed forces. There are also reports of the militarization of some indigenous communities.

The Special Rapporteur is particularly concerned at the situation of some very small communities that are now on the brink of extinction as a result of the murder of their leaders and the massacres, threats and forced dispersal of their members, and he appeals in his report for a resumption of the peace process in order to restore respect for international humanitarian and human rights law and adopt the measures needed to halt the recruitment of minors into armed groups.

Based on these conclusions, the Special Rapporteur recommends, *inter alia*: that the supply and free passage of food to indigenous communities in conflict zones be secured, in particular to the neediest groups; that international cooperation be mobilized around an emergency aid programme to indigenous communities in danger of extinc-

tion, particularly in the Amazon region; that neutral and demilitarized indigenous territories be respected by all armed groups and indigenous peace zones created, free from all military operations and subject to international supervision; that the prosecution services be immediately allowed to carry out investigations and apply the law in all complaints concerning abuses and violations committed against members of indigenous communities by the Armed Forces and the police.

In the context of the new anti-terrorist measures, the Special Rapporteur calls on the military not to detain any indigenous people unless a warrant for their arrest has been issued by a competent authority. He also recommends that the original powers of the Constitutional Court, and in particular the "*amparo*" procedure, one of the principal mechanisms for the defense of indigenous peoples' human rights in the country, should be fully respected.

The rapporteur's visit to **Canada** took place from 21 May to 4 June 2004. In his report, the Special Rapporteur notes that he is encouraged by Canada's commitment to ensuring that the country's prosperity is shared by Aboriginal people, a goal to which the federal and provincial governments of Canada devote an impressive number of programmes and projects and considerable financial resources, as well as by Canada's commitment to close the unacceptable gaps between Aboriginal Canadians and the rest of the population in educational attainment, employment and access to basic social services.

He stresses, however, that economic, social and human indicators of well-being, quality of life and development are consistently lower among Aboriginal people than other Canadians. Poverty, infant mortality, unemployment, morbidity, suicide, criminal detention, children on welfare, women victims of abuse, child prostitution, are all much higher among Aboriginal people than any other sector of Canadian society, whereas educational attainment, health standards, housing conditions, family income, access to economic opportunity and to social services are generally lower. Canada has taken up the challenge to close this gap.

According to information received during the course of his visit, one of the main issues for Aboriginal peoples in Canada relates to land tenure and access to its natural resources. Aboriginal peoples continue

to claim their rights to the land and its natural resources, as well as to respect for their distinct cultural identities, lifestyles and social organization. Current negotiated land claims agreements between Canada and Aboriginal peoples aim at certainty and predictability and involve the release of aboriginal rights in exchange for specific compensation packages, a situation that has led in several instances to legal controversy and occasional confrontation. Obtaining guaranteed free access to traditional land-based subsistence activities such as hunting and fishing remains a principal objective of Aboriginal peoples in achieving the full enjoyment of their human rights, as does the elimination of discrimination and racism, of which they are still frequently the victims. In some cases, taking advantage of development possibilities, Aboriginal people have established thriving business enterprises. Much more needs to be done to provide such opportunities to all Aboriginal communities in the country in order to raise employment and income levels.

On the basis of these conclusions, the Special Rapporteur recommends to the Government of Canada, among other things, that new legislation on Aboriginal rights be enacted by the federal and provincial legislatures, in line with the proposals made by the Royal Commission on Aboriginal Peoples; that ILO Convention No. 169 be ratified promptly, in consultation with Aboriginal peoples; that no matter what is negotiated, it should be recalled that the inherent constitutional rights of Aboriginal peoples are inalienable and cannot be relinquished, ceded or released; that an evaluation of the new self-government agreements be undertaken.

He also recommends that the government intensify its measures to close the human development gaps between Aboriginal and non-Aboriginal Canadians in the fields of health care, housing, education, welfare and social services; that emergency measures be taken to address the critical issue of high rates of diabetes, tuberculosis and HIV/AIDS among Aboriginal people; that Aboriginal suicide be addressed as a priority social issue; that the government addresses with some urgency the elimination from existing legislation of provisions that place certain categories of First Nation women at a disadvantage; that section 67 of the Human Rights Act be struck out; that the Canadian Human

Rights Commission be mandated to deal with the human rights of First Nations; and that efforts be increased at all levels to reduce and eliminate the over-representation of Aboriginal men, women and children in detention centres.

Looking ahead, the Special Rapporteur has expressed his wishes to the governments of New Zealand and South Africa to visit their respective countries in 2005. □

Notes

- 1 Besides the main report, Addendum 1 contains information on communications and government responses on alleged human rights violations received and processed during the period from 15 December 2003 to 31 December 2004, as well as information on past and future activities of the Special Rapporteur. Addendum 4 contains the conclusions and recommendations from the OHCHR-UNESCO Experts Seminar held in Paris on Education and Indigenous Peoples as support to the work of the Special Rapporteur in this particular field.
- 2 The country mission reports are contained in documents E/CN.4/2005/88/Add.2 and Add.3, respectively.

THE UN PERMANENT FORUM ON INDIGENOUS ISSUES

The third session of the Permanent Forum on Indigenous Issues met from 10 to 21 May 2004 at the United Nations headquarters in New York and was attended by representatives from indigenous organisations, NGOs, intergovernmental organisations, states and UN specialised agencies. The special theme of the third session was "*Indigenous Women*", and issues pertaining to the particular role and vulnerability of indigenous women were emphasised throughout the event. Given the special theme of the event, indigenous organisations included an enhanced presence of indigenous women in their delegations.

The UN Secretary-General Kofi Annan opened this year's session. In his speech he acknowledged the multitude of problems still facing indigenous peoples around the world and stated that many indigenous peoples continued to experience prejudice, extreme poverty, disease, environmental destruction and, sometimes, permanent displacement. He also emphasised the importance of the genuine participation of indigenous peoples, including indigenous women, in the international mechanisms aimed at achieving the Millennium Development Goals. In his concluding remarks, Mr Annan challenged the UN, governments, international organisations, civil society groups and private business to develop partnerships with indigenous peoples and demonstrate sensitivity towards their cultures.

As in previous years, the session also scheduled numerous side events in the form of films, panel discussions and exhibitions on such topics as youth, women and armed conflicts, the environment, human rights, genetic technologies, labour rights and indigenous journalism. Various groups of indigenous peoples also organised caucuses throughout the session to discuss developments, prepare joint interventions and

co-ordinate strategies. Caucuses were either regionally focused (Latin America, North America, Africa and Asia) or topic based. In addition, an indigenous preparatory meeting was held on the two days prior to the third session. At this meeting, representatives from indigenous peoples' organisations shared experiences from previous sessions, reviewed major issues to be discussed at the Permanent Forum and developed a common strategy plan for the third session of the Permanent Forum.

Special theme: Indigenous Women

The third session's special theme "*Indigenous Women*" was addressed in a high-level panel held on the first day of the Permanent Forum and throughout the Forum's deliberations on the other mandated areas.

Indigenous women had prepared for the session in New York by organising a number of regional meetings in early 2004: the Second Asian Indigenous Women's Conference (Baguio, Philippines, March); the Fourth Continental Meeting of Indigenous Women of the Americas (Lima, Peru, April); and the Second African Indigenous Women's Conference (Nairobi, Kenya, April). A preparatory meeting was also organised for the Pacific Region (Fiji, March), and in Denmark, IWGIA organized a Seminar on Indigenous Women and Gender Relations with the participation of indigenous women from the four continents. Each one of these meetings issued declarations that later were presented during the Permanent Forum session.¹

During the high-level panel, all of the panellists and participants emphasised the vital role that indigenous women play in their communities as well as their vulnerable position, particularly in light of the globalisation of the world economy. According to the panel, the position of indigenous women has been further worsened by the privatisation of water, social services and ancestral land, the increasing emphasis on cash crop production, as well as armed conflicts and trafficking.

Of further concern to many of the panellists was the inadequate recognition of issues pertaining to indigenous women on the part of the UN mechanisms, particularly those with a mandate to address discrimination against women. It was also stressed by some of the panel-

lists that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) had failed to recognise particular issues of importance to indigenous women.

The draft recommendations on indigenous women prepared by the Permanent Forum urged the Committee on the Elimination of Discrimination against Women to organise a meeting together with indigenous women and other relevant UN bodies with the purpose of initiating the process of developing a general recommendation on indigenous women. The Permanent Forum recommendations on indigenous women also called on all UN agencies with activities impacting on indigenous women to address the human rights of indigenous women within their policies and programmes. The Permanent Forum finally urged states to increase the numbers of indigenous women in governance and decision-making structures and to develop coherent national public policies for indigenous women that take into account international frameworks and standards.

The six mandated areas

The third session also had on its agenda a discussion of the six mandated areas of Education, Health, Environment, Culture, Human Rights and Economic and Social Development.

During the two-week session, a very large number of indigenous statements were presented under the above-mentioned agenda items. Many statements noted that although some progress has been achieved with regard to the recognition and protection of indigenous peoples' fundamental rights, indigenous peoples continue to be subjected to systemic discrimination and exclusion from economic and political power. They are denied their cultural identities, and displaced from their traditional lands. They are more likely than others to suffer extreme poverty, and all too often experience the human misery caused by conflict and war. In this regard, many indigenous speeches continued to emphasize the immediate need to complete the Draft Declaration on indigenous peoples' rights, and to ensure greater respect for indigenous lands, resources, languages and cultures. Other indigenous statements highlighted the importance of

protecting the environment and preserving biological diversity, promoting an educational system that incorporates indigenous knowledge and preserving traditional health practices.

Indigenous statements also recommended that the Forum work closely with the Office of the High Commissioner for Human Rights as the end of the International Decade draws near in order to make recommendations for future action; that the Forum propose a Second Decade; and that the Economic and Social Council consider increased funding for the Forum so that it can more adequately carry out its sessions and intersessional work. In this regard, many indigenous interventions reiterated the responsibility of the United Nations to support the work of the Forum. The United Nations was thus urged to provide additional resources for the establishment of follow-up mechanisms to Forum recommendations.

One of the main issues discussed this year was the “*future work*” of the Forum. During this discussion, several indigenous statements requested the Forum to consider expanding its work agenda to include governance and treaties, migration issues and conflict resolution at future meetings.

Another important issue raised throughout the session by both governments and indigenous participants was the insufficient implementation of many of the previous recommendations of the Permanent Forum. Many interventions therefore recommended that the Forum’s fourth session should focus on reviewing the implementation of previously adopted recommendations, in preparation for its upcoming first review, rather than choosing a new theme. However, as another area of concern was the slow progress in achieving the Millennium Development Goals, which would have provided crucial assistance to poor countries in areas such as health, education and economic development, the Permanent Forum decided to choose the cross-cutting theme of “*Millennium Development Goals (MDGs) and Indigenous People*” as the theme of its 2005 session.

The Report

The Permanent Forum ended its work agenda with the adoption of its report.

This report is divided into two parts. Part one includes draft decisions recommended by the Forum for adoption by the ECOSOC, as well as recommendations to be brought to the attention of this UN body. This includes a number of proposals for possible future action identified by the Forum. Part two contains a summary of the discussions that took place during the third session of the PF.²

The third session of the Permanent Forum on Indigenous Issues adopted five draft decisions and eight sets of recommendations.

Draft decisions for adoption by the ECOSOC

- That the ECOSOC authorize, on an exceptional basis, a three-day inter-sessional meeting of the Permanent Forum in 2005 to prepare for the body's fourth annual session, in cooperation with the Inter-Agency Support Group.
- That the ECOSOC authorize a technical three-day workshop on free, prior and informed consent.
- That the provisional agenda of the body's fourth annual session be approved by the ECOSOC. This session will focus on the "Millennium Development Goals and Indigenous Peoples", with emphasis on the Goals related to the eradication of extreme poverty and hunger and the achievement of universal primary education.
- That the ECOSOC authorize the holding of the Forum's fourth annual session at the United Nations headquarters in New York, in May 2005, and consider holding the Forum's 2006 or 2007 session in Geneva, or in another part of the world.
- That the General Assembly endorse the declaration of a second International Decade of the World's Indigenous People, to follow the conclusion of the present International Decade in 2004.

Recommendations to the ECOSOC

In the recommendations on indigenous women, the Forum encouraged relevant United Nations' bodies to integrate the human rights of indigenous women into their programmes and policies. Among other things, it recommended that a meeting be convened to develop a general recommendation on indigenous women.

The Forum also recommended that a workshop on “migration of indigenous women” should be held to highlight the urgency and scale of this issue, with a focus on the trafficking of indigenous women. Moreover, the Commission on Human Rights should appoint a rapporteur to study genocidal and ethnocidal practices against indigenous peoples.

The other seven texts included recommendations on education and culture, human rights, environment, health, economic and social development and future work.

Closing of the session

The third session was closed by the President of the General Assembly, who stressed the importance of adopting a Universal Declaration on the Rights of Indigenous Peoples and said that once the Commission on Human Rights had completed the draft it would form a specific international instrument on human rights and fundamental freedoms that should promote and protect the rights of indigenous peoples.

In his closing speech, the Permanent Forum’s Chairman Ole Henrik Magga noted that he and a number of other Forum members would have completed their terms by the end of 2004. In this regard, he said that the Forum members should be proud of all that it had accomplished in the relatively short period of three years. The Forum had established the body’s secretariat and, despite having devoted much time to logistics, had been able to begin to address the six mandated areas, adopting many recommendations on indigenous issues. The Forum had also done much to raise awareness of indigenous issues within the United Nations system in general, which constituted the primary thrust of its work.

Ole Henrik Magga also said that the support of Member States, United Nations agencies and indigenous organizations had been essential during the Forum’s first years and would continue to be so. He further referred in his speech to the Forum’s work procedures and noted that the session’s structure next year would be revised to facilitate implementation of its mandate. Yet it remained imperative to seek out methods of work that would allow members to interact with Unit-

ed Nations agencies more effectively and to respond to reported human rights violations against indigenous peoples.

The ECOSOC and the UN Permanent Forum

During its 2004 substantive session held in New York from 28 June to 23 July 2004, the ECOSOC considered the report from the third session of the Permanent Forum, including its decisions and recommendations. Permanent Forum Chairperson Ole Henrik Magga presented the report.

After consideration of the report, the ECOSOC took the following decisions with regard to the Permanent Forum:

- The ECOSOC decided to authorize, on an exceptional basis, a **three-day pre-session meeting of the Permanent Forum on Indigenous Issues in 2005** to prepare for the fourth annual session of the Forum, with the support of the Inter-Agency Support Group on Indigenous Issues.
- The ECOSOC decided to authorize a technical **three-day workshop on free, prior and informed consent**, with the participation of representatives of the United Nations system and other interested intergovernmental organizations, experts from indigenous organizations, interested states and three members of the Permanent Forum on Indigenous Issues, and requested the workshop to report to the Forum at its fourth session, under the special theme of the session.
- The ECOSOC decided that the fourth session of the Permanent Forum on Indigenous Issues would be held at the United Nations headquarters in New York from 16 to 27 May 2005.
- The ECOSOC approved the provisional agenda and documentation for the fourth session of the Permanent Forum on Indigenous Issues and identified as the special theme for the fourth session the **Millennium Development Goals and Indigenous Peoples**.
- The ECOSOC decided to transmit to the General Assembly for its consideration the Permanent Forum's recommendation on the proclamation of a second International Decade of the World's Indigenous People, to begin in January 2005, and further recom-

mended that, in its consideration, the General Assembly, should consider:

- a) Identifying goals for a second decade, taking into account the achievements of the first;
- b) Identifying a coordinator that would coordinate the programme of activities of a second decade;
- c) Addressing the question of human and financial resources to be made available in support of the activities undertaken within the framework of the decade, including the possible continuation of the UN Voluntary Fund for the UN Decade of the World's Indigenous People established by the General Assembly in 1994.

Final remarks

The experience of the third session also presented several challenges for effective participation that could be addressed at its fourth session. First, the modalities of the Permanent Forum made effective participation difficult. The large numbers of participants and the desire of most of them to present a statement made dialogue virtually impossible. One of the remaining challenges for the Forum is therefore to seek out innovative methods of work that will facilitate better dialogue and interaction between governments, indigenous peoples and UN agencies.

During the third session it was also clear that there is a need to raise the capacity of indigenous peoples' organisations in terms of how best to engage with the Permanent Forum in order to raise their issues of concern. □

Notes

- 1 These declarations can be accessed at www.iwgia.org.
- 2 To download the report: <http://daccessdds.un.org/doc/UNDOC/GEN/N04/384/66/PDF/N0438466.pdf?OpenElement>.

60TH SESSION OF THE UN COMMISSION ON HUMAN RIGHTS

The 60th session of the UN Commission on Human Rights took place in Geneva from March 15 to April 23, 2004. On April 8, the Commission considered item 15 "Indigenous Issues". Under this item, reports from the Commission's subsidiary organs and special mechanisms¹ dealing with indigenous peoples' rights are presented to and discussed by the Commission.

The UN Special Rapporteur's report

The Special Rapporteur, Mr Rodolfo Stavenhagen, presented his 3rd progress report. In this report, Stavenhagen focussed on the obstacles, gaps and challenges faced by indigenous peoples in their access to justice administration and the relevance of indigenous customary law in national legal systems, two issues that indigenous representatives and government delegations have repeatedly identified as being of crucial importance for the full enjoyment of the human rights of indigenous peoples. Once again, the Special Rapporteur observed that indigenous peoples are usually among the most marginalized and dispossessed sectors of society and the victims of persistent prejudice and discrimination.

In his presentation, Stavenhagen said that important progress had been made at national and international levels concerning the recognition and promotion of the human rights of indigenous peoples through ratification of ILO Convention No.169. He noted that several countries had adopted domestic legislation following their ratification of the Convention. Despite this legislation, the human rights of indigenous peoples continued to be violated in many countries. He therefore

stressed the urgent need to adopt the United Nations Draft Declaration on the Rights of Indigenous Peoples.

A significant number of governments praised the work of the Special Rapporteur and his efforts to raise awareness of the situation of indigenous peoples.

Report from the Working Group on a UN Draft Declaration

Luis Chávez, Chairperson-Rapporteur of the Working Group on a UN Draft Declaration on the Rights of Indigenous Peoples presented the report from its 9th session held in Geneva in September 2003. According to Chávez, governments and indigenous peoples have changed their approach to the process and he felt that bloc dynamics had been eliminated. He also considered that a more open scenario had been achieved but that this change had not yet been sufficiently intense to bring about the consensus necessary to amend the original text.

He further mentioned that, during the session, a group of government delegations had asked for the Working Group to approve some of the paragraphs on a provisional basis, and that this had received the support of many governments and indigenous delegations, although others had not been able to accept them. A consensus had not been reached but the amendments would serve as the basis for future work.

As a way of achieving concrete results before the next session of the Commission, Chávez recommended that the Commission consider the possibility of holding an additional session of the Working Group before the end of 2004 to ensure that the goal of bringing a consensus text to the 61st session of the Commission was achieved.

In his concluding remarks, Chávez stressed the need for political will in order to advance in the adoption of the Declaration, and said that the best way to achieve this would be to grant government delegations and representatives of indigenous peoples the power to enter into commitments.

Open debate

After the presentation of the official reports, government delegations and NGO observers were given the possibility of commenting on the reports. Eleven governments and 25 NGOs (mostly indigenous organisations) took the floor.

In their statements to the Commission, almost all the indigenous organizations expressed their deep concern at the lack of progress in the Working Group on the Draft Declaration. They stressed that in nine years of work only two articles had been adopted and all attempts to achieve consensus had failed. This was due to the continual rejection of collective rights, as well as of the right to self-determination and land. It was also a violation of international human rights law and an indication of the governments' lack of political will. If the CHR were unable to adopt the text by the end of the Decade, it would demonstrate the Commission's inability to address the rights of indigenous peoples. Governments were thus urged to recognize the unqualified right of self-determination of indigenous peoples.

The indigenous representatives from Chile expressed their appreciation of the Special Rapporteur's official visit to Chile. They confirmed his findings and urged the Commission and the Government of Chile to uphold the recommendations of his report.

The indigenous representative from Mexico, on the other hand, raised some criticisms of the Special Rapporteur's report on his official visit to Mexico. In his statement, he said that it was surprising to see that cases of human rights abuses submitted to the Rapporteur had not been reflected in the report.

As had been the case in 2003, differences emerged among governments as regards the continuation of the work of the Working Group on Indigenous Populations (WGIP). Whereas Australia, the USA and the EU called for streamlining and rationalization of the UN indigenous mechanisms and believed that the WGIP was no longer needed, the Latin American governments continued to praise its role in promoting the rights of indigenous peoples within the UN system, and encouraged its continuation. In their statements, indigenous repre-

sentatives called for a continuation of the work of the WGIP as an important platform for voicing indigenous peoples' concerns.

Indigenous statements also called for a second International Decade of the World's Indigenous Peoples in order to continue the momentum that had been achieved. To this end, the Commission was requested to give serious consideration to the appointment of an international panel of indigenous people to plan and implement the activities for a second Decade.

The Permanent Forum on Indigenous Issues was another topic that many government and indigenous statements touched upon. Both the New Zealand and Nordic governments considered it as the pre-eminent international entity for the discussion of all indigenous issues, including human rights, and states and UN agencies were urged to participate in its work.

Resolutions on indigenous issues

The 60th session of the Commission on Human Rights approved three resolutions on indigenous issues, including one highlighting "the continuing need for the Working Group on Indigenous Populations on account of its mandate, which is distinct from those of the Permanent Forum and the Special Rapporteur." In the voting on this resolution, the Western Group (USA, Australia, New Zealand and the EU) voted against, while the delegations from GRULAC (Group of Latin American and Caribbean Countries), Africa and Asia voted for it. The resolution was adopted.

The Commission also adopted by consensus a resolution on the UN Working Group on the Draft Declaration that included the possibility of having an additional session before the end of the year (November-December) in order to obtain some concrete results in the drafting process before the end of the Decade.

The Commission finally adopted by consensus a resolution that renewed the mandate of the Special Rapporteur for a further three years. □

Note

- 1 I.e. the Working Group on the Draft Declaration on the Rights of Indigenous Peoples; the UN special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People; and the Programme of activities for the International Decade of the World's Indigenous People.

10TH SESSION OF THE WORKING GROUP ON THE UN DRAFT DECLARATION

The tenth session of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples (WGDD) took place from 14 to 24 September 2004 in Geneva. This year's session included an additional week of work, which was held from 29 November to 3 December 2004.

The Working Group, established by the UN Commission on Human Rights (CHR) in 1995, was given the mandate of completing the adoption of a Draft Declaration on the Rights of Indigenous Peoples within the timeframe of the International Decade of the World's Indigenous People, which ended in 2004. This tenth session was therefore its last within the mandate entrusted it by the CHR in 1995. The chairperson/rapporteur of the Working Group will therefore have to present his final report to the 61st session of the CHR in March-April 2005.

For this reason, both the indigenous organisations actively participating in this process and a large number of governments made great efforts during the meetings held in September and December 2004 not only to obtain substantial progress in discussions around the most controversial articles, such as those related to self-determination and rights to lands, territories and natural resources, but also to achieve the provisional adoption of a considerable number of articles around

which recent years' discussions had demonstrated the existence of a general consensus.

The indigenous caucus (a meeting of all the indigenous delegations participating in the meeting) worked long and hard throughout this year's sessions to identify groups of articles around which they believed a consensus could be reached, not only among the indigenous representatives but also among governments. A list of 24 articles was prepared for consideration for provisional adoption by governments.

These 24 articles were divided into three categories:

- 1) Nine articles to which neither the governments nor the indigenous peoples had raised objections.
- 2) Seven articles to which objections had been raised and minor changes made, and which could therefore be accepted.
- 3) Eight articles that still needed further discussion but could be considered for adoption.

These efforts on the part of the indigenous caucus to go through article by article and analyse the governments' proposals for each one were with the overriding aim of getting as many articles as possible adopted at this last session and thus give the Commission a clear signal that progress was being made towards adopting a Declaration on the Rights of Indigenous Peoples.

In terms of discussing the possible adoption of articles, which was one of the main themes of this session, the chairperson appointed the Norwegian delegation as facilitator in order to seek consensus around the articles that could be adopted.

Despite the efforts made by the indigenous caucus and one group of governments to achieve the adoption of a group of articles, at the last session the chairperson stated that whilst there had been major advances and the Working Group was near to a consensus on the text of a considerable number of articles, there was not yet sufficient consensus for the provisional adoption of any of them.

The indigenous caucus had also prepared an intervention. In this statement, it noted its disappointment at the failure to adopt a Declaration by the end of the International Decade. It expressed its firm conviction, however, that significant progress had been made towards

reaching a consensus on the text of the Declaration and recommended the provisional adoption of a group of articles. The indigenous caucus also called upon the governments to demonstrate their firm support for a renewal of the Working Group's mandate at the next session of the Commission on Human rights, in order to enable it to complete its work and approve a UN Draft Declaration on the Rights of Indigenous Peoples.

Unfortunately, due to lack of time, the chairperson did not give the caucus' representative an opportunity to read out this declaration, but the statement was officially submitted to the chair with a request that it should be annexed to his report to the Commission on Human Rights.

Despite the progress made during its 10th and last session, the future of the Working Group – and of the Declaration in general – now hang in the balance, and the Commission on Human Rights will need to make a decision as to whether to renew its mandate or not at its 2005 session. □

THE UN WORKING GROUP ON INDIGENOUS POPULATIONS

The UN Working Group on Indigenous Populations (WGIP) held its twenty-second session from 19 - 23 July 2004 at the United Nations Headquarters in Geneva. The special theme of this year's session was "Indigenous Peoples and Conflict Resolution". Mr Miguel Alfonso Martínez (Cuba) was re-elected as Chairperson for this session.¹

The newly appointed High Commissioner for Human Rights, Mrs Louise Arbour, opened the session. In her speech, Mrs Arbour expressed concern at the slow progress in adopting the Draft Declaration on the Rights of Indigenous Peoples and she appealed to all parties to accelerate the process and finalize the Declaration as soon as possible. The High Commissioner referred to the achievements of the Decade, the establishment of the Permanent Forum on Indigenous Issues and the appointment of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people. She noted that the Working Group, the Sub-Commission and the Permanent Forum had all called for a second Decade and highlighted the importance of the Working Group on Indigenous Populations and the need for its continuation.

Mrs Arbour ended her opening speech by reiterating the strong commitment of her Office to the rights of indigenous peoples, which she considers "one of the priorities of our human rights programme and a priority for the UN as a whole."

The main topics

Indigenous peoples and conflict resolution. The general debate and principle theme at this year's session related to one of the many impor-

tant issues for indigenous peoples: conflict resolution, and Mr Miguel Alfonso Martínez (Chairperson-Rapporteur) presented a paper on this subject. Following his introduction, more than 100 speakers made presentations on this crucial issue.

The WGIP's recommendations on this topic were that:

- The WGIP should once again include the topic of conflict prevention and resolution as an agenda point, point 4, at its next session in 2005.
- The Office of the High Commissioner for Human Rights (OHCHR) should organise a seminar on the application of treaties, agreements and other constructive arrangements between indigenous peoples and states (preferably in 2005).
- The OHCHR should organise a workshop on indigenous peoples and the conflict prevention and resolution.
- The organisations in charge of treaty monitoring should pay special attention to conflict situations affecting indigenous peoples.
- The main topic for the 23rd session should be: "indigenous peoples and the protection of traditional knowledge in international and national legislation".
- The Sub-commission should consider the best ways and means of protecting the indigenous peoples in situations of armed conflict, including situations involving UN peacekeeping forces.

"Globalisation and Indigenous Peoples".² The WGIP decided to continue to receive information on this issue, which will be made available on its Web page.

The Working Group this year commenced a new way of working that involves documents for the WGIP's work being prepared by its members in association with an indigenous organisation. This new way of working gave excellent results.

"Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples". A joint document prepared by Mr Yokota, a member of the WGIP, and the Saami Council was presented. The document³ examines the development of this issue in in-

ternational negotiations within the World Trade Organisation (WTO), World Intellectual Property Organisation (WIPO), Convention on Biodiversity (CBD), etc. The document concludes by establishing the need to create an international mechanism for the protection of indigenous peoples' cultural heritage (including traditional knowledge) because the existing mechanisms within the UN have thus far been neither effective nor appropriate in guaranteeing such protection. After considering the contributions of the participants, the final recommendations on this issue requested that the authors of the document prepare a new document with concrete proposals for possible guidelines, that consultations on this latter be held and that the OHCHR request information on this from governments, indigenous organisations, the UN system and NGOs.

Free, prior and informed consent. In order to discuss this issue, a document produced jointly by Mrs Motoc, a member of the WGIP, and the Tebtebba Foundation was presented.⁴ After receiving the participants' contributions, the WGIP made two draft recommendations on the issue:

- 1) that the authors of the document prepare a draft legal comment on free, prior and informed consent and present it to the next session of the WGIP; and
- 2) that the OHCHR request information on the issue from governments, indigenous organisations, the UN system and NGOs.

Other issues

Among other things, the following topics were considered:

- Cooperation with other United Nations organisations within the sphere of indigenous affairs;
- Follow-up to the World Conference on Racism;
- Examination of the activities included within the framework of the Decade;
- Situation of the funds of voluntary contributions;
- The Draft Declaration on the Rights of Indigenous Peoples;

- The situation of the rights of indigenous peoples under threat of extinction for environmental reasons.

The prepared documents were debated and the participants' declarations heard with regard to all these issues. The indigenous organisations expressed their concern with reference to the adoption of the Draft Declaration on the Rights of Indigenous Peoples. After nine years of work, only two articles of the Draft Declaration have been preliminarily adopted and all attempts to achieve consensus in the Working Group on the Draft Declaration have failed. According to their statements this is due to the continual denial of the existence of collective rights, especially the right to self-determination and land rights. This is a violation of international human rights law and an indication of the lack of political will on behalf of the governments

Given the imminent conclusion of the Decade at the end of 2004, the indigenous representatives stated the need for the General Assembly to proclaim a second Decade, once the achievements and limitations of the first one had been evaluated.

Side events

As in previous years, numerous side events consisting of panel discussions were organised during the session. Among other things, these included:

- A workshop on working with the Special Rapporteur on the human rights and fundamental freedoms of indigenous people. Lessons learned from experiences in the Philippines, Colombia and Chile (organised by the Tebtebba Foundation).
- Presentation of Tebtebba's publication on the Conference on Indigenous Peoples, Conflict Resolution and Sustainable Development, held in the Philippines in 2000.

- World Bank Informative Workshop on the Revision of Extractive Industries.
- Workshop on Mining and Indigenous Peoples (organised by the Tebtebba Foundation and PIPlinks).

Although the topics for discussion in these panels were highly relevant, general attendance was limited due to the inconvenience of having to hold side events during the lunch break. □

Notes

- 1 All documentation prepared for the session is available at: <http://www.ohchr.org/english/issues/indigenous/docs/documents22.htm>
- 2 E/CN.4/Sub.2/AC.4/2004/3.
- 3 E/CN.4/Sub.2/AC.4/2004/5.
- 4 E/CN.4/Sub.2/AC.4/2004/4.

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

During 2004, the African Commission on Human and Peoples' Rights (ACHPR) continued to focus on protecting and promoting the human rights of indigenous peoples in Africa. IWGIA continues to be actively involved in this process. In November 2003, the ACHPR adopted a comprehensive report on the human rights of indigenous populations in Africa and decided to give its Working Group of Experts on Indigenous Populations/Communities another two-year mandate to gather further information, raise the awareness of governments and other key stakeholders, undertake further research etc. (Please see www.iwgia.org for the full text of the resolution.)

Forthcoming activities

The Working Group met twice during 2004: once in May 2004 prior to the 35th ordinary session of the ACHPR and again in November 2004 prior to its 36th ordinary session. At its meeting in Banjul, The Gambia, in May, the Working Group decided on a comprehensive activity plan to be implemented over the coming two to three years. The main components of this activity plan are:

Translation and publication of the report

The ACHPR's report on indigenous populations/communities in Africa will be translated into and published in all four languages of the African Union (English, French, Arabic and Portuguese). The reports will be distributed to all member states of the African Union, UN agencies, NGOs, indigenous organizations and major development agencies.

Country visits

Part of the Working Group's mandate is to undertake country visits to study the human rights situation of indigenous populations/communities in Africa. A total of six country visits are being planned over the next two years and the countries proposed include: Kenya, Tanzania, Niger, Rwanda, DRC, Cameroon, Namibia, Botswana and South Africa. These countries have been chosen because of the visibility of their indigenous populations.

The main objectives of the country visits will be to:

- Gather information about the human rights situation of indigenous populations.
- Provide information on the African Commission's report and approach towards indigenous peoples' issues.
- Submit a report, including recommendations, to the African Commission.

Research and information country visits

Research and information country visits will be carried out by members of the Working Group or by associated experts from the resource network. Countries to be visited include: Sudan, Uganda, Burundi, Central African Republic, Congo Brazzaville, Libya, Algeria, Mali and Burkina Faso. The objective of these visits is to disseminate information on the ACHPR's report and approach towards the rights of indigenous peoples to governments and other stakeholders and to gather information about the human rights situation of indigenous populations in these countries. Reports will be produced on all of these visits and submitted to the ACHPR for adoption.

Establishment of an advisory network

An advisory network of experts will be established. The Working Group will be able to consult members of this network on various issues and ask members to carry out specific tasks for the Working Group. Members of the network will cover all regions of Africa and will all be experts on indigenous issues.

Compilation of database

A database of indigenous organizations in Africa will be compiled by the Secretariat of the African Commission.

Research on constitutions and legislation

Comprehensive research will be undertaken into the constitutions and legislation of all countries with indigenous populations in Africa. The extent to which these contemporary constitutions and legislation protect the rights of indigenous populations will be documented and analysed. The objective is to produce a comprehensive reference document for the forthcoming work on protection and promotion of the human rights of indigenous peoples.

Awareness raising workshop

A wider awareness raising workshop will be organized on the ACHPR's approach towards indigenous issues. Participants will include members of the Working Group, government representatives, human rights NGOs and experts, indigenous organizations, the UN Special Rapporteur on the rights of indigenous peoples, other relevant UN bodies etc. The objective of the workshop will be to raise the awareness of all stakeholders around the ACHPR's approach towards the issue of the human rights of indigenous peoples.

Information dissemination

Information on the report and the ACHPR's approach towards indigenous issues will be disseminated at national level by members of the Working Group or people from the resource network.

During the inter-sessional period between the 35th and 36th sessions, the Working Group and IWGIA engaged in fundraising for the forthcoming two-year activity plan of the Working Group and funding was secured by the end of 2004. The Working Group will thus be able to start implementing its work in 2005.

The ACHPR 2004 sessions

Representatives of indigenous organizations continued to participate in the sessions of the ACHPR during 2004, with a total of 23 indigenous representatives participating in the two sessions. Three indigenous organizations have been granted observer status, and others are in the process of applying. Indigenous representatives have raised many important human rights issues in their statements during the ACHPR sessions and the commissioners are giving these issues increased attention. During the examination of state reports, commissioners are increasingly asking the governments questions about the situation and protection of the human rights of indigenous populations in their countries. This was the case in 2004 during examination of the state reports from Rwanda, Niger and Burkina Faso. There was a particularly strong focus on the situation of the Batwa during the examination of the Rwanda report.

UN agencies such as the ILO and the UN Office of the High Commissioner for Human Rights have taken an interest in the ongoing process in the ACHPR and the ILO participated in the 36th session, expressing its interest in collaborating with the ACHPR and the Working Group.

In conclusion, the ACHPR has taken a very important step in recognizing the existence of indigenous populations in Africa and in prioritising the promotion and protection of their basic human rights. The ACHPR report on the rights of indigenous populations is a key instrument for advocating the rights of indigenous peoples on the African continent and will hopefully serve as an effective instrument in the forthcoming deliberations of the ACHPR in order to raise awareness and strengthen constructive dialogue with African governments. □

INDIGENOUS PEOPLES AND THE CBD IN 2004

This article covers the work done by the International Indigenous Forum on Biodiversity (IIFB)¹ at the 7th meeting of the Conference of the Parties (COP7) to the Convention on Biological Diversity (CBD). Particular emphasis is placed on the discussions on Access and Benefit Sharing, Article 8(j) and Related Provisions and Protected Areas. A brief report on the Ad Hoc Technical Experts Group (AHTEG) on Island Biodiversity is also included.²

Seventh Conference of the Parties to the CBD

COP7 took place from 9-20 February 2004 in Kuala Lumpur, Malaysia. Over 2,300 participants, including representatives of 161 governments, UN agencies, non-governmental organizations (NGOs), intergovernmental organizations, indigenous and local communities, academia and industry attended. One of COP7's main challenges was to respond with concrete measures to the outcomes of the 2002 World Summit on Sustainable Development (WSSD), including the target of significantly reducing biodiversity loss by 2010, and to address poverty and equity in the Convention's further development and implementation. Thirty-three decisions were adopted.³

The IIFB covered most of the official agenda items, focusing on twelve issues of interest to indigenous peoples, namely: protected areas (PAs); Article 8(j); sustainable use; access and benefit-sharing (ABS); biodiversity and tourism; mountain biodiversity; inland water ecosystems; marine and coastal biodiversity; technology transfer and cooperation; follow-up to the WSSD and the Multi-Year Programme of

Work; and communication, education and public awareness. Around 140 indigenous representatives and campaigners were in attendance. To increase the IIFB's effectiveness, a three-day pre-COP7 meeting in Sabah developed a comprehensive outline of its strategy for intervening at the official COP7 conference. Two thematic working groups and several work teams were formed to enable efficient and effective execution of various activities and responsibilities during the pre-COP7 meeting and at the official conference.

The IIFB was clear from the beginning regarding which key issues it wanted to lobby and advocate for during the conference:

- Respect for and recognition of indigenous peoples' rights, including territorial rights.
- Ensure free, prior and informed consent.
- Restitution of lands and waters taken without consent in the past when establishing protected areas and respect and protection of sacred sites, re-insertion of language welcoming the outcomes of the Vth World Parks Congress in discussions on protected areas and the creation of an Ad Hoc open-ended Working Group on Protected Areas.
- Adoption of the *Akwé: Kon* Guidelines on cultural, environmental and social impact assessment for projects to be developed on indigenous lands or waters.
- Recognition of the rights of indigenous peoples in developing the International Regime on Access and Benefit Sharing.

Throughout COP7, the IIFB held daily caucuses to set strategies for the official proceedings of the day, and to give guidance on the progress made in the various negotiations, etc. The thematic working groups monitored specific agenda items, and used the caucuses to present draft interventions to be presented during the day. In addition, a series of workshops were held, both open workshops meant to raise some of the issues most crucial to indigenous peoples and closed workshops aimed at analyzing and discussing further a joint stand on crucial matters.

COP7 was characterized by a high level of professionalism in dealing with governments and participation in the negotiations. This

professionalism was widely remarked upon by governments, inter-governmental agencies and NGOs and is reflected in an increasing openness by Parties to the participation of indigenous peoples in the work of the Convention. Once again, strong efforts on the part of the EU, EC and some governments to promote indigenous peoples' participation proved critical in advancing the rights of indigenous peoples under the Convention.

Lobbying Work

IIFB's continued and diligent efforts to lobby at the international political level definitely paid off. The presence within the IIFB of indigenous delegates from almost all regions of the world greatly facilitated critical bilateral and regional lobbying work. The close working relationship established with the EU proved particularly important in the difficult and intense debates surrounding the establishment of an international regime on access to genetic resources and benefit sharing. Specifically, EU support was critical in ensuring the inclusion of references to international human rights instruments, prior informed consent, codes of ethics and customary law within the terms of reference for the negotiation of a regime. EU support was also marked in the equally difficult but critical debates surrounding the establishment of a new Programme of Work on protected areas.

The success of the IIFB's lobbying was particularly important in considering the decision on Article 8(j) and related provisions during the closing plenary. Following pressure from New Zealand, the Secretariat introduced an unauthorized revised decision which deleted wording related to the protection of the lands and waters traditionally occupied or used by indigenous and local communities. When the issue came to the plenary, the EU led the opposition to this change and was supported by the Group of Latin American and Caribbean Countries (GRULAC), the African Group and the Russian Federation. All Parties highlighted that consensus had existed within Working Group II to retain this important language for indigenous peoples. In the end, New Zealand was effectively forced to concede retention of the language. During the third session of the Working Group on

Article 8(j) – WG8(j) - in Montreal, representatives of the Malaysian government had insisted very strongly on subjecting many issues to national legislation, while rejecting mentioning the international human rights instruments and standards on the rights on Indigenous peoples. As a result, the item on the development of elements of *sui generis* (i.e. specially generated) systems for the protection of traditional knowledge, innovations and practices were left bracketed items and taken to COP7. At COP7, Malaysia continued to stand by this position for 8(j) and other agenda items. Other countries such as Indonesia and Thailand also supported this. Concerned at this insistence on the part of the host country, Malaysian indigenous representatives and NGOs came together to discuss possible lobbying strategies. With strong lobbying from indigenous representatives, NGOs and other government representatives, agreement on the language was eventually reached. This success is a lesson to the IIFB to lobby other governments from Asia and Africa on these issues in future.

An international regime on access and benefit sharing

A major step towards developing an international regime on access and benefit sharing was first taken at COP6 in The Hague in 2002, when 180 Parties adopted the voluntary Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization. It is important to note that the vast majority of indigenous peoples, viewing their participation in the development of the Guidelines as facilitating biopiracy of their resources and knowledge, made a conscious decision not to actively participate in the discussions on the Guidelines, and have therefore rejected their application. At its second meeting in December 2003, the Ad Hoc Open-ended Working Group on Access and Benefit-Sharing (WGABS) initiated a discussion on the process, nature, scope, elements and modalities of such an international regime on access and benefit-sharing, which were submitted to COP7.⁴

At COP7, the Parties engaged in extensive discussions to set the mandate of the WGABS regarding negotiation of the international regime. In the eyes of indigenous peoples, the Preamble to the COP7

decision relating to the international regime sets a dangerous precedent for future negotiations of the regime. It reads “[r]eaffirming the sovereign rights of States over their natural resources and that the authority to determine access to genetic resources rests with the national Governments and is subject to national legislation, in accordance with Article 3 and Article 15, paragraph 1”. The IIFB made an intervention in opposition to this formulation stating that international human rights law recognizes that states do not have absolute sovereignty over natural resources. The parties, of course, refused to agree.

Thanks to the strong lobbying efforts of the IIFB, the adopted preamble states that “the international regime should recognize and shall respect the rights of indigenous and local communities.” Indigenous peoples also successfully lobbied for the inclusion of international human rights law contained in human rights instruments to be considered as possible elements of the international regime. Although this gives some foothold for lobbying in future meetings, there is no guarantee that the regime will be consistent with international human rights law.

Article 8 (j) and related provisions

The debates at the COP7 on Article 8(j) and Related Provisions encompassed the insistence of indigenous peoples to incorporate a holistic outlook and to recognise the inherent rights of indigenous peoples over their traditional knowledge, innovations and practices. The issue of free, prior and informed consent (FPIC) was also seen as an essential element equally relevant to this agenda item.

The Akwé:Kon Guidelines

Indigenous peoples welcomed the adoption of these Guidelines,⁵ which are considered a model document crafted in the spirit of collaboration between the governments and indigenous peoples’ representatives, who participated actively in their drafting. The IIFB continuously reiterated that FPIC is not subject to national legislation but is an inherent right, and the assessment of impacts, especially on cultural, social and environmental aspects, are significant in making decisions regarding the “acceptance” or “rejection” of development projects/programs.

The protection of traditional knowledge

The continuous debate on *sui generis* systems has been in relation to established intellectual property standards for the protection of traditional knowledge, innovations and practices. In considering the elements of *sui generis* systems of protection, the IIFB continued its lobbying to shift the focus of the CBD from intellectual property-based to rights-based systems of protecting traditional knowledge, innovations and practices that advance the primacy of customary laws and indigenous heritage. Indigenous peoples are concerned that while persistent efforts to protect traditional knowledge are being advocated and advanced at the local and national levels, access to this knowledge is equally being facilitated at a faster rate.

Participatory mechanisms

Parties recognize participatory mechanisms for indigenous peoples and local communities as a necessary process within the CBD. This has been reiterated in the Working Group on Access and Benefit-Sharing (WGABS) and WG8(j).

In particular, the phrase “*full and effective participation of Indigenous and Local Communities*” is a crucial ingredient in all the provisions of the Convention. Indigenous peoples are concerned that, in light of the process where governments are mandated to define the process of implementation and identify participation, the mechanisms and delegates are often in question. The fundamental issues when defining the participation of indigenous peoples should be their substantive and concrete contributions.

Indigenous women are often marginalized from participating, which effectively disregards their important role in biological diversity conservation. To this end, Parties and governments were invited to develop effective mechanisms of decision-making and implementation by establishing advisory committees, taking gender into account, at the local, national and regional levels.

Recognizing that financial constraints have always been a key reason for non-participation, COP7 decided to establish a voluntary fund mechanism under the Convention to facilitate the participation of indigenous and local communities, giving priority to developing countries and countries in transition and Small Island Developing

States. This includes meetings of the indigenous and local communities' liaison group and relevant ad hoc technical expert groups.

Recommendations to the Permanent Forum

COP7 stressed the need for a better understanding among UN agencies on issues pertaining to the traditional knowledge of indigenous and local communities and welcomes the increasing collaboration between the Convention and the Permanent Forum on indigenous issues (PFII). Requests for closer collaboration included, among other things, the need for the Executive Secretary of the CBD to contribute to the report of the Secretary General to the PFII; and for the *Akwé:Kon* Guidelines to be transmitted to the PFII.

Protected Areas

At the Sabah preparatory meeting, the IIFB Working Group on Protected Areas agreed that it should push for meaningful language on indigenous peoples' rights in the COP7 decision on Protected Areas (PAs). Inputs to the Programme of Work (PoW) were aimed at consolidating gains made under the "new paradigm" for PAs agreed in 2003 at the World Parks Congress in Durban, where consensus was reached urging government commitment to secure the participation of indigenous peoples in establishing and managing PAs, and to ensure their participation in decision-making on a fair and equitable basis, in full respect of their human and social rights. Crucial to indigenous gains at COP7 was the relatively open chairing of contact groups that enabled numerous indigenous interventions speaking to text, and indigenous participation in the "Friends of the Chair" meetings held to resolve major stumbling blocks. Several governments and the EU commended the lobbying work of the indigenous caucus.

COP7 outcomes

The minimum positions were achieved by the end of COP7 though the negotiations were hard and dragged on well into the second week,

with the final paper adopted only on the last day. Indigenous rights issues were not a major issue of contention for many governments, though most governments were, from the start, openly opposed to FPIC for Indigenous and Local Communities.

The decision of the Parties in relation to Protected Areas (PA) acknowledges ("*notes*") that full respect for the rights of indigenous and local communities is a key issue in relation to protected area planning, establishment and management. This is the first time the issue of rights in an open-ended and general sense has been included in a CBD decision – although indigenous peoples' rights have been acknowledged in a restricted sense in relation to traditional knowledge in Article 8j. Canada and New Zealand tried hard at COP7 to sustain this confined understanding of rights under the CBD but did not succeed in limiting the scope of the decision. This is a major step forward and is a window of opportunity for future elaboration under the CBD, discussions on monitoring indicators and independent reports on implementation of the CBD decision and Plan of Work (PoW). Indigenous interventions also ensured that the *Scope and Purpose* of the PoW consisting of four interlinked elements were to be mutually reinforcing and cross-cutting in their implementation.

The most significant gap in the outcomes is the absence of any recognition of the right of indigenous peoples to free, prior and informed consent (FPIC) in relation to the establishment of new PAs affecting their traditional territories. FPIC was opposed by both Northern and Southern government delegations, including Sweden, UK, Finland, New Zealand, Australia and Malaysia, among others. Intense advocacy by the IIFB focused on the FPIC issue until the penultimate day of negotiations. On the positive side, it is very significant that governments agreed on FPIC in relation to resettlement, which is a significant victory for indigenous peoples. Specific language on land tenure, territorial rights, sacred sites, land restitution and guarantees on the prevention of poverty were *not* included in the COP7 decision, nor in the PoW. The IIFB nevertheless pushed for these elements until the last possible point in the negotiations.

Some elements of the CBD decision and PoW (support for private PAs etc) pose a potential risk to indigenous peoples *if* the decision and suggested activities are not implemented in a balanced manner that

takes account of equity, rights and governance concerns. In this regard, it will be essential for indigenous organisations to hold governments and international agencies to account when they seek to accelerate the expansion of PAs in land, coastal and marine environments without taking measures to respect the rights of affected indigenous communities. The deletion of the paragraph on FPIC in the establishment and management of PAs and the loss of the language on land tenure and territorial rights were a loss to indigenous and local communities but the recognition and respect of the rights of indigenous and local communities in general represents a major achievement. It will be critical for the indigenous movement at the local, national and international levels to monitor the implementation of the PoW. COP7 also decided to establish a working group on PAs and this will meet twice before COP8.

Ad Hoc Technical Expert Group on Island Biodiversity

In adopting its Multi-Year Programme of Work up to 2010, Island Biodiversity was identified as a new thematic area to be developed under the CBD (Decision VII/31), with in-depth consideration at COP8 in Brazil in 2006. The main mandate of the Ad Hoc Technical Expert Group (AHTEG) was to develop proposals for a Plan of Work on island biological diversity incorporating targets and related indicators, priority actions, identification of relevant actors and partners for the implementation of the Plan and synergies with other programmes.⁶ The draft elements for the Plan of Work produced by the AHTEG will be reviewed and further developed before reaching COP8 in 2006.

Comments on the AHTEG meeting and the PoW

While the importance of traditional resource management in islands and the need to respect indigenous and local communities' rights and guarantee their full and effective participation (such as in the establishment of protected areas, gene banks, the development of national frameworks and policies, etc.) was included in the PoW, there are still

several weaknesses. In the *Provisional Indicators for Assessing Progress towards the 2010 Biodiversity Target*, one of the most important indicators for indigenous peoples, namely the *Status and trends of linguistic diversity and numbers of speakers of indigenous languages*, was not incorporated. If a consensus to incorporate it is reached, further text will need to be developed. Likewise, a specific target in the *Provisional Framework for Goals and Targets* (Target 8.2) dealing with maintenance of “*biological resources that support sustainable livelihoods, local food security and health care, especially for poor people...*” needs to be further assessed to determine whether a new target or priority action should be developed.

Since the issue of indigenous and local communities kept cropping up during the final plenary when the whole PoW was considered, it was decided to insert a preambular paragraph in the introduction to capture the issues of indigenous and local communities’ rights and participation, and to delete the numerous references to indigenous and local communities throughout the goals and actions although, at the same time, specific reference to the rights and participation of indigenous and local communities was retained in particularly important aspects of the PoW. The IIFB needs to analyse the text and suggest where these references should be added or changed. Paragraph 14 of the preamble currently reads:

It is important to note that cultural diversity and the traditional knowledge and practices of indigenous and local communities of many small islands are unique and need special consideration and integration in this programme of work. All aspects of the programme of work should be read and implemented with the full recognition and respect for the rights of indigenous and local communities and their full and effective participation.

However, this text is likely to be challenged. □

Notes

- 1 The IIFC was formed during COP3 in Buenos Aires as a forum where indigenous peoples could meet collectively, strategize and work to influence the international meetings on environmental issues such as the COPs and the Working Groups on Article 8(j), and on Access and Ben-

efit. Since COP5, the IIFB has become an official advisory body to the COP.

- 2 This is a shortened version of an overview article which can be found on IWGIA's website at <http://www.iwgia.org/sw219.asp>.—Ed.
- 3 <http://www.biodiv.org/meetings/cop-07/docs.aspx>).
- 4 UNEP/CBD/COP/7/6.
- 5 The *Akwé:Kon* are voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. *Akwé:Kon* is a Mohawk term meaning “everything in creation”, so as to emphasize the holistic nature of this instrument. —Ed.
- 6 The CBD official report of the AHTEG meeting with the edited Plan of Work is available at www.biodiv.org/doc/meetings/sbstta/sbstta-10/information/sbstta-10-inf-01-en.doc.

THE ILO AND INDIGENOUS AND TRIBAL PEOPLES

The International Labour Organization (ILO) is one of the specialized agencies of the UN System. The ILO's primary objective is to promote social justice for all, based on internationally recognized labour standards. These standards are in the form of Conventions and Recommendations. Based on these standards, the ILO also provides technical assistance in a wide range of areas.

The ILO has been working with indigenous and tribal peoples since the 1920s, in recognition of their particular vulnerability and marginalization. In 1957, the ILO adopted the first international Convention on Indigenous and Tribal Populations (Convention No. 107). Convention No. 107 is no longer open for ratification but remains in force for 19 countries, including Bangladesh, El Salvador, India and Panama.

In 1989, the ILO revised Convention No. 107 and adopted the Indigenous and Tribal Peoples' Convention (Convention No. 169). The transition from the earlier Convention marked a historical change in approach - away from an integrationist and paternalistic approach and towards an acknowledgement of indigenous and tribal peoples' cultures and ways of life and recognition of their right to control their own path of development.

ILO Conventions and indigenous peoples

Convention No. 169 is a comprehensive instrument, covering a wide range of issues, including land rights, access to natural resources, health, education, vocational training, conditions of employment and cross-border contact. The fundamental principles of Convention No. 169 are consultation and participation, meaning that indigenous peo-

ples have the right to be consulted and to participate in policy, legislative, administrative and development processes that affect them, and to decide their own priorities for development.

Convention No. 169 has been ratified by 17 countries, most of which are in Latin America. In these countries, the Convention has been at the core of recent constitutional, legal and institutional reforms to accommodate indigenous and tribal peoples' rights. Furthermore, the Convention is setting standards far beyond the actual number of ratifications, as a global reference point for the discussion and definition of indigenous peoples' rights.

A number of other ILO Conventions are also of direct relevance to indigenous and tribal peoples. These include the Forced Labour Convention (No. 29), the Convention on Discrimination in Employment and Occupation (No. 111) and the Worst Forms of Child Labour Convention (No. 182). In the context of these Conventions, the ILO is working on issues pertaining to indigenous and tribal peoples all over the world, also in countries that have not ratified Convention No. 107 or No. 169. The ILO Declaration on Fundamental Principles and Rights at Work is also of direct relevance for indigenous and tribal peoples.

The ILO has specific mechanisms to supervise the application of ratified Conventions. Having ratified any ILO Convention, a state is required to submit periodic reports to the ILO on the measures taken to apply it. The reports are examined by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which publishes its observations on states' compliance with ratified Conventions, in a process of dialogue with the government concerned. In addition to the regular reporting, the ILO also has a number of special procedures to deal with alleged violations of ratified Conventions. A number of Representations (a form of complaint) concerning non-compliance with Convention No. 169 have been examined under this procedure. These mainly concern lack of consultation with indigenous communities on development projects and legislative changes affecting them.

In summary, the ILO has a double role: on the one hand it seeks to specifically promote and protect the rights of indigenous and tribal peoples based on Convention No. 169. On the other, it must ensure that indigenous and tribal peoples are addressed and participate in broader programmes addressing core ILO issues such as employment

and international labour standards. In both cases, the rights-based approach provided by Convention No. 169 guides the ILO's work, with a particular focus on consultation and participation.

Recent developments

A number of significant developments concerning indigenous and tribal peoples have taken place in the ILO over the last 12 months. These can be roughly divided into the following main areas:

1. ILO contributions to international developments;
2. Mainstreaming within the ILO; and
3. Specific targeted projects.

ILO contributions to international developments

The ILO contributes actively to international processes and developments regarding indigenous peoples. This includes contributions to the UN Permanent Forum on Indigenous Issues (UNPFII) and participation in the Inter-Agency Support Group to the Permanent Forum (IASG) and the Inter-Agency Task Force on Indigenous Women. In the past few months, the ILO has prepared detailed submissions on its work for indigenous and tribal peoples, its response to the recommendations of the UNPFII, and specific contributions to ongoing processes concerning "free, prior and informed consent" and the challenge of data disaggregation.

This year, the UNPFII will focus on the Millennium Development Goals (MDGs) concerning eradication of poverty and achievement of universal primary education. The ILO has therefore made a special effort to include concern for indigenous peoples in its general contribution to achieving the MDGs.

Mainstreaming within the ILO

As mentioned above, the situation of indigenous and tribal peoples overlaps and touches upon broader areas of work of the ILO related to discrimination, child labour, forced labour, employment etc. It is there-

fore a priority for the ILO to mainstream concern for indigenous and tribal peoples in all relevant policies, programmes and projects of the organisation.

In order to deepen an understanding and clarify the linkages between indigenous peoples and core areas of ILO concern, the ILO undertook, among other things, the following initiatives in 2004:

- Study on the reality of child labour in four different indigenous communities in Peru (ILO-IPEC¹);
- Documentation of the situation of forced labour in Peru, Bolivia and Paraguay (ILO-Declaration²);
- Study on the inclusion of indigenous and tribal peoples in national poverty reduction strategies (PRSPs) in 15 countries (ILO-Declaration);
- Case studies of indigenous peoples' notions of poverty and participation in national poverty reduction efforts in Cameroon and Cambodia (ILO-PRO 169³);
- Projects to eliminate child labour in indigenous communities in Honduras, the Philippines and Belize (ILO-IPEC); and
- Research into ethnicity and child labour, Nepal (ILO-IPEC).

One concrete example of how ILO field offices are working with indigenous peoples is in Nepal, a country currently suffering armed conflict. The conflict is partly related to the marginalized position of large sections of society, including indigenous peoples, who make up approximately 37% of the population. ILO-Nepal and representative indigenous organizations have been working closely with government, employers' and workers' organizations to increase awareness of indigenous issues and explore the possibility of using ILO Convention No.169 as a framework for peace talks (as was the case in Guatemala in 1996). A consultation on these issues organised by the ILO and indigenous partners will take place in January 2005, and will convene more than 150 government and indigenous representatives.

The ILO, along with many other UN agencies, has realised that pursuit of an ambitious strategy of mainstreaming concern for indigenous and tribal peoples at all levels requires a process of capacity-building, including the development of appropriate tools. The ILO is therefore in the process of developing tools, including guidelines for field staff, and organising staff training.

Another main element of the ILO's mainstreaming strategy is to make the ILO more accessible for indigenous peoples by, *inter alia*, informing them of its broader areas of work that are of relevance to indigenous peoples. To this end, the ILO is preparing information materials specifically for indigenous peoples on issues of child labour, forced labour, discrimination, Convention No. 169, freedom of association and supervisory mechanisms.

Specific targeted projects

Complementary to the mainstreaming efforts, the ILO has two targeted projects specifically addressing indigenous and tribal peoples:

The *Interregional Programme to Support the Self-Reliance of Indigenous and Tribal Peoples through Cooperatives and Self-Help Organizations* (INDISCO) takes a community-driven participatory approach to the promotion of sustainable livelihoods, income generation and decent employment for indigenous and tribal peoples.

In the Philippines, INDISCO has assisted in the preparation of the *Medium-Term Philippine Development Plan for Indigenous Peoples 2004-2008*, embraced by President Arroyo; expansion of community development activities through a partnership with the Finnish Embassy; support to prevent and eliminate child labour among indigenous communities through community-driven and culturally appropriate education and livelihoods support; and continued support for the implementation of the Indigenous Peoples' Rights Act (IPRA). In India, INDISCO is active in promoting cooperatives and decent employment among tribal communities. Funding was secured for the phasing-out and handing over of the Orissa project, which is helping 40 tribal communities to create sustainable income-generating activities through participatory schemes for cooperative development.

The *Project to Promote ILO Policy on Indigenous and Tribal Peoples* (PRO 169) aims to ensure the promotion and protection of indigenous and tribal peoples' human rights through legislative and policy development based on ILO standards, and through capacity-building for these peoples. In 2004, PRO 169 supported a series of legal studies on the situation of indigenous peoples in Morocco, Nepal and Cameroon, conducted an indigenous fellowship programme, prepared ILO contributions to the UNPFII and other international processes, identified recommendations and priorities for mainstreaming indigenous issues within the ILO, and supported training and information dissemination on Convention No. 169.

INDISCO and PRO 169 are currently planning longer-term capacity-building projects in Cameroon and Cambodia.

Contact

It is difficult to summarize the many ILO activities of relevance to indigenous peoples in a short article. In order to obtain more detailed information, or access relevant studies, publications, reports etc., please visit the ILO website on indigenous and tribal peoples: <http://www.ilo.org/indigenous> or contact PRO 169 directly at ILO.⁴ □

Notes

- 1 International Programme to Eliminate Child Labour.
- 2 In-focus Programme to Promote the ILO Declaration on Fundamental Principles and Rights at Work.
- 3 Project to Promote ILO Convention No. 169.
- 4 The address is PRO 169 - Office 6/58 - 4, route des Morillons, CH-1211 Genève 22, Switzerland. Telephone : +41-22-7997921; E-mail: feiring@ilo.org.

PART III

GENERAL INFORMATION

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