



THE INDIGENOUS WORLD 2014



THE INDIGENOUS WORLD **2014**

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Compilation and editing: Cæcilie Mikkelsen

Regional editors:

Arctic & North America: Kathrin Wessendorf

Mexico, Central and South America: Alejandro Parellada

Australia and the Pacific: Cæcilie Mikkelsen

Asia: Christian Erni and Christina Nilsson

The Middle East: Diana Vinding and Cæcilie Mikkelsen

Africa: Marianne Wiben Jensen and Geneviève Rose

International Processes: Lola García-Alix and Kathrin Wessendorf

Cover and typesetting: Jorge Monrás

Maps: Jorge Monrás

English translation: Elaine Bolton

Proof reading: Elaine Bolton

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

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Executive Director: Lola García-Alix

Head of Finance: Morten Bjørn Nielsen

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INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

Classensgade 11 E, DK 2100 - Copenhagen, Denmark

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

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

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EDITORIAL

EDITORIAL

The path towards the World Conference on Indigenous Peoples

It was a defining moment when, in the long afternoon spent waiting for the final draft outcome document to be presented, Chief Wilton Littlechild of the Cree Nation and Chair of the Expert Mechanism on the Rights of Indigenous Peoples took the floor in Alta and gave words of hope and inspiration to the over 600 delegates and observers gathered at the Indigenous Global Preparatory Conference. The indigenous delegates were clearly worn out by days without end of heated discussions and tough negotiations, and the atmosphere in the stadium was tense with anxiety that time would run out without achieving the huge task of reaching a global consensus on indigenous peoples' priorities and recommendations for the World Conference on Indigenous Peoples.¹

Standing at the podium in Alta, northern Norway, homeland of the Saami people, Chief Littlechild paid tribute to the elders who had led the way for international recognition of indigenous peoples and for indigenous peoples to have a voice in the UN: "Sometimes we struggle. Yes. Sometimes we face difficult challenges. But we should not forget the progress we have made," he said and recalled the collective vision formulated by the elders in 1977 when the Saami hosted the 2nd General Assembly of the World Council of Indigenous Peoples in Kiruna, Swedish Sápmi: "We want recognition. We want respect. And we want justice and peaceful co-existence."

Since the Kiruna meeting, the indigenous movement has succeeded in getting ILO Convention 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted, and in establishing three institutional UN mandates on indigenous peoples rights, i.e. the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples, and the Expert Mechanism on the Rights of Indigenous Peoples.

Emphasising that, despite international recognition, not all indigenous peoples yet enjoy recognition, respect, justice and peaceful co-existence, he concluded:

So you see, we have a lot of work to do and a long way to go. But I think, if we continue to build on the strength of our people, if we pursue the action plan and strategy that you are working on today, we will get there soon. (...)

From Kiruna to Alta we now have a hopeful path to the future. One world where we have full recognition as indigenous peoples: reconciliation for the past harm that has been done to our peoples: ...respectful relations based on partnership: ... And the full implementation of the UN Declaration, so that we can all live that dream we all have of a full right to self-determination. (...)

For yes, there will be better times. And yes, there will be a better world for all.

Chief Littlechild's speech was received with a standing ovation and, later that same evening, on 12 June 2013, the Alta Outcome Document was unanimously adopted by the seven geo-regional indigenous caucuses as well as by the indigenous women's caucus and the indigenous youth caucus.

The Alta Conference was the culmination of a comprehensive global preparatory process in which indigenous peoples came together to formulate their aspirations for the World Conference from their respective regional, age or gender-based perspectives. The Alta Outcome Document hence represents an enormous collective effort on the part of the global indigenous movements and effectively voices the priorities of the world's 5,000 distinct indigenous peoples – more than 370 million people.

The document reaffirms that the inherent and inalienable right of self-determination is pre-eminent, and a prerequisite for the realization of all rights enshrined in the UNDRIP, and that the UNDRIP must be regarded as the normative framework and basis for the Outcome Document of the World Conference and its full realization.

The recommendations contained in the Alta document provide an important overview of the issues that are of central concern to indigenous peoples. While reflecting much of the language of the UNDRIP, the document also adds to the understanding of indigenous peoples' priorities both in terms of the content of their rights and in terms of how those rights might be protected, and is, according to the UN Special Rapporteur on the rights of indigenous peoples, Prof. James Anaya, an important normative instrument and plan of action in its own right.

More concretely, it provides multiple recommendations within four overarching themes that encapsulate the issues of greatest importance to indigenous peoples. Not surprisingly, these four themes are also well reflected in the 73 articles included in this edition of *The Indigenous World*.

Indigenous Peoples' lands, territories, resources, oceans and waters

The first theme of the Alta Outcome Document covers indigenous peoples' lands, territories, resources, oceans and waters and highlights the crucial need for states to recognise indigenous peoples' inalienable rights to land as a prerequisite for securing their ability to practice self-determination. The backdrop to this theme is the enormous pressure indigenous peoples are facing in upholding their lands, their livelihoods and, ultimately, some of the world's most fragile and biodiversity-rich ecosystems against the ever-expanding development frontier.

While this phenomenon is certainly not new, there has been an increase in the forced displacement being suffered by indigenous communities globally. A sharp acceleration in the acquisition of lands, notably by foreign investors in search of arable land and natural resources, has led in many cases to what has been labelled "land grabbing".

In Tanzania, for example, several indigenous communities were evicted in 2013 in the name of nature and wildlife conservation for tourism. A huge military operation established to crack down on poachers was found to be targeting pastoralist communities instead, leaving a trail of burned houses, dead livestock and many inhabitants unlawfully arrested, tortured and killed. In Ethiopia, thousands of indigenous people have been evicted to make room for sugarcane plantations and an estimated 500,000 will lose their lands when the proposed Gibe III Dam becomes a reality. In Laos and Cambodia, the dispossession of indigenous communities through the granting of land concessions to agro-industrial enterprises and mining companies has accelerated while, in Brazil, renewable energy projects in the form of hydroelectric dams are threatening more than 90,000 ha of indigenous peoples' land.

One underlying cause of land grabbing is the lack of clarity of tenure rights. It is therefore good news that Kenya has, in recent years, adopted a new Constitution and a National Land Policy and established a National Land Commission. If the Constitution and the Land Policy are implemented and if the Commission is

able to work according to its mandate, this will provide a good framework for solving indigenous peoples' land claims and securing their land rights. The lack of implementation of the ACHPR's Endorois ruling, which in 2009 ordered the Kenyan government to restore the Endorois' right to their ancestral land in the Lake Bogoria area, demonstrates, however, that even with a new and progressive constitution and a well-functioning regional human rights system, indigenous peoples still face a formidable task when seeking justice. It is hoped that the National Land Commission will take up this matter with the relevant branch of government as part of the process of seeking redress for historical injustices against indigenous peoples.

Another improvement in clarifying tenure rights was seen in Indonesia when, in May, the Constitutional Court overruled the 1999 Forestry Law and concluded that 'Customary Forest' is not state forest but forest within the traditional territory of indigenous communities. While official implementation is still wanting and land grabbing ongoing, indigenous communities in Indonesia have begun their own process of demarcating and rehabilitating customary forest. They have also undertaken to map approximately six million hectares of indigenous territories in 2013 and to launch a campaign to claim formal recognition.

This and many other examples found in this book demonstrate the strength of indigenous peoples in pursuing strategies for the protection and defence of their lands, livelihoods and worldviews through everyday acts of resistance.

UN system action for the implementation of the rights of Indigenous Peoples

The second theme of the Alta document reflects indigenous peoples' aspiration to improve their possibility of full and effective participation in the UN system itself and to participate in and have their rights respected in the more concrete manifestations of the work of UN agencies on all levels.

Although indigenous peoples have made great progress since they gained access to the UN, their right to fully participate as rights holders in UN decision-making processes that directly affect them through their own representative organisations and institutions (Art 18 of the UNDRIP) continues to be strongly contested by some member states. The current hesitancy in recognising indigenous peoples' full, effective, direct and equal participation in the World Conference

process is a clear reflection of this. Disturbingly, only five months before the conference, it is still uncertain whether or not the UN will take the necessary steps to ensure indigenous peoples' full and effective participation in a conference that is aimed at the realization of their rights. If the UN fails to do so, most of the world's indigenous peoples will disengage from the process and the UN will prove incapable of living up to its own obligations to promote, respect and implement the rights of indigenous peoples.

Implementation of the rights of Indigenous Peoples

A thread running through the recommendations under the third theme of the Alta document is a renegotiation of the relationship of peaceful co-existence between states and indigenous peoples on the basis of the UNDRIP and the strengthening of indigenous peoples' capacity to practice self-determination. Apart from counterbalancing the inequalities experienced by indigenous peoples, the recommendations are aimed at a complete decolonization of indigenous peoples' health, education, governance and legal systems, as well as reconciliation and redress for past harms. This includes the restoration of lands, sacred sites and ancestral remains.

2013 saw some interesting developments with regard to how indigenous peoples are seeking to renegotiate their relationship with states. In Tanzania, indigenous peoples have organised to influence the constitution, which is currently undergoing a review process. For the first time in Tanzania, a constitutional review aims to include all sectors of society. The first draft mentions representation, education and land rights for minorities. With the appointment of six of its members to the Constituent Assembly, the pastoralist and hunter-gatherer initiative Katiba hopes for a strengthening and clarification of these issues, which are essential if a more just society is to be built.

In Nepal, on the other hand, the constitutional review is flawed by the continuous refusal to respect indigenous peoples' right to be represented through their own institutions in the Constituent Assembly, which is today based on a political party system privileging the elite. Elections for the second Constituent Assembly in November saw a decrease in the number of indigenous Constituent Assembly members, making it even more difficult for indigenous peoples to secure an iden-

city-based federalism that would recognise and respect diversity in a country where at least 36% of the population is indigenous.²

In Colombia, in the context of ongoing peace negotiations and the state's aggressive promotion of megaprojects, indigenous peoples last year mobilized to clarify, consolidate and improve their land rights. Indigenous peoples have been heavily affected by the civil war - often caught in the crossfire between the armed groups - and they thus do not feel represented by either of the parties to the peace talks, neither of whom they trust will promote their claim for restoration of lost land and territorial governance.

On the path to peaceful and respectful co-existence between states and indigenous peoples, states need to recognise and adhere to the UNDRIP and, as a first step, ensure that indigenous peoples are able to participate in peace negotiations, reconciliation processes and renegotiations of the social contract through their own representative institutions.

For justice to be fulfilled, however, fundamental change is needed. 2013 saw a clear example of how a change in colonial power structures may still be a long way off: in Guatemala, former president Ríos Montt was prosecuted and convicted for the genocide of the Maya Ixil and crimes against humanity during his presidency but, shamefully, the case was subsequently overturned by the Constitutional Court. The trial opened the eyes of Guatemalan society to the genocide committed against indigenous peoples during the civil war, and it demonstrated that even the most powerful can be brought before the courts but, in the end, it still demonstrated that impunity continues to reign.

Indigenous Peoples' priorities for development with free, prior and informed consent

The last theme of the Alta Outcome Document deals with self-determined development as an alternative to externally-imposed approaches to development. Indigenous peoples want development on their own terms, and they demand to be consulted in ways that respect the principle of Free, Prior and Informed Consent (FPIC).

In 2013, in its report to the UN General Assembly, the UN Working Group on Business and Human Rights identified ILO Convention 169 on Indigenous and Tribal Peoples and the UNDRIP as the authoritative sources of indigenous peo-

ples' rights by which states and business enterprises must abide, including the right to FPIC,³ when planning projects that will affect indigenous peoples. The UNDRIP contains the clearest language on FPIC, while ILO C169 sets the highest legally binding standards for participation in, and prior consultations of, indigenous peoples on issues that affect them.

This volume, however, gives example upon example of slow, flawed or completely lacking implementation of FPIC processes by both states and companies. In 2013, social protests were staged in Namibia, Malaysia, Nepal, West Papua, Brazil, Ecuador, Peru, Nicaragua, Canada and many more countries against proposed megaprojects affecting indigenous peoples' lands and territories. In none of these instances have indigenous peoples been able to exercise their right to Free, Prior and Informed Consent.

In 2014, the ILO celebrates the 25th anniversary of Convention 169. After 25 years, it has been ratified by 22 countries (15 in Latin America), many of which have recently made efforts to produce indigenous consultation mechanisms. Judging from the Latin American contributions to this volume, these efforts do not live up to international standards and have not yet been crowned with great success. In Chile, for example, a new regulation on consultation approved in 2013 exempts public companies, the military and municipalities from the obligation to consult and considers the duty to consult fulfilled if attempts at consultation have been made - even if no agreement has been reached. In Peru, the regulations governing the law on prior consultation lack clarification as to when consent is compulsory and place the responsibility to conduct consultation with the very public sector that is promoting the measures requiring consultation. The duty to consult is, moreover, only applied to certain parts of the indigenous population, following a set of arbitrary criteria for recognition of indigenous identity.

As stressed by the UN Special Rapporteur on the rights of indigenous peoples during his visit to Peru in December 2013, a necessary condition for implementing consultation is the creation of an "atmosphere of mutual trust".

While indigenous peoples' trust in states and companies is being affected by the devastating consequences of development projects on their territories and by the unlawful repression of their legitimate social protests, most states and companies continue to disregard indigenous peoples' fundamental rights and show distrust of indigenous peoples' own institutions and models for development and thus primarily see them as "obstacles" to development.

Indigenous peoples are not against development or environmental protection but indigenous organisations are promoting alternative models that encompass rights, culture and spiritual values and are seeking sustainable ways of life built on traditional knowledge. Indeed, such models can inform ecosystem monitoring and growth in biodiversity, resilience, cultural diversity, food security and equality as demonstrated in many of the articles in this book (e.g. CBD, UNFCCC, IFAD, Post 2015).

To quote from this year's Canada article: "Indigenous peoples' rights are not a barrier to economic development. The rights of Indigenous peoples as protected in domestic and international law provide a principled, unbiased framework to ensure that the development that does take place will benefit Indigenous peoples rather than compounding the injustices they have experienced."

Throughout the year, from the discussions on sustainable development goals in New York to the indigenous women's conference in Lima to the climate talks in Warsaw, indigenous peoples have reiterated that they are not the problem but rather a part of the solution to the environmental and climate change crisis facing us all. Acknowledging indigenous peoples' self-determined development models and their right to development on their own terms is an important step towards recognition, respect, justice and peaceful co-existence – the vision formulated by indigenous peoples in Kiruna in 1977 and again in Alta in 2013.

About this book

First and foremost, IWGIA would like to thank all the contributors to this volume for their commitment and their collaboration. Without them, IWGIA would never be able to publish such a comprehensive overview of the past year's developments and events in the indigenous world. The authors of this volume are indigenous and non-indigenous activists and scholars who have worked with the indigenous movement for many years and are part of IWGIA's network. They are identified by IWGIA's regional coordinators on the basis of their knowledge and network in the regions. This year, the volume includes 58 country reports and 15 reports on international processes. All the contributions are offered on a voluntary basis – this we consider a strength, but it also means that we cannot guarantee to include all countries or all aspects of importance to indigenous peoples every year. We would like to stress that omissions of specific country reports should not

be interpreted as “no news is good news”. In fact, sometimes, it is the precarious human rights situation that makes it difficult to obtain articles from specific countries, as was the case this year with e.g. Egypt, Burkina Faso and the Central African Republic, where indigenous peoples have suffered gross human rights violations in 2013, including of their rights to life and security.

The articles in this book express the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated herein. We therefore encourage those who are interested in obtaining more information about a specific country to contact the authors directly. It is, nonetheless, our policy to allow those authors who wish to remain anonymous to do so, due to the political sensitivity of some of the issues raised in their articles. *The Indigenous World* should be seen as a reference book and we hope that you will be able to use it as a basis for obtaining further information on the situation of indigenous peoples worldwide. ○

Cæcilie Mikkelsen, editor, and Lola García-Alix, director
Copenhagen, April 2014

Notes and references

- 1 The official title of the World Conference on Indigenous Peoples, to be held on 23- 24 September 2014 in the UN Headquarters in New York, is a “high-level plenary meeting of the General Assembly to be known as The World Conference on Indigenous Peoples”. See more about the World Conference and about indigenous peoples’ preparatory process in the article included in this volume.
- 2 According to indigenous organisations, indigenous peoples comprise more than 50% of the population of Nepal. For further information, see the Nepal article in this volume.
- 3 The report can be downloaded at: <http://www.ohchr.org/Documents/Issues/Business/A-68-279.pdf>



PART I

REGION AND
COUNTRY REPORTS
THE ARCTIC

GREENLAND

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

A new government

In March 2013, Greenland elected a new government. Aleqa Hammond won the elections when her social democratic party, Siumut, gained more than 42% of the votes. Aleqa Hammond, who is the first female premier in Greenland, succeeds Kuupik Kleist of the socialist party, Inuit Ataqatigiit, who had been in power since 2009. Hammond formed a political coalition with two conservative parties, Atassut and Partii Inuit. The central political focus of the new government was to introduce a stricter royalties policy on the extractive industries and to enable mining in areas where uranium is present. Furthermore, it aimed to set up a commission on reconciliation in order to critically investigate the colonial history of the



country. According to Aleqa Hammond, colonialism has had an impact on people's self-perception and she claims that some of the self-destructive behaviour among parts of the Greenlandic population can be explained by the colonial experience. However, in Greenland, the idea of a reconciliation commission has met

with critical reactions because the new premier has not addressed the purpose and methods of the commission. Faced with this new political initiative, the Danish Premier, Helle Thorning-Schmidt, stated that Denmark had no need to engage in a process of reconciliation with Greenland. Consequently, the commission will face opposition in both Greenland and Denmark from the beginning.

Extractive industries

Greenland's strategic priority of attracting and underpinning the extractive industries reached a milestone in 2013 when Greenland awarded the London Mining company a 30-year licence to build and run a giant iron ore mine (the so-called Isua project 150 km from the capital of Nuuk). If investment capital can be raised, this will become one of the largest commercial projects in the history of Greenland. Apart from environmental concerns related to the proposed mine, two other issues have been discussed at great length. First, in order to make the mine economically feasible, the company needs to import thousands of foreign (primarily Chinese) workers, who will work under rules and salaries stipulated in separate legislation developed to open Greenland up to cheap labour. In the wake of this legislation, concern over social dumping has been raised, as well as the cultural problems that may emerge with such a large foreign work force. Second, the hearing process related to the Isua project was criticised by the organisation Greenland Transparency for not being open to constructive dialogue and an exchange of perspectives. Instead, the meetings were staged as information and sales-related meetings, according to the organisation. The concerns related generally to the level of public information, and the possibility of hearings on the extractive industries has been aired by a number of organisations in Greenland. The Inuit Circumpolar Council, another NGO in Greenland, for example, raised concerns over the lack of information distributed and made available to civil society with respect to oil industry activities. The authorities responded that it was unable to provide the organisations with the requested data because it contained commercially confidential information.

Uranium and the politics of zero tolerance

Since the 1990s, the Greenlandic and Danish authorities have pursued an active strategy of attracting extractive industries to Greenland in order to diversify and strengthen the economy and job opportunities. Faced with an anticipated budget deficit that is likely to grow rapidly, and an aspiration to establish a Greenlandic economy that is more independent of Danish support, the large-scale extractive industries have emerged as a viable and desirable path to pursue. Furthermore, geological surveys indicate a number of highly interesting mining possibilities, and several licenses for exploration and exploitation have been granted. As a consequence, the zero-tolerance policy on uranium that was allegedly adopted in 1988 now appears counter-productive to a number of mining activities, given that uranium is also present in many places, and is thus hindering the mining of other minerals. The Greenlandic Parliament (Inatsisartut) was divided on how to solve this predicament. While one wing supported an abandonment of the policy altogether, another argued for a raising of the bar to acceptable levels for uranium. This latter position would allow mining with uranium only as a by-product. At the autumn session of parliament, an abandonment of the zero-tolerance policy was put to the vote. With 15 in favour and 14 against, the proposal was adopted. It was one of the new government's key issues but it was followed by a heated public debate as some consider uranium to be a controversial, dangerous and environmentally harmful mineral. The Greenlandic environmental organisation, Avataq, was particularly active in the debate. Other voices claimed that uranium mining was such an important matter that it would require a referendum or, at the very least, more public debate and involvement, as argued by the civil society organisation, Greenland Transparency. The Greenlandic government emphasised that all mining activities still had to be considered on the basis of environmental and social assessments and that an abandonment of the zero-tolerance policy did not necessarily open Greenland up to all kinds of mining activities.

The Greenlandic uranium initiative soon featured on the agenda of the Danish Parliament as well, given that several Danish politicians were arguing that the sale of uranium was a defence and security matter, and thus Denmark's responsibility. Furthermore, it was argued that all the regulations, responsibilities and requirements related to uranium export had to be followed by the signatory to the international agreements, treaties and conventions, which in this case was Den-

mark. Several political parties in Denmark were thus hesitant to allow uranium exports from Greenland. Seen from a Greenlandic perspective, this was, among other things, interpreted as interference in Greenland's right to handle its own resources, as stipulated in the Self-government Act of 2009. While both Greenland and Denmark accepted that uranium was a mineral that required special attention and cooperation, negotiations did not result in any solutions and the parties were, by the end of 2013, very far removed from each other on the matter.

Boycott of the Arctic Council

The day before the Ministerial Meeting of the Arctic Council in Kiruna (Sweden) was due to take place, in May, the head of the Greenlandic government (Naalakkersuisut) announced a boycott of the meeting and that it would put its engagement in the Council on hold. It was an historical meeting at which new members such as China, Singapore, Japan, Italy and South Korea were given observer status, the Council adopted a Vision for the Arctic and the leadership passed from Sweden to Canada. Greenland's absence was therefore criticised by political observers and political parties outside Naalakkersuisut as it was a break with the traditional diplomacy whereby Greenland had long pursued a more accommodating stance on matters of representation, i.e. sharing a seat with Denmark and the Faroe Islands in the Arctic Council negotiations, despite not being fully in agreement with this. From the Greenlandic government's point of view (which at that time was only two months old), Greenland needed its own seat in negotiations and did not accept Sweden's decision as Chair of the Council to give only one seat to each member state. In this case, Denmark is the member state of the Arctic Council and represents all interests within the Realm of Denmark (Denmark, Greenland and the Faroe Islands). The boycott illustrates one of the predicaments in the political set-up of the Arctic Council, the Realm of Denmark and its international commitments. It also shows that Greenland's Self-Government Act of 2009 has generated increased Greenlandic interest in representing itself at international fora and in having its own vote. Before Sweden took over the leadership in 2011, Denmark always had three chairs at the table in order to have the Realm represented adequately. Sweden's insistence on introducing a one-state-one-seat procedure was met with opposition from all parts of the Realm although only Greenland boycotted the actual meeting. The Greenlandic premier noted in

an interview in the Greenlandic newspaper, *Sermitsiaq*: “We believe it is of great importance for the population of Greenland and Greenlandic society that we are directly involved in the negotiations on conditions in Greenland. The work of the Arctic Council is very important to us, and we will not settle for being on the sidelines. Until then, we’re putting our involvement in the Arctic Council on hold”.¹ After the meeting, the Realm of Denmark entered into negotiations with the new leadership of the Council (Canada) in order to soften the formalities related to the practices of representation. According to the *Naalakkersuisut*, the negotiations turned out satisfactorily and, on August 19, Aleqa Hammond announced that Greenland had resumed its work and participation in the Council and that: “Greenland is stronger, thanks to its boycott of the Arctic Council”. However, the political opposition in Greenland found it difficult to see how Greenland’s representation had been improved. The matter cannot be seen only as a “domestic” issue between Greenland and Denmark because the continued involvement and participation of indigenous peoples and regional governments has become vital to the credibility of the Arctic Council. Consequently, issues of representation and voting rights have come under increasing strain as more and more emphasis is placed on resource development on indigenous lands and territories. The “arrangement of seats” is thus not a trivial matter. ○

Notes

1 *Sermitsiaq*, 14 May 2013: <http://sermitsiaq.ag/noedt-goere-drastisk>

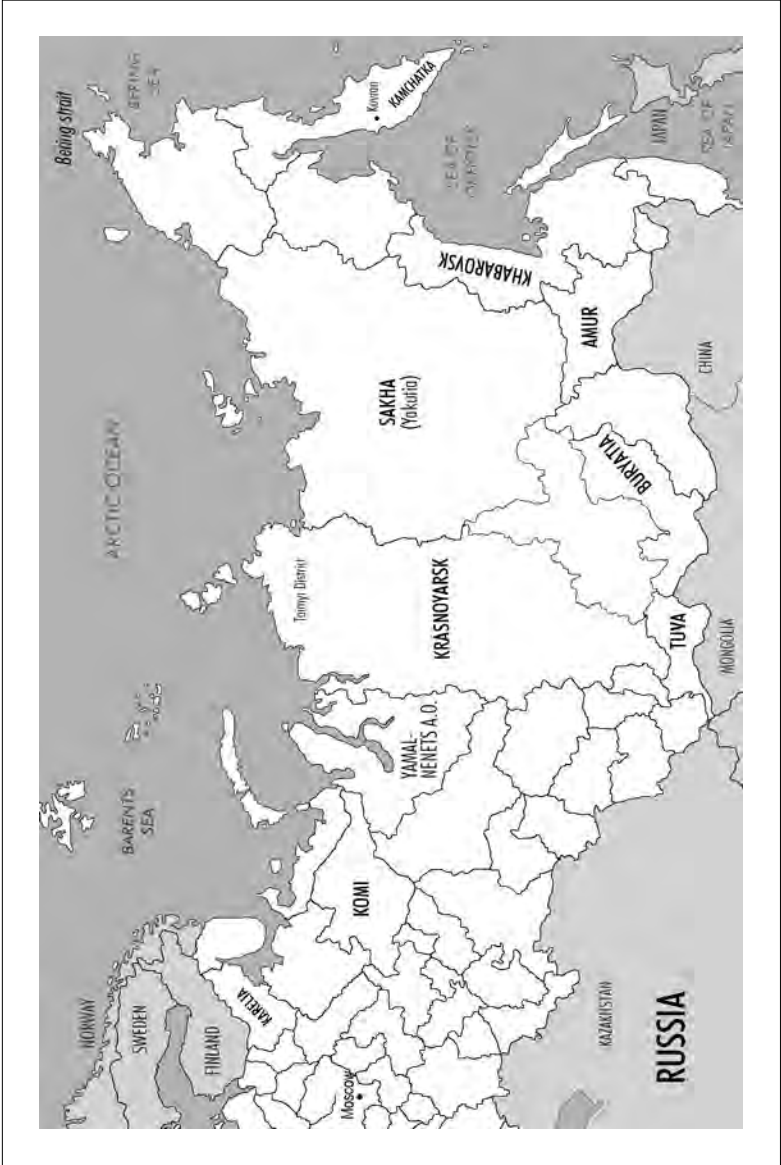
Frank Sejersen is a Danish anthropologist employed as an associate professor in the Department of Cross-Cultural and Regional Studies (University of Copenhagen), where he has been pursuing research into the Arctic in general, and Greenland in particular, since 1994. Frank Sejersen was appointed a member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

RUSSIAN FEDERATION

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

The small-numbered indigenous peoples are protected by Article 69 of the Russian Constitution and three federal framework laws¹ that establish the cultural, territorial and political rights of indigenous peoples and their communities. However, the implementation of the aims and regulations contained in these laws has been complicated by subsequent changes to natural resource legislation and government decisions on natural resource use in the North. In recent years, some important policy measures have been adopted, including the action plan for the implementation of the Concept paper on sustainable development of the indigenous small-numbered peoples of the North for 2009-2011; however, its key components have not been implemented.

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



The indigenous peoples of the Russian North met 2013 with great anxiety. By 1 November 2012, the Federal Ministry of Justice had suspended the activities of their national umbrella organisation, RAIPON (Russian Association of Indigenous Peoples of the North), under a formal pretext. This was both the culmination of a campaign of retaliation, which had been going on since 2009, and also related to the much wider crackdown on civil society observed in Russia since the substantial protests which commenced around the allegedly rigged Duma elections of 2011 (See *The Indigenous World 2013*). The suspension threatened to jeopardize the VII Congress of Indigenous Peoples of the North, to be held in late March 2013.

The suspension sparked an international outcry, including among many large NGOs such as Greenpeace but also several governments, in particular from the Nordic countries. By early 2013, the Ministry of Justice and RAIPON had found a compromise. RAIPON convened an extraordinary congress, during which modified statutes were adopted, complying with the Ministry's demands and allowing the VII Congress to go ahead.

The VII Congress of Indigenous Peoples of the North

On March 28-29, the VII Congress of Indigenous Numerically-Small Peoples of the North, Siberia and the Far East of the Russian Federation was convened in Salekhard, the capital of the gas-rich Yamal-Nenets autonomous district, located in the Polar Circle. Yamal is considered a "Border Security Zone", which means that foreigners are barred from entering the region without a special permit issued by the intelligence service, the FSB.

The Yamal government sponsorship of the congress included several free charter flights picking up indigenous delegates in Krasnoyarsk and Moscow, as well as the provision of accommodation and of the congress centre in which the event was conducted. It was the first time the congress had taken place outside of Moscow.

The Congress convenes every four years, discusses issues and concerns of indigenous peoples in Russia, provides for dialogue with high-ranking government officials, drafts a resolution and elects RAIPON's president and other mandates. Representatives of indigenous associations from 44 regions of the country took part in the congress, including 360 official delegates with voting power who

had previously been elected at regional conferences. Observers from the media, Russian government bodies, corporate representatives, foreign embassies and Russian and international civil society and indigenous peoples' representatives were also present. A government presence was very visible throughout the event, both on stage and around the premises.

The congress resolution

The most important outcome document of the congress is a resolution, adopted by the delegates, that lists their main concerns and aspirations. In their resolution, indigenous representatives denounce failures in government policy, and propose specific legislative and administrative measures to be immediately considered by the federal government, as well as requests and proposals directed at the new leadership of RAIPON.² The concerns highlighted in the resolution include:

- The government's failure to implement the two most important action plans concerning indigenous peoples adopted at federal level: the 2009-2011 Action Plan for the Outline of Sustainable Development of Indigenous Peoples of Siberia and the Far East and a package of urgent measures under the Second International Decade of the World's Indigenous Peoples;
- The lack of an effective mechanism for indigenous peoples' participation in decision-making processes regarding their socio-economic and cultural development, the protection of their ancestral territories, their traditional way of life and livelihoods, with due consideration for the principle of Free, Prior and Informed Consent (FPIC);
- The removal from various laws of important legal safeguards for the rights of indigenous peoples;
- The long-standing failure to develop and adopt legal mechanisms for the protection of indigenous peoples' land and resource rights;

The resolution highlights the need for decisive action in the following areas:

- Ensuring consistency in the elaboration of legislation protecting the rights of indigenous peoples, in particular the right to the long-term use of lands

and natural resources free of charge; systematization and consolidation of Russia's legislation on indigenous peoples into a single legislative body;

- Immediate implementation of the Federal Law “On Territories of Traditional Nature Use” and establishment of the Territories of Traditional Nature Use in line with requests from indigenous peoples, in order to ensure their sustainable development and the protection of their natural and cultural heritage;
- Development and adoption of legislation mandating the implementation of ethnological impact studies prior to the approval of economic and other activities affecting the ancestral territories and traditional ways of life of indigenous peoples, including regulations for obtaining their FPIC;
- Measures to combat poverty, unemployment, lack of access to health-care, education and other public services, including through tracking their actual development using a set of socio-economic indicators;
- Introduction of regulations ensuring the guaranteed representation of indigenous peoples in the legislature and administration;
- Administrative reforms to improve the government administration of indigenous affairs and indigenous peoples' participation in the development of legislation as well as to empower indigenous peoples' local self-governance.

The congress also adopted the Salekhard Declaration on the World Conference on Indigenous Peoples 2014.³

Election of a new president

One of the most reported events during the VII Congress was the election of RAIPON's new president, which took place in a politically-charged environment. Sergei Khariuchi, who had headed RAIPON for 16 years and four successive presidential terms, decided not to run for office again and proposed Grigorii Ledkov, a member of the State Duma for the governing *United Russia* party. Like Khariuchi, Ledkov is a Nenets from Yamal. The other two candidates were Anna Ottke, president of the indigenous Association of Chukotka and Pavel Sulyandziga, first vice-president of RAIPON and member of the Civic Chamber of the Rus-

sian Federation. Sulyandziga won an absolute majority in the first two rounds of voting. He could not be announced the winner, however, due to a recent change in RAIPON's by-laws which establishes that a two-thirds majority is necessary to elect a new president. This change was one of the conditions imposed by the federal Justice Ministry in return for accepting and registering RAIPON's new by-laws, without which the ban on the organisation's activities would not have been lifted (see above). After the second round of voting, the situation was therefore deadlocked and foreign observers and the press were expelled from the hall. In an unexpected turn of events, and despite his strong lead, Pavel Sulyandziga withdrew his candidacy. He allegedly did so under pressure from the authorities, who had maintained a strong presence throughout the congress. Ledkov was consequently elected as RAIPON's president by a show of hands from those delegates who had not walked out in protest.

Post-congress developments in RAIPON and the indigenous movement

After the congress, most of RAIPON's activities fell into a hiatus for several months, as the new president laid off most of the organisation's workforce, including the team in charge of information dissemination.

Despite the congress' resolution, no improvements were achieved in federal legislation throughout the year. On the contrary, the authorities publicly defended plans to further limit indigenous communities' rights during round table meetings with RAIPON representatives, held on November 12 in the State Duma, and on November 22 in the Federation Council, where a draft measure to amend the federal legislation on fishing was discussed, removing the rights of *obshchinas* to fishing grounds.

Government representatives proposed that indigenous peoples and their cooperatives (*obschinas*) should no longer be granted use rights for fishing and hunting grounds; neither should they be allowed to pursue business activities, including marketing traditional produce. They alleged that these rights had been abused, that "pseudo-*obschinas*" had been created by non-indigenous people solely in pursuit of business interests and that interethnic conflict had resulted. According to the government, indigenous peoples' traditional economic activities should be confined to providing for their own subsistence.

Some regional leaders challenged the government declaring:

The aforementioned bills completely eliminate obschinas of indigenous numerically small peoples of the North, Siberia, and the Far East from the federal law on fishing and conservation of biodiversity. To date, indigenous obschinas are the principal bodies ensuring socio-economic and cultural development of our peoples...

The representative explained that exclusion of ethnic *obschinas* from the law on fishing would result in a re-allocation of fishing grounds originally designated for traditional fishing and fishing quotas towards commercial stakeholders and recreational fishing. She expressed concern over indigenous peoples being turned into scapegoats, falsely accused of monopolizing marine resources, and made responsible for growing unemployment in the regions and decreasing tax revenues, for disturbing the regional socio-economic development, for decreasing investment, and even for aggravating interethnic relations. Notably, the Federal Fishing Agency had included such claims into its explanatory notes on the draft law, at which indigenous representatives expressed their outrage.

At the same time, industrial companies are encroaching onto the lands of indigenous peoples. When they present their projects, many of them state that they are not obliged to consider their industrial impact on indigenous peoples or compensate them for resulting losses as indigenous peoples are not registered as legal users of the lands and aquatic areas affected. For instance, in 2013, such declarations were made by the representatives of “Exxon Neftegas Ltd” at the public hearings on the Sakhalin project in Piltun Bay, as well as by representatives of the “Rosneft Far East” company in relation to the “Arctic Shelf. Chuckchi Sea” project.

On 28 December 2013, President Putin signed into law a bill amending the Federal Law “On Designated Protected Nature Territories”, as well as amendments to a series of legislative acts of the Russian Federation which had been ratified by the State Duma at their first and the second hearings on 18 December 2013. The law changes the status of Territories of Traditional Nature Use (TTNU) from “specially protected nature territories” to “specially protected territories”. In recent years (2009-2012), RAIPON - along with the Committee on Nationalities Affairs of the State Duma - had been protesting the proposed change, while the Ministry for Regional Development had publicly supported it. Experts fear that this change will ultimately leave the concept of TTNU an empty shell because, unlike

“specially protected nature territories”, mere “specially protected territories” have no defined status in legislation. This affects prohibitions that apply to protected nature territories in terms of allocating plots for construction of roads, pipelines, electricity lines and other communications; construction of factories, housing, for agriculture and other activities. The impact of this decision will be felt in the very near future.

Russian indigenous peoples almost never hold formal title to their ancestral land. At the same time, legislation regulating the industrial development of lands and waters considers the interests of legally-registered users only. The government is progressively eliminating norms guaranteeing the rights of indigenous *obshchinas* to economic development from the legislation, whereas local authorities are persecuting the most successful *obshchinas*, such as the Evenki *obshchina* Dylacha, in the Republic of Buryatia, which was shut down by a court ruling due to allegations that it had engaged in non-traditional types of economic activity (see *The Indigenous World 2013*).

International human rights mechanisms

The trends depicted above contradict the recommendations received by the Russian Federation from two major human rights mechanisms in 2013, the UN Committee for the Elimination of Racial Discrimination (CERD) and the Human Rights Council’s Universal Periodic Review (UPR).

The UN Committee on the Elimination of Racial Discrimination considered the 20th and 21st periodic reports of the Russian Federation (CERD/C/RUS/20-22) and the respective NGO reports, including a joint shadow report by RAIPON and IWGIA. The rights of indigenous peoples were a matter of tremendous interest to many committee members, including, in particular, the issue of land and resource rights as well as the government’s suspension of RAIPON’s activities and the crackdown on the Evenki *obshchina*, Dylacha. The committee’s concluding observations note Russia’s failure to implement its own indigenous peoples’ strategy and they put particular weight on the obligation to produce specific disaggregated data on the actual situation of the indigenous peoples, something which the state report failed to do entirely, despite repeated requests by CERD and other bodies. Russia did not provide any actual figures on indicators such as life expectancy, employment, income, education, etc.

Given the many detrimental trends in Russian legislation, the committee urged the state to ensure that “any legislative changes enhance, rather than diminish, the rights of indigenous peoples, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples”. Revisiting a long unresolved issue, it recommended that Russia “take all necessary steps to approve and establish Territories of Traditional Nature Use to ensure the protection of such territories from third-party activities”. It also recalled the state’s duty to consult with indigenous peoples along with the need to ensure their adequate representation in legislative bodies, and noted allegations of economic discrimination against indigenous peoples, alluding to the case of Dylacha.⁴ Importantly, the committee requested follow-up information on these issues to be provided by late March 2014 under its follow-up procedure.

In April 2013, Russia was for the second time examined in the UN Human Rights Council’s Universal Periodic Review (UPR). The review was based on the national report submitted by government and information from UN and civil society sources.⁵ In October 2012, IWGIA and RAIPON had jointly submitted a stakeholder submission to the UPR, which was among the sources considered in the OHCHR’s summary of stakeholder information.⁶ Partly relying on the information contained in this submission, during the review several states brought up the issue of indigenous peoples and issued relevant recommendations to the Russian government.⁷

While several recommendations were accepted, Russia’s explanations make it clear that no specific action should be expected to follow. For most of the accepted recommendations, Russia declared that they had already been implemented previously, meaning that, in their own view, no action needed to be taken.⁸ This includes Hungary’s recommendation to “ensure the right of indigenous people to their ancestral lands through the implementation of the relevant legislation with measurable targets and effective data collection”, in response to which Russia i.e. pointed to the Federal Law on Territories of Traditional Nature Use, while ignoring the fact that this law has never been put into practice. Similarly, Russia claimed to already have implemented Mexico’s recommendation to “harmonize the various laws on the rights of indigenous peoples, particularly regarding their access to land and natural resources”, even though the inconsistent state of legislation is clearly noted in the country report by UN Special Rapporteur, James Anaya.

In the same fashion, Russia accepted Estonia’s call to address the poor representation of indigenous peoples in state institutions, noting: “There are no laws

or regulations that restrict the rights of small indigenous peoples to occupy public positions". This response alludes to a fundamental misconception, viewing human rights only as the state's duty not to actively violate rights and ignoring the obligation to enforce rights when they are not fully realised. Even if Russia does not legally restrict indigenous people from assuming public office, the reality on the ground is that, even in predominantly indigenous villages, the local mayor and public servants are usually non-indigenous males. This is indicative of a reality of structural discrimination. In such cases, the state is duty-bound to take special measures to alleviate the situation. Russia also rejected all recommendations to endorse the UN-DRIP or to ratify ILO Convention 169, making it clear that it was not considering accepting any new obligations. Compared to the first review cycle, Russia's rejection of the second half of Estonia's recommendation to "follow other principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples" is a move backwards from a previously more progressive stance. In 2009, Russia had accepted Mexico's almost identical recommendation to "comply with the principles contained in the Declaration on the Rights of Indigenous Peoples".

In its written response, the Russian government declared that: "Russian legislation and law enforcement practice in respect of the rights of indigenous peoples and the preservation and development of their cultures goes substantially further than the provisions of the Declaration, extending its boundaries."⁹ If this statement were indeed correct then there would be nothing preventing the Russian Federation from endorsing the Declaration.

In sum, Russia's response to the UPR is largely consistent with the regressive trends that can be seen to be affecting legislation and law enforcement practices in the country. Russia's approach of formally accepting recommendations as "already implemented" appears to be a cop-out for not taking any real measures and thus indicates a lack of sincerity towards the UPR as a human rights instrument. ○

Notes and references

- 1 The three framework laws are: 1) On the guarantees of the rights of the indigenous small-numbered peoples of the Russian Federation (1999); 2) On general principles of the organisation of communities [obschinas] of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation; and 3) On Territories of Traditional Nature Use of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation (2001).

- 2 Resolution of the VIth Congress of Indigenous Numerically-Small Peoples of the North, Siberia and the Far East of the Russian Federation, in *Mir korennykh narodov*, 30, pp. 6-8.
- 3 The Declaration can be found here: <http://wciip2014.org/wp-content/uploads/2013/03/Salekhard-Declaration-ENG.pdf>
- 4 Concluding observations on the 20th to the 22nd periodic reports of the Russian Federation, adopted by the Committee at its 82nd session (11 February–1 March 2013), UN doc CERD/C/RUS/CO/20-22, 17 April 2013
- 5 All materials are available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/RUSession16.aspx>
- 6 http://lib.ohchr.org/HRBodies/UPR/Documents/Session16/RU/JS3_UPR_RUS_S16_2013_JointsSubmission3_E.pdf
- 7 A full list of recommendations to and pledges by the Russian government is available from http://www.upr-info.org/IMG/pdf/recommendations_and_pledges_russia_2013.pdf; recommendations can also be searched and filtered by issue at <http://www.upr-info.org/database>
- 8 Report of the Working Group on the Universal Periodic Review. Russian Federation. Addendum: *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review A/HRC/24/14/Add.1*, 2 September 2013
- 9 See written response, A/HRC/24/14/Add.1

Olga Murashko is a Russian anthropologist and one of the co-founders of the former IWGIA Moscow. She works as a consultant for the Centre for the Support of Indigenous Peoples of the North (CSIPN)

Johannes Rohr is a German historian, who has been working with indigenous peoples' organisations in Russia since 1995, focusing on their economic, social and cultural rights. He is currently working as a consultant for IWGIA and INFOE.

INUIT REGIONS OF CANADA

In Canada, the Inuit number 59,445 people, or 4.3% of the Aboriginal population. Inuit live in 53 Arctic communities in four regions known as “Inuit Nunangat”: Nunatsiavut (Labrador), Nunavik (Quebec), Nunavut and the Inuvialuit Settlement Region of the Northwest Territories.

The *Nunatsiavut* government, created in 2006, is the only ethnic-style government to be formed among the four Inuit regions to date.

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

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

The *Inuvialuit* land claim will celebrate its 30th anniversary on 5 June 2014. The Inuvialuit Final Agreement (IFA) is a Constitutionally-protected Agreement covering 91,000 square kilometres in the Northwest Territories, including 13,000 square kilometres with subsurface rights to oil, gas and minerals. The Inuvialuit Regional Corporation (IRC) represents collective Inuvialuit interests in dealings with governments and industry, with the goal of improving the economic, social, and cultural well-being of its beneficiaries, and protect and preserve the Arctic wildlife, environment and biological productivity. The Inuvialuit are also negotiating for self-government.

In Inuit regions of Canada, major discussions in 2013 focused on the prospect of resource development as a major force in the advancement of the four Arctic regions, balanced with measures taken to manage environmental consequences. There was a continued focus on the issue of harvesting as a sustainable cultural practice, and on the ongoing housing crisis in Arctic communities, as well as persistent health and social issues.

At the Kiruna Ministerial Meeting on 15 May 2013, Canada assumed the two-year Chairmanship of the Arctic Council from Sweden. The Honourable Leona Aglukkaq, an Inuk from Nunavut, is Canada's Minister for the Arctic Council and Chair of the Council during Canada's chairmanship. The theme of Canada's chairmanship is "development for the people of the North" with a focus on responsible Arctic resource development, safe Arctic shipping and sustainable circumpolar communities. Examples of this theme include the development of a Circumpolar Business Forum, an agreement on marine oil-pollution preparedness, and increasing global awareness of the traditional ways of life of Northerners.

In March, Inuit Tapiriit Kanatami (ITK) President Mr. Terry Audla was in Bangkok, Thailand to successfully defend Inuit rights to harvest and trade polar bear. The Convention on the International Trade of Endangered Species (CITES) considered a proposal to upgrade the polar bear to the highest level of protection, which would have resulted in a total ban on the trade of polar bear. The proposal, brought to the Convention by the USA, was defeated.

Inuit in Canada noted with great disappointment the November 25 ruling by the World Trade Organization, which failed to strike down the shameful European Union ban on Canadian seal products. ITK advised that Canada appeal, and Canada announced its intentions to do so immediately.

An Arctic Leaders Working Meeting with Inuit leaders from four regions and Canada's Prime Minister Stephen Harper in August discussed Inuit housing, resource development, economic development, and marine transport and search and rescue.

In early December, ITK participated in the ArcticNet Annual Scientific Meeting (ASM). President Terry Audla delivered a keynote speech advocating for true inclusion of Inuit traditional knowledge in the work of Western Scientists. At the ArcticNet ASM, ITK's Amaujaq National Centre for Inuit Education, chaired by Mary Simon, won a Can\$325,000 Arctic Inspiration Prize for their work in advancing Inuit education across Inuit Nunangat.

Inuvialuit Settlement Region

After 25 years of negotiations, the Northwest Territories Lands and Resources Devolution Agreement was signed in June, which transfers authority over land and resources from Canada to the Government of the Northwest Territories (GN-



WT). The Devolution Agreement recognizes the legal priority of the Inuvialuit Final Agreement (IFA) and that the unique resource management organizations and processes established under the IFA will continue to play a vital role in making good decisions about resource development in the Inuvialuit Settlement Region (ISR). The Inuvialuit have a great deal of confidence in those organizations and processes and believe that they provide a firm footing upon which the Inuvialuit, Canada and the GNWT can build even stronger processes and relationships for the regulation and management of oil and gas development and other activities in the ISR. The Devolution Agreement comes into effect on 1 April 2014.

Negotiators for the GNWT, Canada and IRC also completed negotiations for an Inuvialuit Self-Government Agreement-in-Principle and, upon approval, will begin negotiations for a final agreement.

Nunavut

On 9 July 2013, Nunavut Tunngavik Inc. (NTI) celebrated the 20th anniversary of the Nunavut Land Claims Agreement (NLCA).

Progress continued on NTI's historic lawsuit against the Government of Canada, launched in 2006 because of the government's failure to implement the NLCA. NTI won its fourth motion and was awaiting a ruling from the Nunavut Court of Justice regarding the federal government's recent appeal. NTI is also continuing with preparations for the case for trial. Not long ago, Inuit were on the outside of the mining industry but the signing of the NLCA changed that. Inuit own 18 per cent of the land in Nunavut, including the mineral rights to some of this land, which includes most of the known mineral deposits. Inuit reach agreements with exploration and mining companies for the mineral rights to some of the most prospective land in Nunavut and will earn millions of dollars in royalties from mining projects. There have been two royalty payments for a total of CAD\$ 2.6 million made to NTI to date.

It is therefore critical that NTI and the regional Inuit Associations develop a strategic and prudent plan for how to invest and spend these royalties. The planning process began by developing the Resource Revenue Policy and the Resource Revenue Trust, which is a solid step toward economic self-sufficiency, achieved directly because of the NLCA.

Nunavik

In 2013, Makivik Corporation and other Nunavik organizations visited all communities as part of the Parnasimautik consultations to gather information on the needs of the region and the development of a vision for its future in a number of fields, including education, health, mining, harvesting and lands.

The serious lack of housing in the Nunavik region finally received national and provincial acknowledgement. At the Arctic Leaders Working Meeting with Prime Minister Harper, Makivik was able to communicate the urgent need for a "housing catch up program" for Nunavik. Makivik also gained the backing of the Quebec Premier and the National Assembly to find a solution to Nunavik's Housing Crisis. Makivik will pursue its efforts in this regard until a solution is put in place.

Finally, the high cost of living for Nunavik Inuit was one of the main priorities for Makivik and the Kativik Regional Government. Both organizations signed a new three-year agreement with the Quebec government that will substantially increase cost of living subsidies in Nunavik.

Nunatsiavut

Lack of housing is also an important problem in Nunatsiavut and, in 2013, the Nunatsiavut government conducted a Housing Needs Assessment, in partnership with the Government of Canada and the Government of Newfoundland and Labrador. In December, it was awarded an Arctic Inspiration Prize of Can\$ 350,000 for its initiative, *Sakkijanginnatuk Nunalik: Healthy Homes in Thriving Nunatsiavut Communities*. This will be used to help build and monitor Nunatsiavut's first sustainable, multi-unit residential dwelling and establish a prototype for Northern housing development that addresses changing climate, infrastructure requirements and Inuit housing needs and preferences and that could potentially be applied across the country.

In 2013, the Nunatsiavut government also focused on the issue of harvesting and expressed great concern over the decline in the caribou herds that roam the Labrador-Ungava Peninsula, and which are central to the culture and food security of Labrador Inuit. President Sarah Leo was one of the leaders to spearhead the organization of the Ungava Peninsula Caribou Aboriginal Roundtable (UPCART) in September 2013. UPCART comprises all of the aboriginal groups that depend on the caribou on the Ungava Peninsula. It recognizes the importance of expressing and exercising aboriginal responsibility for the caribou and is building trust between the aboriginal groups who rely on caribou for their way of life. The UPCART is jointly in the process of developing a management plan for the caribou. One of the goals of the group is to overturn a five-year ban on the hunting of caribou imposed by the Government of Newfoundland and Labrador in January 2013. ○

Stephen Hendrie is Executive Director at Inuit Tapiriit Kanatami - Canada's national Inuit organization based in Ottawa. He joined ITK in 2002 following 10 years of work in the field of communications at Makivik Corporation in Nunavik, northern Quebec. He has a BA from Concordia University in Montreal (1984), and an MA in Political Science from McGill University in Montreal (1991) and many years of journalistic experience. With contributions from staff at the Inuvialuit Regional Corporation (IRC), Kerry McCluskey (Nunavut), William Tagoona (Nunavik), and Bert Pomeroy and Carl McLean (Nunatsiavut). With contributions from staff at the Inuvialuit Regional Corporation (IRC), Kerry McCluskey (Nunavut), William Tagoona (Nunavik), and Bert Pomeroy and Carl McLean (Nunatsiavut).



NORTH AMERICA

CANADA

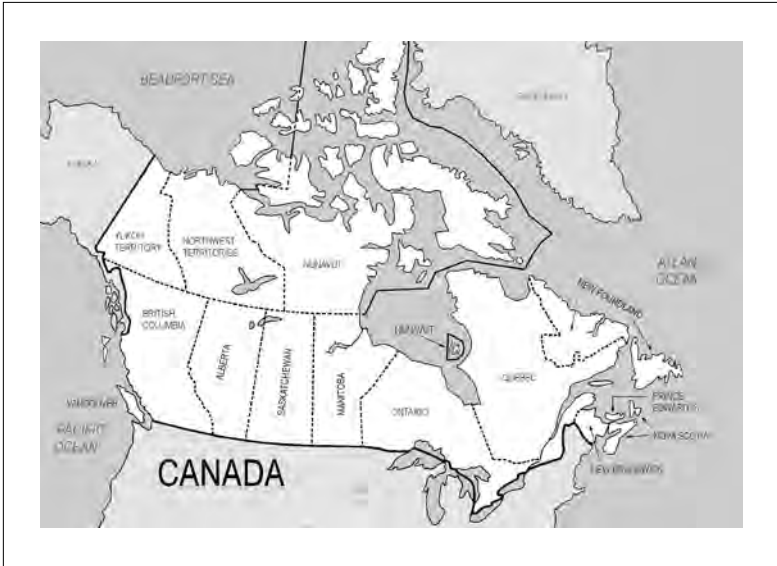
The Indigenous peoples of Canada are collectively referred to as “Aboriginal peoples”. The *Constitution Act, 1982* of Canada recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. According to the 2011 National Household Survey, 1,400,685 people in Canada had an Aboriginal identity, representing 4.3% of the total Canadian population.¹ 851,560 people identified as a First Nations person, representing 60.8% of the total Aboriginal population and 2.6% of the total Canadian population.

First Nations (referred to as “Indians” in the Constitution and generally registered under Canada’s Indian Act²) are a diverse group, representing more than 600 First Nations and more than 60 languages. Around 55% live on-reserve and 45% reside off-reserve in urban, rural, special access and remote areas. The Métis constitute a distinct Aboriginal nation, numbering 451,795 in 2011, many of whom live in urban centres, mostly in western Canada.

Canada’s *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and Treaty rights of Aboriginal peoples. The Supreme Court has called the protection of these rights “an important underlying constitutional value”³ and “a national commitment”.⁴ Canada’s highest Court has called for reconciliation of “pre-existing aboriginal sovereignty with assumed Crown sovereignty”.⁵

In 2010, the Canadian government announced its endorsement of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which was adopted by the UN General Assembly in September 2007. This decision comes as a reversal of Canada’s earlier opposition to the Declaration, which it had pursued together with Australia, the USA and New Zealand, and who have all since revised their attitude towards the UNDRIP. Canada has not ratified ILO Convention 169.

2013 started exactly as 2012 ended – much media coverage surrounding Idle No More⁶ events, awareness raising among the non-Indigenous settler population



and demands for the Prime Minister to meet with Indigenous leaders. By the end of January, a meeting did happen with, as of yet, unrealized promises for collaborative actions. Later in the year, the federal government cut funding to Indigenous political organizations at the federal and regional levels. Relationships between the Canadian government and Indigenous peoples remain strained at best and are often hostile. The goal of “reconciliation” requires respecting Indigenous peoples’ human rights in good faith and creating real partnerships for implementation of the UNDRIP. This goal remains elusive.

Legacy pole raised in Gwaii Haanas, British Columbia

On the 20th anniversary of an agreement between the Haida Nation and the federal government to co-manage and protect their traditional territory as a cultural heritage site, following a logging blockade led by Haida Elders in 1985, a 50-foot-high legacy totem pole was raised. The pole is a 500-year-old red cedar and its carvings show the protection of the land from the bottom of the ocean to the top of mountains. It is the first Haida pole raised in more than a century,⁷ and

symbolizes the importance of the protected area for those who fought to make it happen. Haida carving was almost wiped out by a combination of the impacts of early missionaries and smallpox, which decimated the population of Haida Gwaii.

Tsilhqot'in title at the Supreme Court

In 2012, in the *William vs British Columbia case*, the lower court affirmed the Aboriginal rights of the Tsilhqot'in people but restricted awarding Aboriginal title to small plots of land (see *The Indigenous World 2013*). In November 2013, the Tsilhqot'in Nation case affirming their rights, including title,⁸ was heard by the Supreme Court of Canada. This landmark case began more than 20 years ago, when the Tsilhqot'in went to court to protect their traditional lands from industrial logging. At stake is the right of the Tsilhqot'in Nation to own lands in the heart of its traditional territory. Canadian law recognizes that Indigenous peoples may hold a title to their lands that predates colonization. However, no Canadian court has ever affirmed such title. The Tsilhqot'in and a wide range of interveners urged the Supreme Court in 2013 to reject government efforts to limit First Nations' ownership and control of land and seize this opportunity to give practical application to the human rights standards affirmed in the UNDRIP and other international human rights law. Civil society expressed concern that governments are using extensive legal resources to oppose the rights of Indigenous peoples. Such actions are incompatible with the constitutional imperative of reconciliation between Indigenous and non-Indigenous peoples.⁹ A decision is expected in 2014.

Reports on resource development in western Canada

The proposed Northern Gateway Pipeline¹⁰ is among hundreds of large-scale resource extraction and infrastructure projects championed by governments and industry. Two critical reports concerning proposed pipelines and other resource development in western Canada were released in December. These are the Report of the Prime Minister's special representative, Douglas Eyford, on west coast energy infrastructure¹¹ and the *Report of the Joint Review Panel for the Enbridge Northern Gateway Project*.¹² Both reports acknowledge the need for Indigenous peoples to be consulted in decisions affecting their lands and futures. However,

neither report properly addresses the legal framework of Indigenous peoples' human rights. As such, they fail to provide sufficient guidance as the federal government considers potential approval of Northern Gateway and other projects. Western Canada, in particular, is facing an influx of new proposals, such as the proposed pipeline expansion by Kinder Morgan. A proposed second pipeline would serve to "triple the flow of oil in its Trans Mountain pipeline from Edmonton to the BC coast" and "could result in a seven-fold increase in tanker traffic in the waters that surround Vancouver".¹³

In December, the report of the Joint Review Panel recommended approval of the Northern Gateway Project, subject to 209 conditions. The federal government had assured the Panel that it would carry out necessary consultations with First Nations before making a final decision. It is unclear how this can happen, however, given the advanced stage of the plans and the federal government's open support of the proposed project.

In both the *Constitution Act, 1982* and international law, "peoples" is used when referring to the distinct status of Indigenous nations. Apart from direct quotations, Eyford's report refers only once to the term "Aboriginal peoples", while "Aboriginal communities" is used 109 times. In a report meant to find a basis for reconciliation around resource development, not using "peoples" shows an avoidance of the language of human rights and related obligations. Such choices are harmful to the cause of reconciliation.

Three of the four paragraphs in Eyford's mandate assume Aboriginal participation in west coast energy development. The report does not provide a reasonable description of the extent of opposition expressed by Indigenous peoples and others before the Joint Review Panel on the Northern Gateway Project.

Anti-fracking protests at the Elsipogtog Mi'kmaq Nation

On the other side of the country, another example of resource development being advanced despite Indigenous peoples' objections occurred in New Brunswick. Violence erupted in October with excessive police force responding to protestors who oppose shale gas exploration on their traditional territory. Governments have a responsibility to ensure a measured police response in unresolved conflicts over Indigenous lands rights. In all instances, police have a clear responsibility to respect and protect human rights. Police must also act to respect the right of

peaceful protest and assembly and act to protect the lives and safety of those involved in protests. Use of force must always be a last resort and the scale and nature of the force deployed must be in proportion to the need to protect public safety. This is another example where the duty of consultation and accommodation, and the inter-related obligation of governments to deal honourably with Aboriginal peoples, cannot be met if there is a predetermination that projects will go ahead regardless of legitimate concerns raised by affected communities and nations.

Indigenous peoples' rights are not a barrier to economic development. The rights of Indigenous peoples as protected in domestic and international law provide a principled, unbiased framework to ensure that the development that does take place will benefit Indigenous peoples rather than compounding the injustices they have experienced.

Every provision in the *Declaration* must be interpreted in accordance with the "principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith". These are core principles in Canadian and international law. In the context of resource development across Canada, these same principles are not being fairly and fully applied to Indigenous peoples. As Daniel Wilson has commented:

Indigenous peoples and their allies appear prepared to force Canadians to confront the fundamental hypocrisy in denying Indigenous legal rights while expecting Indigenous people to obey Canada's laws. Without the full acceptance of that truth there can be no reconciliation, and without the application of that truth in law, the looming battles over fracking or the Northern Gateway pipeline will be messy indeed.¹⁴

Review of Canada's human rights record

In April, Canada had its second Universal Periodic Review (UPR) before the UN Human Rights Council (HRC).¹⁵ As was the case in the first review, the majority of the questions and recommendations from other states dealt with urgent matters involving human rights violations of Indigenous peoples.¹⁶ These include violation of land rights, inequalities in education, health, drinking water and sanitation, food insecurity, control over lands and resources, and racial discrimination. More than

20 states raised specific concerns about high levels of violence against Indigenous women in Canada. Despite the many principled recommendations by Canada's traditional allies, the federal government's official response¹⁷ indicated that Canada was not prepared to accept any State recommendation unless federal, provincial and territorial (FPT) governments "are already implementing [them] through existing legislative or administrative measures, and are committed to continuing to take steps to achieve".¹⁸

Recommendations were not accepted "if they call for specific actions that are not under consideration at this time, whether or not Canada supports the underlying objectives".¹⁹ In particular, the government did not accept any State recommendations that "relate to the UN *Declaration on the Rights of Indigenous Peoples*, which Canada views as an aspirational, non-binding instrument".²⁰ Canada did not agree to address violence against women through a "national action plan", the holding of a national public inquiry or ensuring accurate police data collection and reporting on numbers of missing and murdered Indigenous women.²¹ In the absence of such essential measures, the responses across police jurisdictions and various departments of government lack coordination and accountability in relation to the affected families and communities. A recent Statistics Canada report suggests that the national homicide rate for Indigenous women is at least seven times higher than for non-Indigenous women.²² The UPR process is only effective if all states engage in good faith and attempt to respond effectively to the valid recommendations put forward by other states. Canada has yet to do that at the UPR.

Archival documents withheld on residential schools

In January 2013, the Truth and Reconciliation Commission (TRC) obtained a court ruling²³ requiring the Canadian government to provide the TRC with all relevant documents housed in Library and Archives Canada. Despite the government's objections, such materials were confirmed to be within the scope of Canada's obligations under the 2007 Indian Residential Schools Settlement Agreement. In compiling an historical record, it is crucial that the TRC have records relevant to the devastating and ongoing impacts of residential schools on the health of survivors and communities. By the end of 2013, the government had still not produced millions of relevant documents.

Unilateral cuts in social assistance

In *Simon v. Attorney General of Canada*,²⁴ First Nations in New Brunswick, Nova Scotia and Prince Edward Island requested that the Federal Court of Canada review a decision by the Canadian government that had the effect of severely reducing social assistance payments to a majority of recipients living on reserves. For decades, in accordance with its own regional manuals, the government had applied welfare rates that were “reasonably comparable” to those of provincial governments. These regional policies allowed accommodations for specific situations on the reserves. Yet, in 2011, the federal government unilaterally decided that First Nation governments would be required only to make payments that strictly “mirror” those established by the provinces concerned.

The Court ruled in favour of the First Nations, indicating that the federal government’s actions were unreasonable. According to the “doctrine of reasonable expectations”, the government had a duty to consult the First Nations concerned, and this was not fulfilled. In this regard, the Court indicated that it “favours an interpretation that will embody the values” of the *UN Declaration on the Rights of Indigenous Peoples*.²⁵ The Court added: “The recipients of social assistance are the most vulnerable in society and yet a decision affecting a number of them is made without any true comprehension of its impact”.²⁶ The Canadian government is appealing the ruling.

Manitoba Metis Federation

In March, the Supreme Court of Canada ruled that Canada had failed to respect the constitutional rights of the Metis by failing to carry out the land allocations for the Metis under the 1870 *Manitoba Act*.²⁷ In this regard, the majority of the Court concluded that Canada had failed to uphold the honour of the Crown, which calls for “a broad, liberal, and generous interpretation”.²⁸ The reasoning stated that: “When the issue is the implementation of a constitutional obligation to an Aboriginal people, the honour of the Crown requires that the Crown: (1) takes a broad purposive approach to the interpretation of the promise; and (2) acts diligently to fulfil it.”²⁹ Limitations of actions statutes “cannot prevent the courts from issuing a declaration on the constitutionality of the Crown’s conduct.”³⁰

UN Special Rapporteur's visit

In October, James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, conducted a formal visit to Canada. While his final report and recommendations will be submitted to the Human Rights Council in 2014, he did issue a statement on conclusion of his visit. In this he states:

I can only conclude that Canada faces a crisis when it comes to the situation of indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginals claims remain persistently unresolved, and overall there appear to be high levels of distrust among aboriginal peoples towards government at both the federal and provincial levels.³¹

Numerous Indigenous peoples and civil society organizations met with the Special Rapporteur and submitted critical information regarding their concerns.³² Many of the concerns raised at the UPR were also emphasized with the Special Rapporteur. ○

Notes and references

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- 3 *Reference re Secession of Québec*, [1998] 2 S.C.R. 217, para. 82.
- 4 *R. v. Marshall (No. 2)*, [1999] 3 S.C.R. 533, para. 45.
- 5 *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para. 20.
- 6 Idle No More is an ongoing peaceful and educational protest movement started by Indigenous women with teach-ins in 2012. It has encouraged hundreds of rallies across Canada and beyond in support of Indigenous rights and sovereignty.
- 7 Lyndsie Bourgon, “Haida Gwaii will see the first carved pole raised in over a century”, *The Globe & Mail*, August 9, 2013, online at <http://www.theglobeandmail.com/news/national/haida-gwaii-will-see-the-first-carved-pole-raised-in-over-a-century/article13700197/>

- 8 For all the documents filed with the Supreme Court on the case see: <http://www.scc-csc.gc.ca/case-dossier/info/fac-mem-eng.aspx?cas=34986>
- 9 Amnesty International and Canadian Friends Service Committee, “Indigenous land rights in Canada: Landmark case points the way to true reconciliation”, 20 November 2013, online at: <http://quakerservice.ca/wp-content/uploads/2013/11/Tsillhqotin-CFSC-AI-comments-on-trial-Nov-20-13.pdf>
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- 14 Daniel Wilson, “Lingering questions: Progress on Indigenous rights in 2013”, 26 December 2013, <http://rabble.ca/blogs/bloggers/daniel-wilson/2013/12/lingering-questions-progress-on-indigenous-rights-2013>.
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- 16 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada*, UN Doc. A/HRC/24/11 (28 June 2013), <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession16.aspx>.
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- 18 *Ibid.*
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- 24 *Simon v. Attorney General of Canada*, 2013 FC 1117 (Federal Court of Canada).
- 25 *Ibid.*, para. 121.

- 26 *Ibid.*, para. 155.
- 27 *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14.
- 28 *Ibid.*, para. 86.
- 29 *Ibid.*, para. 75.
- 30 *Ibid.*, para. 135.
- 31 United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya, "Statement upon conclusion of the visit to Canada", October 15, 2013, online at: <http://unsr.jamesanaya.org/statements/statement-upon-conclusion-of-the-visit-to-canada>
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Jennifer Preston is the Program Coordinator for Indigenous Rights for Canadian Friends Service Committee (Quakers). Her work focuses on international and domestic strategies relating to indigenous peoples' human rights, with a focus on implementing the United Nations Declaration on the Rights of Indigenous Peoples. She works in close partnership with indigenous peoples' and human rights representatives. She is the co-editor of: Jackie Hartley, Paul Joffe & Jennifer Preston (eds.), *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope and Action*. (Saskatoon: Purich Publishing, 2010).

UNITED STATES OF AMERICA

According to the United States Census Bureau, approximately 5.2 million people in the U.S., or 1.7% of the total population, identified as Native American or Alaska Native alone or in combination with another ethnic identity in 2010. Around 2.9 million, or 0.9% of the population, identified themselves only as American Indian or Alaska Native. In 2013, there were 566 federally recognized tribal entities in the United States,¹ and most of these have recognized national homelands. Only 23% of those identifying as American Indian or Alaska Native live in American Indian areas or Alaska Native villages. The state with the largest Native population is California, the place with the largest Native population is New York City.²

While there are extreme variations in socio-economic indicators between tribes, taken as a whole, American Indians show higher poverty, unemployment and suicide rates than the general population, especially in Native communities that are relatively isolated. American Indians are citizens of the United States but hold special legal statuses that, in practice, can result in differential political and legal treatment.

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

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



New Council on Native American Affairs

In June 2013, President Obama established the White House Council on Native American Affairs. The council will work on economic development, healthcare, tribal justice systems, education and the management of land and natural resources. This group, chaired by the Secretary of the Interior, is tasked with making policy recommendations to the President, coordinating with Native organizations, coordinating tribal consultations and assisting in organizing the yearly White House Tribal Nations Conference. In light of the high number of tasks, as well as the more than 30 federal agencies represented on the council, it is questionable whether any concrete improvements for tribal communities or in federal-tribal relations will come from this initiative. However, the language of the order establishing the council reinforces several key concepts of Native policies: it recognizes the unique legal status of American Indian tribes, as well as the historic relationships established through treaties and other means. "Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self-determination and prosperity," it proclaims. The order then announces that:

we cannot ignore a history of mistreatment and destructive policies that have hurt tribal communities. The United States seeks to continue restoring and healing relations with Native Americans and to strengthen its partnership with tribal governments, for our more recent history demonstrates that tribal self-determination - the ability of tribal governments to determine how to build and sustain their own communities - is necessary for successful and prospering communities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination. This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities. This policy is established as a means of promoting and sustaining prosperous and resilient tribal communities.³

While the language is certainly encouraging, only time will tell whether this council will result in more than rhetorical politics.

Violence against women

One area where the move from political rhetoric to real action is sorely needed is violence against women. In March, President Obama signed the re-authorization of the Violence against Women Act (VAWA), which had been held up in 2012 because it includes provisions that will strengthen tribal jurisdiction (see *The Indigenous World 2013*). Under pressure, House Republicans accepted the Senate version of the law, which kept these provisions in place. Some tribes thereby gain jurisdiction over non-Indians in domestic violence cases, but only under very limited circumstances, and only if the tribal courts and the procedures conform to strict guidelines. The new provisions under VAWA are part of an effort to curb the epidemic of domestic violence, rape and stalking affecting Native women. According to a 2010 study by the Centers for Disease Control and Prevention, 46% of Native American women have experienced domestic violence, rape or stalking,⁴ although real numbers are hard to obtain because many victims have lost faith in the authorities and no longer report any incidents. Last year, reports of Canadian First Nations women being trafficked into the American harbor of Du-

luth⁵ reinforced the fact that sexual violence continues to be a fundamental problem for indigenous women.

The version of the VAWA that was passed still leaves out Alaska Native villages. In December 2013, the U.S. Indian Law & Order Commission officially presented its report, *A Roadmap For Making Native America Safer*, in Alaska. The chairman of the commission called public safety in rural Alaska a national disgrace and especially criticized the fact that Alaska is opposing more sovereignty for Alaska Native villages. Contrary to American Indian reservations in the United States, under the Alaska Native Claims Settlement Act of 1971 (ANCSA), Alaska Native villages were not affirmed in their sovereignty. An excerpt from the report reads:

*The 75 Alaska Native villages that lack any law enforcement presence must contend with the prevailing sentiment in the State, which the Commissioners frequently heard from State and Federal leaders, that they should “just move.” The Commission was told repeatedly, in other words, that many Alaska Natives should relocate to larger, semi-urban centers, where there are law enforcement, court services, and support for victims and offenders. For communities that already are under great stress from natural resource development, environmental degradation, climate change, competition over subsistence resources, complex restrictions on subsistence activities, high prices for food and fuel, and substandard housing and sanitation conditions, this relatively callous attitude toward village public safety may be the final straw, leading to the dissolution of villages and the abandonment of life ways forged in the crucible of the Arctic thousands of years ago. While cultural change is to be expected, it should be guided by community choices—not forced by colonial policy.*⁶

Native Children

Probably the most controversial Supreme Court decision in 2013 came in *Adoptive Couple v. Baby Girl*, a case dealing with the Indian Child Welfare Act (ICWA). This law was enacted to keep Native children from being adopted by or placed in foster care with non-Native parents, if possible. In this case, the biological father of a girl, who had never seen her and had relinquished his parental rights while the mother was pregnant, had gained custody over the child under ICWA after

she had been living with adoptive parents for two years. The adoptive parents appealed to the Supreme Court, which gave them rights because the father had never possessed legal or physical custody. The couple then enforced a court order to finalize the adoption. After the decision, the father refused to give up the girl, and a legal standoff took place for a time. The Cherokee Nation, of which the father is a citizen, granted him custody to ward off the adoption. Finally, the father relinquished his rights, and the adoptive couple vowed to allow the girl to stay in contact with him and his family. In November, however, their attorneys, who had represented them *pro bono*, asked a court to force the Cherokee Nation and the father to pay them US\$ 1 million for expenses.

While the case raises several questions about adoption practices in the United States, it has also helped to re-open a discussion about ICWA. Some observers see ICWA as a necessity to fend off forced assimilation while others point out that the law defends the rights of nations over children but is not necessarily in the best interests of these children themselves. In South Dakota, where a National Public Radio (NPR) report had accused the state of willfully ignoring ICWA (see *The Indigenous World 2012*), a Lakota grassroots movement has continued the push to resist state adoption and foster home practices for Native children. In April 2013, they organized a speaking tour that culminated in an attempt to raise charges of genocide against the United States before the United Nations. In August, the NPR ombudsman issued a critical response to the original radio report pointing out that he could not determine whether the allegations were true but that they were not proven in the report.⁷ The Lakota People's Law Project had brought out its own detailed report in January, asserting that the radio report's claims were true.⁸ In May, the Assistant Secretary of Indian Affairs, Kevin Washburn, met with tribal representatives to discuss the issues.

Cultural Appropriation

In April, the Hopi faced another form of appropriation. A French auction house put up 70 Hopi items for sale, many of them Kachina masks, considered living beings as they personify spirits. While the tribe tried to stop the sale from going forward through court action, the auction house insisted that the sale was legal as the masks were part of a private collection, obtained legally decades earlier. After the court gave the green light for the sale, the auctioneer said that the masks were no

longer sacred but had become objects of art.⁹ The Hopi faced an identical situation with a different auction house in December. At this auction, however, the Annenberg Foundation bought 24 of the 27 items auctioned off in order to return them to the tribe. The cases have again raised the important issue of the legal rights of tribes (and nations) to possess and protect their culture, of whether caretakers of sacred items have the right to sell them, and of where the distinguishing line between art and sacredness has to be drawn. These issues are also important for cultural tourism, a growing source of income for many Native peoples.

The name of the American football team in the nation's capital serves as proof that sensibilities with regard to cultural respect still need improving. The Washington "Redskins" are still refusing to change their name, an issue that has led to increased pressure this year, especially from the Oneida nation. Journalists, sportscasters, the director of the National Football League and President Obama have all joined calls for the team to rethink its name.

In Alaska, as elsewhere, cultural appropriation sometimes takes the form of a denial of subsistence rights. In May, Ahnna elder Katie John passed away. She had won a series of cases in the 1990s that ensured access to fisheries for rural Alaskans and gave the federal government management rights over navigable waterways in Alaska, where the most abundant fisheries are located. The federal government has, in turn, ensured that indigenous peoples have access to these fisheries. The state wants to claim back its exclusive management rights and, in November, Alaska announced that it would seek a U.S. Supreme Court opinion on the latest decision on these issues, a ruling from 2005. The Alaska Federation of Natives (AFN) strongly opposes the petition. It called the attempt "an assault upon the people of Alaska who depend upon hunting, fishing and gathering to feed their families".¹⁰ As in other cases, non-indigenous groups are working with indigenous groups on these issues. Here, the Alaska Outdoor Council and others have joined with AFN.

Resource Extraction

While the success of Native and non-Native opposition to the Keystone XL pipeline from the Alberta tar sands to refineries in the United States is still uncertain, the Nez Perce tribe in Idaho successfully blocked a supply route to the tar sands last year. In August, Nez Perce tribal members, Idle No More activists and others blockaded Highway 12 to prevent a megaload shipment from traveling through

Nez Perce ancestral land and along a Wild and Scenic River Corridor. A transportation company wanted to ship giant evaporators from Oregon to Alberta along the road. After one shipment went through, the tribe and Idaho Rivers United brought a suit and, in September, a federal judge halted all shipments until the U.S. Forest Service had consulted with the tribe. The megaload shipments started again in December, along a more circuitous, longer route.

A project opposed by Alaskan Native villages has endured a setback. The British mining company Anglo American has pulled out of the Pebble Mine project near Bristol Bay. Some people in the villages had demanded an Environmental Protection Agency review of potential impacts, especially on wetlands and salmon runs. Anglo American cited the many years of planning for the mine that had shown no results. In October, the remaining partner in what would be the world's largest gold mine, Northern Dynasty Minerals, however, said that it was committed to the project.

In Arizona, intense lobbying by the San Carlos Apache and other tribes has forced the tabling of another long-planned mine. The country's largest copper mine would have depended on a land-swap with the federal government (see *The Indigenous World 2012*). In October and November, Arizona Representative Paul Gosar (Republican) had to pull the bill from consideration. He vowed to keep trying to enable Resolution Copper Co. to build the mine.

In Montana, the Crow Tribe last year signed an agreement with Cloud Peak energy for the development of 1.4 billion tons of coal on the reservation. In June, the Bureau of Indian Affairs approved the plans. The Crow reservation has economically depended on coal developments for decades. Cloud Peak could pay up to US\$ 10 million to the tribe over the next five years and will give tribal members hiring preferences for jobs at the mine. Most of the coal will reportedly be used for exports to Asia, although the Crow have been planning a coal liquefaction plant for years. That project has been stalled but the tribe sees its nine billion tons of coal as the only opportunity to battle the unemployment rate of around 50%.

Water

A water rights agreement between the state of Montana, the federal government and the Confederated Salish and Kootenai Tribe of the Flathead Indian

Reservation in western Montana was tabled by the Montana legislature in April. The agreement has been more than ten years in negotiations but non-Indian irrigation farmers in the area and on the reservation feared that they would not retain sufficient water rights if the compact was ratified. The Montana legislature voted to re-open negotiations, and the state governor vetoed that bill. The tribe is now preparing legal claims to take its water rights to court if the agreement is not ratified. Its water rights, especially to off-reservation streams, might be much more extensive than was agreed upon in the compact, but it will take years to move an extensive water rights case through the court system.

In Oregon, the state found in March that the water rights of tribes along the Klamath River date from time immemorial, giving them the most senior and therefore strongest water rights in the Klamath Basin. The tribes and the federal government called upon these rights during the drought-stricken summer. This action cut off water from non-Indian ranchers and farmers. In December, the federal government, the state of Oregon, the tribes and ranchers signed an agreement that should end the conflicts over water in the basin. The agreement will, however, join two other agreements concerning the Klamath that are stalled in the House of Representatives. One would remove four dams from the river to ensure salmon runs and the other is geared to restoring the environment following agricultural development damage. Several Republicans in the House oppose both.

In October, the U.S. Court of Federal Claims decided in *The Hopi Tribe v. United States* that the Hopi could not sue the government over the level of arsenic in the drinking water. The court acknowledged that: “the land is uninhabitable without drinking water” and that “the public water systems serving villages on the eastern portion of the Reservation contain levels of arsenic higher than Environmental Protection Agency (EPA) regulations permit”. The Hopi argued that because the reservation was held in trust by the federal government, the United States had a duty to protect the communities and people, including the water supply. The government answered that the Hopi had “failed to identify a source of law creating a legally enforceable duty requiring defendant to provide a certain quality of drinking water to the Reservation”. The court agreed with the government.⁸ It is not hard to understand why such decisions undermine the rhetoric of honoring trust relationships.

Health

In June, U.S. Health and Human Services broadened an exemption from the Affordable Care Act granted to American Indians. Under the law, everybody who does not have health insurance by 2014 will have to pay a fine to the government. Although being qualified to access services from the Indian Health Service (IHS) does not count as being insured, American Indians were exempt from these provisions in the law. However, the legal definition of being Native in the United States differs between the federal government, states and government agencies. Initially, only enrolled members of federally recognized tribes were considered exempt. In June, that exemption was broadened to everybody who is eligible to receive medical care through the IHS. This includes Native people who are not enrolled members of federally recognized tribes. The IHS is mandated by the government to provide free healthcare services to all American Indian and Alaskan Native peoples. However, because of severe budget restrictions, and because it spends 99% of its budget on reservations, by far not all Native people actually have access to IHS healthcare, even if they are eligible for it.

In March, the IHS released a report on rising numbers of HIV infection on the Navajo reservation. While the absolute numbers are relatively small (47 in 2012), the reservation has seen a five-fold increase in new cases since 1999 and, increasingly, transmission is between Navajo. Many infected people do not inform their families for fear of reprisals and, because mentioning something can make it come true, an open dialogue about HIV/AIDS has not been possible. In general, American Indian and Alaska Native people have a lower survival rate following infection, in part because of poverty and cultural stigma.

In August, the Oglala Sioux Tribe on the Pine Ridge Sioux Reservation in South Dakota made alcohol legal on the reservation. Pine Ridge had been in the spotlight of the fight against alcoholism because the town of Whiteclay, Nebraska, right across the reservation border, basically existed only to sell alcohol to tribal members. For decades, people had tried to end the sale of alcohol there, and a lawsuit by the tribe against beer stores and manufacturers had been dismissed by a judge in 2012. Proponents of legalization argued that it was evident that prohibition had not worked and that legalization would at least keep the money for tribal members on the reservation.

Weather and Climate

Climate change and its impact on subsistence economies is threatening indigenous peoples across North America and will present one of the biggest challenges for the future. These are just a few examples of extreme events in 2013: in September, the Navajo Nation was hit by a series of thunderstorms that created the worst rain emergency in decades. Widespread flooding displaced more than a hundred families and killed sheep. In Alaska, villages were hit by a series of storms in November. In Kotliik, a village in the Yukon River delta, and in Unalakleet, the storm damaged the water and sewage system. The very warm November had prevented ice build-up along the coast, which would normally have protected the villages from the surge of seawater. December saw a continuation of very warm temperatures in Alaska. In the meantime, the relocation of the village of Newtok, also in Alaska, caused by increasing threats of sinking due to melting permafrost and sea coast erosion (see *The Indigenous World 2013*), has been delayed because of an internal leadership dispute. ○

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Sebastian Felix Braun, an anthropologist, is associate professor and chair of the department of American Indian Studies at the University of North Dakota. He is the author of *Buffalo Inc. American Indians and Economic Development* (University of Oklahoma Press 2008), and editor of *Transforming Ethnohistories. Narrative, Meaning, and Community* (University of Oklahoma Press 2013).



**MEXICO AND
CENTRAL AMERICA**

MEXICO¹

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

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

As President Enrique Peña Nieto’s first year in government came to an end, the Special Programme for Indigenous Peoples’ Development 2013-2018 had still not been published. This is supposed to contain the policies, programmes and actions for the period proposed by the National Commission for Indigenous



Peoples' Development (CDI) and approved by the federal executive. Referring to the lack of attention to social conflicts, a high-level official within the Ministry of the Interior noted that:

Demands both old and new are creating the conditions for conflict to emerge in relation to rural, educational, religious, labour and social affairs. The disadvantaged conditions historically faced, for example, by the native peoples are a case in point. Their needs and disputes could result in social conflict. Data from the National Council for the Evaluation of Social Development Policy 2012 (CONEVAL) and from the National Survey of Household Income and Expenditure (ENIGH) 2012 shows that more than half of the country's indigenous population live in disadvantaged or highly disadvantaged municipalities; 8 out of 10 of them are poor and half of them are extremely poor; 70% of 6 to 24-year-olds are illiterate or not attending school; and more than half lack basic infrastructure. And all this despite the progress made in indigenous reforms and legal recognition of the pluriethnic and multicultural composition of our nation.²

In actual fact, during the last year of Felipe Calderón's presidency and the first year of Peña Nieto's, conflicts old and new have intensified, as has repression of indigenous protest, brutal dispossession of their lands for mining concessions (generally Canadian, or transnational companies registered in that country), abuses of justice, constant harassment of the Zapatista territories, complaints of deaths caused by medical negligence, ill-treatment of indigenous and Central American migrants and a failure to implement "aid programmes for victims" of natural disasters.

During Peña Nieto's first year in government, the creation of the Commission for Dialogue with Indigenous Peoples was announced, headed by Jaime Martínez Veloz, a former member of the first Commission for Concord and Pacification (COCOPA), which participated in the signing of the San Andrés Accords between the Mexican government and the Zapatista National Liberation Army (EZLN) on 16 February 1996. He stated that: "2014 must be a defining year for the indigenous reforms demanded by the country". The Commission made known that "an initiative of great significance" could be ready by February 2014 that would pick up on the San Andrés Accords and include new national and international legislation on indigenous peoples.³ After stating that there were powerful political and economic sectors opposed to approving the COCOPA initiative, he maintained that those who were against the initiative in 1996, because "there were technical legal loopholes and it was going to fragment the country" were those who had handed over almost half of the national territory, or 96 million hectares, to mineral exploitation.

The much discussed poverty level and its reduction through the use of certain kinds of partial indicator, however, unquestionably demonstrates the disadvantaged situation indigenous peoples find themselves in, both in terms of *moderate* and *extreme poverty*. Thus in CONEVAL's *level of poverty according to ethnic belonging*, which compares the indigenous population (IP) with the non-indigenous population (NIP), the following data was recorded for 2012: IP in moderate poverty (47%) NIP (35%); IP in extreme poverty (30.6%) NIP (7.6%); IP lagging behind educationally (34.1%) NIP (17.6%); IP with inadequate access to social security (81.0%) NIP (59.1%); IP with inadequate access to food (34.4%) NIP (22.1%); and, finally, IP with income below the minimum well-being line (74.5%) and NIP (49.2%).⁴

Although the decline in mortality rate and increased life expectancy (both general and indigenous) over the last half century demonstrate the significant

progress that has been made, the outlook for indigenous health is far from encouraging. The general trend is towards a significant increase in chronic-degenerative illnesses, while high rates of infectious-contagious diseases persist. A study conducted by the PUMC-UNAM, in coordination with the Pan-American Health Organization-Mexico, analysed official unpublished information – differentiating between IP and NIP – in the 10 states with the greatest concentration of indigenous inhabitants (Campeche, Chiapas, Guerrero, Morelos, Oaxaca, Puebla, Quintana Roo, Tabasco, Veracruz and Yucatán) and confirmed the above: diabetes mellitus, ischaemic heart disease, cirrhosis and other chronic diseases of the liver, cerebrovascular disease, chronic obstructive pulmonary disease, hypertension, nephritis and nephrosis, lower acute respiratory infections, violence (murder) and malnutrition all contribute significantly to indigenous mortality.⁵

Although influenced by current economic trends, indigenous migration (national and international) continues to be an important factor that is modifying traditional structures in terms of population movements, the incorporation of the economically active population into new labour markets, the search for basic comforts and even in terms of the transformation of epidemiological patterns. One relevant factor remains the financial support sent home by Mexicans living abroad. Over the last decade, this has amounted almost consistently to more than 20 billion dollars a year (as recorded by the Bank of Mexico).

EZLN

With the silent march of 21 December 2012, it seemed that the Zapatista National Liberation Army (EZLN) was commencing a new stage in its autonomous political history. In August 2013, the National Indigenous Congress (CNI) was relaunched; regional meetings were held in Campeche in October and December, and in Jalisco, Chihuahua and Morelos in November. In addition, it announced their “little school” *Freedom according to the Zapatistas* for “travelling companions” in Caracol Morelia.⁶ In other words, it confirmed that it would be constructing a school for internal cadres while at the same time coordinating and promoting a national indigenous front with its allies. Although this is in the strategic plan, constant harassment and hostility from the police, paramilitary groups and roving gangs from different sectors of Chiapas society are a daily occurrence

in the life of the grassroots communities. It should be recalled that both the EZLN and the CNI have continued to promote, defend and apply ILO Convention 169 and the international instruments that protect human rights in general and indigenous rights in particular, along with the national agreements aligned with these, such as for example, the San Andrés Accords. On 3 September 2013, however, a majority within the Supreme Court of Justice of the Nation (SCJN) approved recognition of the fact that “the human rights contained in the international treaties to which Mexico is a party are of constitutional ranking but, should the constitution restrict any of these rights, then this latter text shall prevail.”⁷ In other words, for indigenous issues, the existing provisions shall prevail over the provisions of the San Andrés Accords and other documents in relation, for example, to consultation and free, prior and informed consent.

Conflicts over water

Water is increasingly appearing as a focus of social conflict involving the country's indigenous peoples. In its session held in San Miguel Allende (Guanajuato) on 20 September 2013, the Permanent Court of the Peoples, Mexican Chapter, considered the devastation of the country's water sources.⁸ The *Independencia* Aqueduct in Sonora continues to be an area of dispute for the Yaqui people. This structure, 132 km long and which carries water to Hermosillo, affects 45,000 indigenous people who, by Presidential Decree, have rights over 50% of the flow,⁹ along with another one million people from the Yaqui River Basin. In 2012, the Supreme Court (SCJN) granted the Yaqui a protection order and called a halt to the extraction of water and to the structure itself. The National Human Rights Commission also issued a recommendation against the construction (No. 37/2012). On 27 September, the Yaqui delivered a petition to the Federal Ombudsman for Environmental Protection (PROFEPA) containing more than 9,000 signatures and calling on the institution to comply with the SCJN's resolution.¹⁰ On 29 May, faced with a lack of compliance and indifference from the institutions (PROFEPA, CONAGUA and SEMARNAT) and the Sonora state government, the Yaqui brought the main highway to the north-west of the country, the México-Nogales highway in Vicam, to a halt. A spokesperson for the Yaqui, Toma Rojo Valencia, commented: “If necessary, the Yaqui will engage in armed conflict to defend what is rightfully ours”.

These people maintain that the Aqueduct is not intended to benefit the population of Hermosillo but rather the beer, fizzy drinks and cross-border plants and is also aimed at enabling the expansion of the Ford factory. Transferring this water from the Yaqui River to Hermosillo would result in the Yaqui losing more than 50% of their sowing season. With all domestic appeals exhausted, Mario Luna (Yaqui) announced on 26 July that they were putting together a case to take to the Inter-American Commission on Human Rights (IACHR), the International Labour Organization and the United Nations.

Another serious conflict has emerged between the Guarijío or Makurawe people and the state government, Irrigation District 038 and the agro-industrial companies of the lower basin, who are all promoting the construction of the Pilaes dam on the Mayo River. Three percent of the land necessary for this dam belongs to the Guarijío. There are serious and justified complaints of corruption among the state officials and the “Flores y Asociados” firm of consultants regarding the Environmental Impact Assessment (EIA). The Guarijío and their advisors have received death threats for denouncing the attempts made to take over their lands.¹¹ On 11 August 2013, they published a Statement on “Violation of the Collective Rights of the Guarijío people of Sonora due to the Management of the *Bicentenario* Dam project”.¹² The Guarijío offered to sell 973 hectares at 1,500 dollars a hectare but the government and Irrigation District 038 offered only 350. The Guarijío were evacuated from 167 ha of Mesa Colorada on the promise (never kept) that they would be provided with lands, roads, a school and a hospital for 1,200 indigenous people elsewhere. The area to be flooded forms the capital of the Guarijío community, and the place where its annual rites are conducted and where its sacred sites and cemeteries are to be found.¹³ The High Commissioner for Human Rights and the IACHR are aware of the situation but the national institutions are currently offering no solution.

Conflicts over water continue in other parts of the country, including in the Costa Chica in Oaxaca, Paso de la Reina,¹⁴ and in the Sierra Norte in Puebla, where the Totonacos from the Ajajelpán River basin, through the Tiyat Tlali Council, have denounced proposals for three hydroelectric dams made by the Grupo México and Comexhidro companies which, under the guise of self-sufficiency, are aimed at supplying energy to their mining concessions in the region.

Organised crime

Another issue related to national security and the indigenous peoples that emerged during 2013 was that of organised crime (the trafficking, sale and production of illegal drugs) and its links to illegal mining and logging in various parts of the country. The previous government's failed war on organised crime and its inability to maintain a presence across wide areas of the national territory have created a *de facto* situation that has enabled and facilitated the growth of the Community Police (PM) and a proliferation of Self-Defence Groups (GAD). These two social phenomena should not be confused as they have different origins and perspectives but an analysis of this is beyond the scope of this article.

In Guerrero, the Regional Coordinating Body of Community Authorities - Community Police (CRAC-PC) is seeking to reconvene 18 years after it was originally founded because it is now divided up between the 20 founding peoples and the CRAC, which operates out of San Luis Acatlán. Its challenge is not only to reunify but to rebuild the Community System of Security and Justice.¹⁵ At the start of the year, the Union of Organised Peoples from Guerrero State (UPOEG) emerged with its Civic Security System and it is coordinating and negotiating with the Commission for Dialogue with the Indigenous Peoples, a body recently created by the federal government. The CRAC-PC has denounced the UPOEG as a group that has been promoted to bring about their own demobilisation.

In Cherán (Michoacán), where the Purépecha people have thrown out the political parties, they have had to confront drugs traffickers and illegal loggers and so have created their own system of authority, defence and justice.¹⁶ This is now the only municipality that has no clashes with organised crime.¹⁷ In Michoacán state, a number of Purépecha communities are having problems with drugs traffickers who form part of what is known as the Knights Templar Cartel. Along with the criminal group known as the Michoacán Family, this cartel is raiding the area to obtain iron through extortion, robbery and removal of the metal, which it ships out for sale in China through exporters at Lázaro Cárdenas port (Michoacán). In some cases, the self-defence groups have been denounced as government creations with paramilitary features. It is believed that these groups have expanded in the states of: Guerrero, Michoacán, Colima, Tabasco, Estado de México, Veracruz, Oaxaca, Chihuahua, Morelos and Jalisco.¹⁸⁻¹⁹ In Chihuahua, indigenous people from Choreachi are denouncing the murders being committed by groups of

drugs traffickers, who are also involved in illegal logging. They operate as roving groups for the logging companies, who are trying to rob them of their land.²⁰ In the Metropolitan Zone of the Valle de México (ZMVM), in the Nahua community of Milpa Alta, illegal loggers are operating with the support of criminal groups from Michoacán. Through their organisation, the United Peoples' Front, the Otomí people of San Francisco Magú (municipality of Nicolás Romero, Mexico state) are confronting the "*Bosques del Paraíso*" real estate development and accusing the government body for environment and natural resources, SEMARNAT of violating the law and their collective and individual rights to their forests.

REDD+

Fifty-eight percent of the country's woods and forests are owned by cooperatives and indigenous communities. However, Mexico "has taken out debts of more than 678 million dollars with the World Bank and the Inter-American Development Bank in order to include the country's woods and forests in REDD+" with the aim of conservation and reforestation. However, "by making payment for environmental services possible, the international REDD+ mechanism is [also] commercialising the green areas and privatising oxygen".²¹ The International Indigenous Environmental Network maintains that REDD+ is being used as a means to prepare for the biggest misappropriation of lands of all time.

Continental summit of indigenous communicators

Approximately 1,500 communicators, most of them indigenous Latin Americans, met in Santa María Tlahuilottepec, a Mixe community in Oaxaca, from 7 to 13 October last year. Convened initially by indigenous organisations including the National Indigenous Council of Cauca, the Andean Coordinating Body of Indigenous Organisations, the Indigenous Media Communication Association of Colombia, the International Indigenous Press Agency and Radio Jëmpoj, the Second Continental Summit of Indigenous Communication of Abya Yala took place. The work agenda was ambitious and proposed, among other things: the production of strategies for participating in and building issues such as inclusive legislation for indigenous media; access to radio bandwidth; defence of the territories; the con-

struction of a continental plan for communicator training; strategies for continental networking; and indigenous women's participation in communication processes. Within a framework of dialogue, reflection and proposals, all participants were called upon to contribute to the strengthening and strategic empowerment of the communication processes of the continent's native peoples. By means of a final statement, the Summit participants agreed to: take up the necessary task of identifying, monitoring and publicising threats of exploitation and looting; demand, as a right, the legislation and implementation of public policies focusing on the issue of indigenous peoples' communication, which can thus form a strategic tool of political influence; work to construct and implement a training plan for communicators, known as the *Travelling School*, which will fully respect diversity and will establish a communicator's profile with the characteristics of identity, commitment, solidarity and research capacity, with the aim of reviving culture; and to build a joint plan to lobby the forthcoming World Conference on Indigenous Peoples. However, it is important to note that the Summit organisers were strongly challenged over their inclusion of the Mexican government sector in the financing of this summit and also regarding the invitation extended to the country's President to open the proceedings, which was considered contradictory given that it is the government that has closed, harassed and persecuted various indigenous media and has not included the communicators in the sector's legislative actions. This resulted in various organisations withdrawing from the preparations and refusing to attend the event itself.²² ○

Notes and references

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- 10 Where specific quotes are not given regarding the issue of water it means that the documents can be found in the Database of Water on Indian and Black Territories of Latin America; see at www.nacionmulticultural.unam.mx/mezinal/hidrologicos/
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José del Val is an ethnologist and teacher of social sciences. He has previously been director of the Inter-American Indigenous Institute and is currently director of the Multicultural Mexican Nation University Programme (PUMC-UNAM).

Nemesio Rodríguez Mitchel is an Argentine anthropologist specialising in the socio-environmental impacts of megaprojects on the indigenous and black regions of Latin America. He is head of the Oaxaca office of PUMC-UNAM.

Carlos Zolla is a researcher in medical anthropology, indigenous peoples' health and traditional medicine. He is PUMC-UNAM's research coordinator.

Juan Mario Pérez Martínez is PUMC-UNAM's coordinator of communication and distribution. His areas of study relate to indigenous peoples' communication processes.

GUATEMALA

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

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

The genocide trial

The Guatemalan event that captured national and international attention last year was undoubtedly the prosecution of José Efraín Ríos Montt for genocide. This was the army general who, during 1982 and 1983, led the country following a *coup*. His time in office resulted in the most cruel years of the country's armed conflict, a conflict during which more than 200,000 people were killed, most of them indigenous, executed by the national army and paramilitary forces for their alleged support of the guerrillas. Many of these victims were defenceless civilians, elderly men, women and children, murdered in mass slaughters, the victims of cruel violations of their human dignity.

The allegation of genocide perpetrated against the Maya Ixil people was based on the fact that there was a clear intention on the part of the state to eliminate this ethnic group, which was considered to be a bastion of the insurgent forces. According to Marta Cassaus, the military's actions against the Ixil can be



classified as genocide because there is sufficient evidence to demonstrate an explicit intention to destroy them, be it partially or totally. The following elements, distinguishing genocide from other forms of violence, are particularly noteworthy:¹

- Mass murders or genocidal massacres of women, children and the elderly
- Destruction of houses, cultural and religious symbols
- Secret and/or common graves

- Depersonalisation and dehumanisation of the victims
- Declaration of public enemy or persecuted group
- Attempts to wipe out signs of identity
- Total or partial destruction of the ethnic group
- Detailed and systematic planning of their extermination

All these elements were present in the actions committed by the Guatemalan state, through the army, against the Ixil people during the internal armed conflict, specifically in the years 1982 and 1983.

The Maya Ixil indigenous peoples and the genocide trial

The Ixil people currently number around 150,000 inhabitants living on their ancestral territory which now comprises three municipalities: Nebaj, Cotzal and Chajul, in the department of Quiché, in the north-west of the country, known as the “Ixil Triangle” by the army. Their livelihoods are focused primarily on the production of maize and beans, coffee and small handicrafts, and they maintain their own traditional forms of social organisation. It is these that have enabled them to survive the constant pressures on, and dispossession of, their territories and resources. The historic isolation and abandonment that they have suffered in comparison to the rest of Guatemalan society can be seen in their vulnerable living conditions but, at the same time, in the strength of their collective identity. There has been military repression of the Ixil people at different points in history, as in 1939, for example, when dictator Jorge Ubico ordered the shooting of seven members of their traditional authorities, while another 138 people were “disappeared”.

The Ixil territory was one of the main arenas of the internal armed conflict that devastated the country for 36 years (1960-1996), causing thousands of victims, either dead, disappeared or internally displaced. At the start of the conflict, it was noted that the different strategies that had long been implemented by the dominant power groups within the state aimed at “civilising” the Ixil had not worked as they continued to follow their own way of life, without fully submitting to the official order. The state’s vision of the Ixil, added to the violent conflicts that were taking place on their territory, reaffirmed the idea that they were on the side of and supporting the guerrillas, and so the army began devising plans to cut the links between the Ixil and the revolutionary movement.

Different military reports and plans from that time (*Victoria 82, Firmeza 83, Plan Sofía*) directly refer to the Ixil as “communists, subversives, guerrillas, rebels and terrorist criminals” who were supporting the guerrillas and they were therefore declared internal enemies. With this, the military forces commenced their repression of the Ixil, by means of different actions such as the selective elimination of leaders, mass murders, the rape of women, torture, destruction of their livelihoods, psychological harassment and the concentration of people in refugee camps or “development hubs”.

The tactic used by the armed forces was the so-called “Scorched Earth” policy, which consisted of killing the people and burning their communities in order to instil terror in them and thus dissuade them from supporting the guerrillas. The army also forced the population to establish what were known as “Civil Self-Defence Patrols”, effectively no more than tools with which to repress their own neighbours. Moreover, during this regime, which lasted only 17 months of the 36-year civil war, the “Guns and Beans” campaign was established to provide the civilian population with both food and arms with which to confront the insurgents.

Ríos Montt, primarily responsible for the genocide

All the abuses and excesses committed by the government forces during this dark period of Guatemalan history are widely documented in the report “Memory of Silence” produced by the Commission for Historical Clarification (1999) and also in the report “Guatemala Never Again” produced by the Project for the Recovery of Historical Memory (1999); this latter was published by the Catholic Archdiocese of Guatemala and its principal author was Juan Gerardi, who was murdered the day after submitting his report, a crime that remains shrouded in mystery to this day.

Both reports bear witness to the fact that the worst atrocities committed during the internal war were those committed by the armed forces during the *de facto* period of government headed by General José Efraín Ríos Montt (now aged 87) from March 1982 to August 1983, following a *coup d'état*. He later joined the political party known as the Guatemalan Republican Front (FRG), through which he successfully became an elected Member of Parliament and President of Congress (and even ran as candidate for President of the Republic) thus managing to avoid prosecution due to the immunity granted by national law to those occupying public office.

The Constitution of the Republic prohibited him from running as a presidential candidate but political manoeuvring on his part led the Supreme Court of Justice to overrule this ban. He then stood as a presidential candidate in 2003 but lost and this, in the end, led to his political decline, a situation that was used to open a case for his prosecution. Nonetheless, it has taken 10 years for this lawsuit to be considered by the courts.

The accusations of genocide, crimes against humanity and war crimes against José Efraín Ríos Montt and his former Chief of Military Intelligence, José Mauricio Rodríguez Sánchez, were made in 2001 by the survivors, organised in the Association for Justice and Renewal (AJR). Ríos Montt was concretely accused of having ordered 12 massacres and a number of selective assassinations resulting, in all, in 1,771 deaths, along with numerous sexual violations and forced displacements committed against the Ixil population, between March 1982 and October 1983.

Despite the defendants having been accused of these crimes since 1996, it was not until 2010 that the Public Prosecutor's Office ordered an investigation into the complaints, under the responsibility of the prosecutors assigned to the Human Rights Section and to the Unit for Special Cases of Internal Armed Conflict. Up until then, the judicial authorities had undoubtedly been making substantial progress in their investigations aimed at supporting a legal case for genocide based on the criminal liability of the defendants through the different structures of the chain of command. In 2011, and to speed up the process and avoid traditional obstacles to the judicial process, the Criminal Chamber of the Supreme Court of Justice decided to transfer the case to one of the High Risk Courts, created at the request of the International Commission against Impunity in order to prevent interference with and pressure on the judges. In September 2011, the judge overseeing the case brought charges against the two soldiers.

In January 2012, Efraín Ríos Montt stepped down as member of the Congress of the Republic, thus losing the immunity enjoyed by public office and smoothing the path for his indictment. The dominant military and power groups in the country mobilised all legal strategies possible to avoid the opening of a trial, challenging the judge and even bringing up old ideological messages from the cold war to justify the actions of the armed forces during the internal war. The tactic of the defence was to delay or quash the case at all costs.

Indigenous Ixil submit more than 900 statements during the trial

The genocide trial began on 19 March 2013. The prosecutors submitted 900 items of evidence to the judge, including expert and witness statements gathered during the process. Sixty-five witnesses were heard, victims and survivors of the torture, of the shelling of their communities and the ensuing displacement from their lands and territories, and military plans were viewed demonstrating that all the army's actions in this regard could be considered as genocidal as they were seeking to directly eliminate the Maya Ixil people in an expression of the historical structural racism that has long existed in the country.

Particularly noteworthy among the evidence presented were the heartrending statements from Ixil women who, during the armed conflict, were raped, tortured and ill-treated – as children and young girls – and who witnessed the atrocities committed against their families and neighbours. Their evidence was decisive in the final conviction for the crime of genocide.

For its part, the evidence for acquittal submitted by the defence was based on the idea that the excesses committed by the armed forces were not ordered by the military command itself.

80 years in prison for genocide and crimes against humanity

On 10 May 2013, after a debate that was heavily influenced by the legal appeals made by the defence to overturn the case, the judge finally made known the verdict, ruling that Generals Ríos Montt and Rodríguez had been found guilty of genocide, on the basis that there was sufficient evidence in the army's plans and actions to show that it had considered the Ixil population to be subversives and a support base for the guerrillas, and that the army's actions had failed to distinguish between the civilian population and the insurgents, with the clear objective of gaining physical and psychological control over the population.

One of the arguments on which the conviction was based was the evidence of expert witnesses regarding the sexual violations of women, who were considered by the soldiers to be the "spoils of war". It was demonstrated beyond all doubt that the soldiers had acted inhumanely and with complete disregard for the women's dignity, many of whom were murdered after being abused.

The sentence imposed by the court was 80 years in prison, 50 for the crime of genocide and 30 for crimes against humanity, an unprecedented ruling in the

country's social and political history and the first time that a former Latin American head of state had been convicted of genocide. However, as we shall see below, the process was still far from over.

Conviction quashed

It was naive to think that the case would end happily with the sentence passed by the court. Although, legally, those convicted had various opportunities for appealing, there was in fact no need to do so in this case as the judges sitting in the Constitutional Court, the country's highest legal body, decided by 3 votes to 2 in favour of accepting the appeal for unconstitutionality submitted by the defence due to flaws in the process and ordered that the trial should restart from where it stood on 19 April, meaning that all evidence and witness statement presented thus far were declared null and void. In reality, this was clearly an overturning of the whole case, as indeed was confirmed by the Court in a ruling dated 10 January 2014.

Positions and rhetoric of those involved

From the very start of the legal proceedings, it was expected that the dominant power groups and former army officers would wage a legal and ideological battle to prevent the case from going ahead. And, indeed, with all their legal resources, they managed to delay the process and challenge the judges time and again. Otto Pérez Molina, the President of the Republic himself and also a former soldier, openly stated on numerous occasions that there had been no genocide in Guatemala.

These former soldiers regrouped to commence a process of ideological discrediting of the judges, human rights activists and victims of genocide, accusing them of being terrorists and communists and justifying the abuses of war as natural, inevitable and necessary practices aimed at freeing the country from the grips of communism. They plagued the media with reports and pronouncements against the judge, the head of the Public Prosecution Service, the social leaders and even international cooperation agencies, for their alleged support of the trial.

For its part, the private business sector also rejected the case for genocide, forming a common front in support of those accused and the army as an institution in general.

Lessons from the process and prospects for the future

Considered a historic case on both a national and international level, and inconceivable until it had actually commenced given the ultraconservative political structures that still dominate the country, the very least this trial does is demonstrate that even the most powerful can be brought to justice before the courts.

Guatemalan society has been made aware of the abuses committed against an ethnic group (in fact, the Ixil were not the only people to suffer genocide in the country) and there is now agreement that this should never happen again. However, it is also clear that the country's traditional power bases remain heavily entrenched and strong enough to pressurise government institutions and officials to act in their favour.

Other important events

Visit of the IACHR rapporteur

In August, the IACHR's Rapporteur on the Rights of Indigenous Peoples, Dinah Shelton, visited the country. During her visit, she confirmed the conflicts emerging over mining, hydroelectric and industrial monocropping megaprojects on indigenous territories. In addition, she noted the high level of mutual distrust existing between the indigenous peoples and government authorities. Despite the indigenous peoples' opposition to these investments, it seems that the authorities are intent on acting in favour of the companies rather than in response to the indigenous peoples' demands for respect for their collective rights.

Denial and criminalisation of the struggle for indigenous rights

As has been the case in previous years, 2013 saw many indigenous protests in opposition to the megaprojects taking place in the country. These protests were suppressed by the government forces and their leaders prosecuted. Moreover, the government has supported these mining operations, authorising operating licences even at the cost of social conflict, as can be seen in the case of the San Rafael Mine, in Santa Rosa department, and the Cemento Mine in San Juan Sacatepéquez, Guatemala department. Paradoxically, after issuing the most re-

cent operating licences, the government then stated its intention of establishing a moratorium on such licences.

Indigenous and peasant struggle suppressed

Since the failure to approve the Law on Rural Development, the government has tried to implement initiatives that do not require legal approval, such as the Integral Rural Development Policy, and is continuing to implement the rural extension system and Family Agriculture programme. However, alongside this, there has been constant repression of peasant leaders and, over the course of this year, this has resulted in a number of victims.

Regularisation of indigenous lands in protected areas

Finally, it is important to note the institutional efforts being made by various state bodies to recognise rights of ownership to indigenous communities before issuing protected area declarations, as in the case of the regularisation process being conducted in the Polochic River basin, in the departments of Izabal and Alta Verapaz. ○

Note

1 <http://www.cecies.org/articulo.asp?id=431>

Silvel Elías. *Lecturer in the Faculty of Agronomy of the San Carlos de Guatemala University. He runs the Rural and Territorial Studies Programme, PERT FAUSAC, and supports initiatives aimed at recognising the collective rights of indigenous peoples.*

HONDURAS

Given the lack of an official census, it is estimated that the nine indigenous and Afro-descendant peoples living in Honduras number 1.27 million inhabitants, divided between the following groups: Lenca, 720,000; Garífuna, 380,000; Miskito, 87,000; Tolupan, 47,500; Nahua, 20,000; Chortí, 10,500; Pech, 3,800 and Tawahka, 1,500. The territory claimed by the indigenous peoples accounts for approximately 2 million hectares out of a total national land mass of 11.2 million. Only 10% have a guaranteed property title.

Each of the indigenous peoples retains a degree of individuality, in line with their customs, and this is reflected in their day-to-day practices in terms of, for example, their community councils. Honduras ratified ILO Convention 169 in September 1994. In 2007 it voted in favour of the Declaration on the Rights of Indigenous Peoples. Apart from Convention 169, there is no case law to protect the rights of indigenous peoples.

The 2013 General Elections

In the 24 November 2013 elections, the peoples' mistrust of electoral results became more entrenched, highlighting the lack of a sufficiently coordinated state institutional structure that is able to ensure the necessary transparency that would underpin both legality and legitimacy of the democracy that is being built in Honduras.¹ Over the last three years, there has been a gradual increase in public corruption, combined with a rhetoric against corruption, criminality and violence that has ended up legitimising both militarisation and authoritarianism.

Although there was clearly fraud and violence in the 2013 elections, the results were immediately supported by the US embassy and, a little while later, by the European Union and observers from the Organisation of American States (OAS), the Carter Center and the Supreme Electoral Court of Honduras (TSE).² The mechanisms by which fraud is perpetrated are maintained by means of a deep-rooted system of patronage, and this perpetuates a fraudulent system

whereby state social compensation programmes are used for party political ends and to buy the votes of the poor, who form a majority in the country. This vote buying on the part of the National Party, which also bought hundreds of the smaller parties' credentials, was a key factor in its success, along with the many inconsistencies that were denounced and documented by civil society organisations and opposition parties (such as the PAC and LIBRE).

The buying of credentials meant that National Party (NP) activists were able to present themselves as the representatives of other parties at polling stations in a majority of constituencies nationally and thus manipulate voters in favour of the NP (a polling station must have an accredited representative present from every party participating in the elections). Combined with a high level of public corruption and a lack of transparency in the financing of the electoral campaigns, this played a decisive role in the governing party's victory, and that of Juan Orlando Hernández in particular. During the entire electoral period, the National Party was maintaining between 27 and 29% in the polls as a presidential favourite, but won 36% of the actual vote.

The position of the *Libertad y Refundación* (Freedom and Reform) party is that they were robbed of the presidency and other political posts. However, the elections led to a regrouping of the parliamentary political forces. Two new parties appeared on the political scene: *Libertad y Refundación* (LIBRE) and the *Partido Anticorrupción* (Anti-Corruption Party/PAC). The former is the direct result of the resistance movement that was created following the *coup d'état* on 28 June 2009 and the Cartagena Agreement which, among other things, enabled the return to the country of former (deposed) president José Manuel Zelaya Rosales. The latter burst onto the scene during the post-coup process and has managed to capitalise on the urban youth vote, a highly important sector of the population that had previously been more prone to abstaining and demonstrating political apathy.

The effect this political opposition will have over the next four years remains to be seen. The PAC and LIBRE have taken their seats in a Congress in which there has been very little real political opposition and, in contrast, clear anti-democratic political practices on the part of the two main parties (the Liberal Party and the National Party). This bi-party system, institutionalised for more than 100 years and with 30 years of alternating political power between them in the "democratic era", has not been accustomed to facing opposition within its own "natural" space. Although this bi-party system has been damaged, it is very far from dead. According to the official (albeit disputed) results of the 2013 elections, the Liberal and



National parties between them obtained 57.19% of the valid votes cast. In previous elections they used to win 95% and so, according to these figures, there has been a 42.81% drop in voter support for them. In other words, although a split in the bi-party system was inevitable, as an institution it remains in place, with the social bases to sustain it, along with a complex system of patronage plus control over the state's main revenue streams in order to finance³ and engineer electoral support for the two parties.

Against this backdrop, the state and the three powers (executive, legislative and judicial) have one main feature in common: a concentration of power in the hands of the new president, Juan Orlando Hernández. During the period 2010-2013, there was clear manipulation of the national political agenda by the legislature, with Hernández as president of the National Congress. He was also strongly backed up by Lobo Sosa, President of the Republic at the time. Now, with Juan Orlando Hernández as president, a process of “re-engineering” of the state institutions has commenced. On the one hand, this is in response to recommendations made by the international financial institutions aimed at “reducing” public expenditure – this was the justification given for the closure of the Ministry for Indigenous and Afro-Honduran Peoples (SEDINAFROH) and the Ministry of Culture, Arts and Sports (both essential links between the state and indigenous and Afro-indigenous communities). On the other, it is a result of a reconcentration of

power in the hands of the executive. For example, social militarisation has returned to stay for the foreseeable future. From within the National Congress, Juan Orlando Hernández had promoted the Military Police, defining this force as “key to his government”. He is now promising a return to the mass military recruitment of young people “at risk”, a practice that has historically had devastating effects on indigenous communities.⁴

The Honduran political context is unfolding against a backdrop of few promising outlooks. The country continues to be described as one of the most dangerous in the world, with a murder rate of 83 for every 100,000 inhabitants.⁵ Quite apart from this statistic, however, the state policy of auctioning off sovereign lands (along with rights to the subsoil, air and water) and of criminalising social protest has increased the vulnerability of the historically-excluded indigenous and Afro-indigenous communities. Violence has merely reinforced the theory and practice of a militarisation of Honduran society, with a return to a modernised hard-line policy. There have also been growing levels of public corruption: Transparency International (TI) identifies Honduras as one of the most corrupt countries in Central America, and even among the most corrupt in the world, according to its Corruption Perception Index 2013.⁶ And, finally, there is the question of whether the political elite is really interested in a true process of democratising Honduran society or not. Meanwhile, although the *coup* gave a boost to important elements of popular political culture such as civic mobilisation in defence of their rights, the climate for this now seems to be virtually at an end.

The process of indigenous and Afro-indigenous struggle

Since 2011, conflicts have become more prevalent and have been particularly detrimental to indigenous and Afro-indigenous peoples. Their ancestral right to autonomy and sovereignty over lands and territories, to use of the soil, subsoil and rivers is being clearly threatened and, in many cases, process of territorial dispossession are already being consolidated. This has been the consequence of stronger policies aimed at liberalising the land and natural resources in general. Although these are historic conflicts, they are also a particular response to the June 2009 *coup d'état*. The “transitional government” of Roberto Micheletti, and Porfirio Lobo Sosa’s government, through the National Congress, approved dozens of mining, hydro-electric, oil (in the Honduran Moskitia) and river conces-

sions, to name but a few. It is in the context of these processes that important struggles are being taken forward by some indigenous and Afro-indigenous organisations.

Among the Lenca peoples, COPINH (the Civic Council of Popular and Indigenous Organisations of Honduras) has organised open struggles against river concessions and against the construction of hydro-electric power stations and mining, organising the peoples and communities around these issues. The struggle for territory being taken forward with the communities of the Río Blanco, in Intibucá department, north-western Honduras, is vital. Indigenous inhabitants, members of COPINH, are opposing the Agua Zarca hydro-electric project being promoted by sectors of national and transnational private capital. The project directly threatens the Gualcarque River, the historic heritage of the Lenca people.⁷ This struggle has not only been waged against these sectors specifically; more fundamentally, if this work goes ahead it will set a precedent for the wider start-up of the megaprojects that have been considered by successive governments related to the liberalisation of natural resources. This is despite the fact that COPINH signed an agreement with Porfirio Lobo Sosa's government, permitting a certain level of institutionalisation. The agreement signed did not, as hoped, ensure that the lives of the community leaders would be respected and protected and nor did it prevent their growing criminalisation and persecution, as can be seen in the internationally-renowned case of Berta Cáceres, Aureliano Molina and Tomás Gómez.

The murders of indigenous members of the Tolután people on 25 August 2013 was not an isolated event but closely linked to the struggles and resistance processes being organised by the indigenous peoples in defence of their territories and natural resources. The indigenous Tolután who were murdered came from San Francisco de Locomapa, in Yoro department, and had been involved in blocking roads during the 12 days leading up to their deaths, in protest at the territorial dispossession they were suffering at the hands of mining and logging companies.⁸ The Tolután had denounced and publicised this conflict during 2012.⁹ The community, however, received no conclusive response from the state institutions in terms of resolving the conflict. These murders have gone unpunished, like so many others, and illustrate the situation that indigenous peoples have been facing these last few years.

The Garífuna peoples have also taken up the struggle against their territorial dispossession and removal of their community ownership. Mega-tourism and for-

eign investment projects require that the Garífuna be removed from their historic lands. Examples of this include the Banana Coast tourist project and that of the Model Towns, a process that commenced under Pepe Lobo and which has become one of the driving forces behind the Garífuna peoples' struggle. The Model Towns are now being promoted as Employment and Economic Development Zones, designed as special areas aimed at attracting foreign investment.

The Vallecito territory, in Colón department, north Honduras, has also been the scene of an important struggle. In recent years, this territory, historically Garífuna, has been threatened and gradually taken over by Miguel Facussé. Facussé is a major player in palm oil cultivation in Honduras and the Central American region – land that is also crucial for drugs trafficking – and his guards have killed dozens of *mestizo* peasants and Garífuna in recent years. Despite the Garífuna community from Vallecito winning its case against Facussé in the Supreme Court in 1999, Facussé's employees have continued to threaten and assault the native inhabitants with impunity.¹⁰

In the Honduran Moskitia, a remote land that has historically belonged collectively to the indigenous Miskito, Tawahka, Garífuna and Pech peoples, violence and displacement is taking place that has structural links with the processes that Lenca, Tolupán and Garífuna communities outside of the area are currently resisting. In this case, however, the peoples are even more vulnerable given the poor access to the region and the absence of state institutions, a gap that is increasingly being "filled" by drugs trafficking. The situation is an increasingly complex one; unlike the struggles being waged by indigenous and Afro-indigenous communities outside the region, in La Moskitia (incorporated into the Honduran state under the name of Gracias a Dios in 1957) organisational processes are simply not taking place among communities whose main concern is the real threat of hydro-electric projects and, in particular, the oil exploration that is expected to commence in 2014. These people depend almost completely on the rivers, and any change in these would represent a threat to their lives and livelihoods.

The links between drugs trafficking and the political system in La Moskitia are becoming institutionalised. Following her election, the Brus Laguna municipal authority is now being run by Teonela Paisano Wood, although it is well-known that her brother is a drugs trafficker. Another brother, Seth Paisano Wood, is MP for Gracias a Dios department.

In Olancho department, which borders onto La Moskitia, the Tawahka peoples are also struggling to prevent their land from being taken over by drugs traffickers and cattle farmers. Although not intentionally – or with any particular coordination – the work of drugs traffickers and the extractive industries is complementary: the traffickers terrorise and subjugate the peoples, removing them violently from the lands they have traditionally farmed, and this enables the large corporations to move in.¹¹

Conclusion

Against a backdrop of corruption, drugs trafficking, violence and impunity, the general outlook is not promising, particularly for the indigenous and Afro-indigenous peoples, whose very existence is being challenged by the state as an “obstacle to development”. Despite the fact that the indigenous and Afro-indigenous peoples are pursuing processes of struggle and resistance, it is clear that they are facing ever more complex situations: a process of liberalisation of the country’s natural resources has resulted in a scenario that proposes the almost immediate annihilation of the peoples’ relationship with their territories. It seems there is no possibility of “dialogue”, far less of promoting true democratic processes within the state agenda. Looming on the horizon, depending on the historic situation of the peoples and their organisations, are further processes of resistance, struggle, tensions, and also dispossession and greater exclusion. ○

Notes and references

- 1 For further consideration of these issues see Marvin Barahona, *Elecciones y ciudadanía en Honduras (1981-2013): La larga marcha hacia una democracia deficiente y un Estado de derecho incorregible*, in *Envío*, Year 11, N 40, December 2013, pp. 25-31.
- 2 The same TSE that supported the usurping government established after the 2009 coup and prepared the conditions for “demonstrating” the legitimacy of Lobo Sosa’s government; the one that also supported the candidacy of Juan Orlando Hernández, permitting him to break a number of electoral laws (for example, he marched with soldiers in his televised campaign broadcasts) while censoring LIBRE’s broadcasts which broke no electoral laws.
- 3 Drug trafficking is a latent issue in Honduran elections; however, it has not been considered seriously enough by the political parties in general.
- 4 See “Niños y jóvenes serán ‘reclutados’ por las FF AA” in *La Tribuna*, 29 March 2014, <http://www.latribuna.hn/2014/03/29/ninos-y-jovenes-seran-reclutados-por-las-ff-aa/#.UzihcoR5Gz8.twitter>

- (viewed 1 April 2014); and *Ghosts and Warriors: Cultural-Political Dynamics of Indigenous Resource Struggles in Western Honduras*, by Daniel Aaron Graham, University of California, Berkeley, 2009, <http://danielgrahamphd.files.wordpress.com/2011/10/graham-super-dissertation.pdf> (viewed 1 April 2014).
- 5 National Autonomous University of Honduras – University Institute for Democracy, Peace and Security. *Boletín del Observatorio de la Violencia*, January – December 2013. Ed. No. 32, February 2014, p. 1. Available at: www.iudpas.org (viewed 1 April 2014).
 - 6 See “Corruption Perceptions Index 2013”, <http://www.transparency.org/cpi2013/results>, (viewed 1 April 2014).
 - 7 For more information see “Honduras: Río Blanco, cuando un pueblo dice no, es no” by Claudia Korol, in *Biodiversidad en América Latina y el Caribe*, 11 September 2013, http://www.biodiversidadla.org/Portada_Principal/Documentos/Honduras_Rio_Blanco_Cuando_un_pueblo_dice_no_es_no (viewed 1 April 2014).
 - 8 See *Honduras: Masacre de indígenas Tolupanes y la ausencia de la aplicación del Consentimiento Previo Libre e Informado*, published 27 August 2013 on OFRANEH's website, <http://ofraneh.wordpress.com/2013/08/27/honduras-masacre-de-indigenas-tolupanes-y-la-ausencia-de-la-aplicacion-del-consentimiento-previo-libre-e-informado/> (viewed 1 April 2014).
 - 9 See *Carta Pública* de la Tribu de San Francisco de Locomapa, Yoro, published 17 June 2012, <http://www.honduraslaboral.org/article/carta-publica/> (viewed 1 April 2014).
 - 10 See “Honduras: Alerta! Contactos dirigencia OFRANEH y de funcionarios de estado - Garífunas continúan bajo asedio en Vallecito” 26 August 2012, <http://www.copinh.org/article/hondurasalerta-contactos-dirigencia-ofraneh-y-de-f/> (viewed 1 April 2014).
 - 11 See “Prying Native People from Native Lands: Narco Business in Honduras” by K. McSweeney, Z. Pearson, published on 04 February 2014 in NACLA, <http://nacla.org/news/2014/2/4/prying-native-people-native-lands-narco-business-honduras>, (Viewed 1 April 2014).

Regner Asís Castellanos Álvarez is a sociologist from the National Autonomous University of Honduras (UNAH)

NICARAGUA

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

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

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

Sumu-Mayangna habitat at risk of disappearing

The government is employing a pro-indigenous rights discourse that is favourable to natural resource conservation. However, in reality, indigenous peoples are feeling ever more threatened on their territories for lack of any real state intervention. The Deputy Minister for Environment and Natural Resources (MARENA) has stated that 70,000 hectares of forest are being lost every year, primarily in the Sumu-Mayangna and Miskitu territories, which overlap with the BOSAWAS Biosphere Reserve. Technicians from the National Demarcation and Titling Commission (CONADETI), indicate that, according to assessments conducted between 2005 and 2013, the estimated number of settlers moving onto indigenous territories has tripled over this period. In some cases, particularly on the Mayangna territories, this illegal trend has been increasing ever since the collective property titles were issued.

For this reason, and in order to defend their right to life, in February 2013 the Sumu-Mayangna people - in alliance with civil society organisations - held public protests and organised road blocks demanding the establishment of the Special Regularisation Commission¹ of CONADETI along with a state budget for its operations. The immediate outcome of this was that five people were wounded in clashes although, over the year, one Mayangna and two settlers died as a consequence of conflict on the territories.

Alongside these actions, the RAAN territorial authorities, presided over by Aricio Genaro from the Sumu-Mayangna nation, organised protests in front of the National Assembly, the National Human Rights Institution (*Procuraduría para la Defensa de los Derechos Humanos*), the media and human rights protection centres in Managua during 2013. As a result, Decree 15-2013 was enacted. This decree anticipates protecting the forest resources and implementing the regularisation process for indigenous and Afro-descendant territories titled under Law 445. To this end, the Inter-Institutional Commission for the Defence of Mother Earth on Indigenous and Afro-descendant Territories in the Caribbean and Alto Wanki-Bocay was created.² Nonetheless, Brooklyn Rivera MP, who is supposed to be a member of this Commission by virtue of his membership of the Ethnic Affairs Committee of the National Assembly, has stated that this body has never met to establish a plan of action, and has not yet even been formed.



However, some actions were undertaken by government officials and their institutions, and the head of the army stated that the army’s environmental battalion had done its job and put a stop to settlers advancing into the heart of the BOSAWAS reserve. In actual fact, what it had done was to seek out some illegal land and timber traffickers – land registrars, mayoral assistants - while the Attorney-General’s Office asked the Supreme Court to investigate 17 lawyers. The former Vice-Minister for Indigenous Affairs accused the army of inefficiency, and also accused a chief of police of encouraging and leading the land invasion, calling on the government to remove him from post.

Some of the lawyers and notaries who had “legalised individual plots on indigenous lands” without any legal basis were punished and corrupt officials removed.

The Mayangna Sauni As territorial government, for its part, was also successful in winning court cases taken against the usurpers and traffickers of indigenous

lands, including a deputy commissioner in the national police. The indigenous authorities intend to intensify this kind of legal process against the invaders.

It is notable that, during these processes, the FSLN's political secretary for the Mining Triangle in the RAAN promised the mestizos that no-one would be evicted from the lands they were in possession of because it was not the policy of President Ortega's government to do so; moreover, at least 17 trucks containing timber from indigenous territories were stopped in the RAAN and found to have no documentation or extraction permits. Days later, it emerged that the wood belonged to the Alba-Forestal company, linked to the President of the Republic, and the trucks and timber were subsequently released under police and army escort.

Colonisation and deforestation are thus continuing, leading the indigenous authorities to conclude that satisfactory action has not yet been taken. Various territorial governments and indigenous authorities are now threatening to evict the settlers by force, and plan to appeal to the Inter-American Commission on Human Rights.

James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, for his part, observed the case and also noted his concern at the lack of effective measures and that the deforestation on reserves was putting the habitat of the indigenous peoples living there at risk.

The titling process at an unexpected end?

To date, CONADETI has issued 21 titles recognising collective ownership (of the 23 territories claimed). There are also new calls for autonomy being made by Sumu-Mayangna communities who were initially included within Miskitu territories; these demands have not been dealt with because CONADETI's work has been at a standstill since its presidency transferred from the RAAS to the RAAN in June 2012.

Indigenous authorities now fear that political efforts to reform Law 445 itself may become a reality without their consent. One critical amendment proposed is that the indigenous and Afro-descendant peoples will be forced to accept "co-habitation" with the illegal mestizo population on their territories. This model draws its inspiration from what the Rama-Kriol territorial government calls an "offer of co-existence". This is very different, however; in this latter case, it is a vol-

untary offer that depends on an assessment by the territorial authorities themselves and admission criteria being applied: social, environmental behaviour, and recognition of the indigenous government. It furthermore only applies to those mestizos who were living in the territory when a territorial assessment was conducted at the start of the demarcation and collective titling process. This is very different from the recent influx of settlers who are threatening the survival of the Sumu-Mayangna nation.

International cooperation departs and NGO work becomes more complicated

Financial support from international cooperation declined by 67% in 2013, as compared with 2012, and was at its lowest level for 19 years. Austria, the Netherlands and Finland all withdrew, officially stating that their decision was based on the general reduction in poverty in Nicaragua.

The decline in bilateral cooperation also included the Joint Support Fund to Civil Society for Democratic Governance in Nicaragua (FGD), the primary beneficiaries of which were the indigenous peoples. However, Danish cooperation (DANIDA) is continuing to implement the Regional Human Rights Programme (PRODERECHOS) for the country's indigenous peoples, and this is currently set to continue until 2015. The Netherlands will also continue its work in Nicaragua via a regional human rights programme.

In any case, the space in which Nicaraguan NGOs are able to operate has been reduced. Not only is financial cooperation disappearing; bodies that are not aligned with official government policy are being persecuted, and some indigenous authorities have received orders not to work with NGOs.

The interoceanic canal and the RAAS regional council on the wrong path?

The Nicaraguan Interoceanic Grand Canal project is moving forward via a contract with the HKND company, owned by the Chinese businessman Wang. Its aim is to link the Pacific and Atlantic oceans, enabling the passage of larger boats than can currently be accommodated by the Panama Canal; there will also be the

provision of a rail link, an oil pipeline, two deep-water ports, two airports and free zones, at a cost of 40 billion dollars, according to official information from the Nicaraguan government.

In order to facilitate the project, Law 840 was approved, published on 14 June 2013. This is the “Special Law for the Development of Nicaraguan Infrastructure and Transport Specific to the Canal, Free Trade Zones and Associated Infrastructure”, which repeals various other legal provisions.³

Authorities from the Rama-Kriol territory, the Miskitu community of Tasbapounie in the territory of the Cuenca de Laguna de Perlas and the Black Creole Indigenous Community of Bluefields, all in the South Atlantic Autonomous Region (RAAS), submitted an appeal to the Supreme Court of Justice – one of a total of 31 appeals for unconstitutionality – claiming that the law violated 23 articles of the Political Constitution and other international instruments promoting and protecting indigenous peoples ratified by Nicaragua. The Supreme Court of Justice, however, rejected all these appeals in just one ruling, claiming that the consultations of public officials from the autonomous regions supplanted the property rights of indigenous and Afro-descendant peoples, thus prioritising the investment of a private equity-backed transnational corporation over the traditional and historic collective ownership of the indigenous peoples of Nicaragua. The ruling is based on Resolution No. 703 23-05-2013, issued by the Regional Council of the RAAS. In this resolution, the regional councils cite their exclusive right to take decisions regarding the indigenous territories, even though in actual fact the only legal representatives of the communities and territories are their own authorities, legally-constituted in accordance with the provisions of Law 445 (but not Law 28 on the regional autonomy regime).⁴

The project is now being managed by the China Railway Construction Corp with McKinsey & Company, the British environment consultancy firm ERC and the Kirkland firm of American lawyers. In 2013, 4,000 people commenced the technical and feasibility studies, at a cost of 900 million dollars.

Routes commencing in the Kriol community of Monkey Point have thus far been ruled out, as has a path along the San Juan de Nicaragua River from the Caribbean. There remain four possible official routes through the RAAS, of which three would affect the Rama-Kriol territory, namely via the Bluefields Lagoon, the Kukra River or the Punta Gorda River. The first would mean the partial or total relocation of 80% of the indigenous Rama population living in the communities of Rama Cay, Tiktik Kaanu and Sumu Kaat.

The reaction of the indigenous peoples of the RAAS to: 1) the negligent attitude of the Regional Council; 2) the publicising of the canal as the only development pathway for the region; and 3) the lack of attention to regularising the indigenous territories has led to a distancing between the Council/Regional Autonomous Government and the territorial and communal authorities.

The process that seems to be of greatest importance to the indigenous peoples of the Caribbean Coast is that of amending the current 1987 Statute of Autonomy in favour of eliminating the interference of political parties, resolving the overlap of political/administrative jurisdictions in favour of indigenous territoriality as opposed to the imposed municipal structure, and guaranteeing a direct link between communal/territorial/regional/national authorities, from the bottom up.

Justice?

On 29 October 2003, the Inter-American Commission on Human Rights (IACHR) granted a merits hearing in the case of the murder of Francisco José García Valle, husband of María Luisa Acosta,⁵ who was involved in defending the indigenous and Afro-descendant communities affected by the sale of the Pearl Cays (Cayos Perlas) on the Internet. The perpetrators of this crime remain at large. Ten years on, the petitioners now consider that all arguments have been sufficiently discussed and the Nicaraguan state has been unable to counter the allegations made by the petitioners and the victims, and so at the merits hearing they asked the IACHR to issue the report established in Article 50 of the American Convention, recognising that the Nicaraguan state has failed in its international obligation to sufficiently investigate and punish those responsible for the death of Mr. García Valle. ○

Notes and references

- 1 "Regularisation" refers to the resolution of conflicts with third parties, those private individuals or legal entities that claim property rights within a titled communal land.
- 2 This Commission is made up of the General-Attorney's Office, the Supreme Court of Justice, the Ministry for the Caribbean Coast, the Ministry for Environment and Natural Resources, the National Assembly's Ethnic Affairs Committee, the Ministry for the Family, the Coordinating Body of the Autonomous Governments, the Police and the Army but this commission is not that which should have been established according to CONADET's Regularisation Manual, approved on 23

February 2008: two representatives from the Property Intendancy, the legal representatives of the territory subject to regularisation, a representative of the Attorney-General's Office, the Presidents of the two Autonomous Regional Councils, an INETER technician and a cartography specialist from the SDC/Indigenous Component

- 3 It even repeals Law 800 of 2012 (Law on the Legal Regime for the Nicaraguan Interoceanic Grand Canal and on the Creation of the Authority for the Nicaraguan Interoceanic Grand Canal).
- 4 The ruling states: "...effectively come[s], in accordance with the Political Constitution, from the legitimately constituted Authority and that the plaintiffs, in the capacity in which they are acting, are communal authorities from the noted municipalities, but they do not form part of the CRAAS, which alone has the representation and competence to issue resolutions; and so, consequently, there is no reason to consult them.
- 5 Read more about the case here: <http://hrbrief.org/2013/11/case-12-792-maria-luisa-acosta-et-al-nicaragua/>

Claus Kjaerby is a Danish a civil engineer with a Master's degree in International Development Studies. He has worked in Central America as an advisor on indigenous affairs and intercultural governance for eight years. He has spent 17 years supporting organisational development processes, protected areas management, eco-tourism and territorial governance with indigenous peoples in the Amazon, Andes and Central America. He has coordinated conservation, titling and infrastructure projects on the Caribbean Coast with funds from Danida, the World Bank/DfID. He is currently a consultant/ coordinator for the Danish NGO "Forest of the World" in Honduras and Nicaragua, and also acts as an adviser on Panama for the same organization.

COSTA RICA

With a population of 104,143 people divided between eight different ethnic groups, indigenous peoples account for 2.42% of the country's total population of 4,301,712. Almost 6% of the national area of Costa Rica is made up of 24 indigenous territories, covering a total of 3,344 km². Some 48,500 people live on the 24 indigenous territories, of whom 35,943 are indigenous and the rest (25.9%) not. The situation is even more alarming in the Southern Zone of the country where levels of non-indigenous encroachment have reached between 50% and 90%. The right to consultation continues to be denied.

Costa Rica is one of the few countries on the continent that does not constitutionally recognise its ethnic and cultural diversity.¹ It ratified ILO Convention 169 two decades ago but this does not mean that indigenous rights have been recognised, nor that the legislative changes required by the Convention have been made. Costa Rica also voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples in 2007.

“Traditional” and “non-traditional” organisations

In 1978, following the (purely legal) establishment of most of the indigenous territories, the state began to promote a model of Integral Development Associations (ADI) through which to manage these territories. This was a general model for the country that sought to ensure coordination between the communal and municipal levels. The ADIs, however, were not organised along the traditional principles of the indigenous communities and they began to form clientelist relationships with the state institutions implementing indigenist policies. On some territories, the communities responded by taking over the ADIs themselves and rejecting this relationship, ensuring that the ADIs gained legitimacy as representative of the community interest. In other more recent cases, faced with difficulties in taking over the ADIs, some sectors of the communities have encouraged the

establishment of new organisational forms in order to dispute these decision-making structures. One outcome of this resistance was the formation of the Térraba Council of Elders, which lodged an appeal for unconstitutionality and managed to get the Constitutional Court, on the basis of recently adopted indigenous legislation in Costa Rica, to issue a vote legitimising it as the community body most appropriate for establishing the indigenous status (or not) of ADI members and thus managing to call a halt to the mechanisms for affiliating and disaffiliating indigenous and non-indigenous members in order to control, among other things, actions aimed at recovering indigenous lands.

Since this constitutional ruling in 2010, there has emerged, as a kind of counter-offensive, the invention of supposed “traditional organisations” aimed at disputing the legitimacy of those ADIs that managed to distance themselves from the age-old mechanisms of manipulation. These “traditional organisations”, the common feature of which seems to be that they are established by very small groups of individuals linked to the state’s indigenist policies, are protected from the constitutional vote and from the most advanced legislation on indigenous peoples, and create confusion within the judicial authorities and state institutions as to who legitimately represents the communities. As a “rebound” effect of the legislation bringing about self-determination, such processes demonstrate that, far from having disappeared, the most recalcitrant integrationist indigenism is subtly adapting to the new rules of play.

These struggles, and the lack of foresight on the part of authorities from all spheres (executive, legislative and judicial), could unfortunately end up delegitimising the interesting community initiatives of the last few years, such as the formation of councils or courts of customary law in Cabagra, Térraba y Talamanca.

On a national level, albeit with the significant involvement of indigenous leaders from Buenos Aires canton in the south, one notable actor during 2013 was the National Indigenous Peoples’ Front (FRENAPI), which groups together all the sectors working to recover invaded lands. In fact, tired of waiting for laws adopted 27 years ago to be implemented, the organisations and leaders represented in FRENAPI have decided to act to take back the lands illegitimately occupied by non-indigenous peoples in Guatuso, Salitre, Cabagra and Térraba.

It is partly because of these actions, but particularly because of the violent counter-offensives unleashed by the non-indigenous settlers, that Chinchilla Miranda’s government, nearing the end of its term in office, has promoted a round table discussion with leaders from the country’s Southern Zone.



Consolidation of the indigenous youth movements

In recent years, indigenous youths have joined together around the demands of their peoples, such as defence of the land and their specific problems as youths, including indigenous students' access to and continuation within the university system. The Federation of Indigenous Students (FIE) and the Movement for Land and Life are noteworthy in this regard. In 2013, the FIE managed to establish itself

as a valid negotiator with the four state universities in the country regarding the World Bank's conditions for awarding them a substantial loan. As a result of these negotiations, a protocol was signed that commits the universities to improving their efforts to attract indigenous students and ensuring they remain within the university system, with the aim of positively influencing a professionalisation of the indigenous peoples.

A dialogue to be viewed with caution

In May 2012, the leaders of the indigenous movement presented the government with a National Indigenous Agenda that contained the main historic demands of their peoples along with a call for targeted public policies to overcome the inequality and social exclusion suffered by the country's indigenous population, within a context of respect and self-determination. No concrete response was ever received, however, and the situation of indigenous peoples and their rights continued to deteriorate. In the wake of the decision to commence the physical recovery of their lands, the tensions that this created has forced the government to establish a round table to discuss the issues put forward by the National Indigenous Committee of Costa Rica, FRENAPI and the local organisations. This round table began to come together in January 2013 with the participation of representatives from the seven indigenous territories of the zone and four ministries, plus the Costa Rican Ombudsman and the UN Development Programme as observers.

One positive aspect of this process is the permanent nature of the dialogue between the state and the indigenous peoples as this has been in place for more than 12 months now, a first in the country's history. Donald Rojas Maroto, coordinator of the National Indigenous Committee, highlights three aspects in particular: 1) the start of the process to measure and demarcate the indigenous territories in the south, with significant progress already made in three of them; 2) the participatory production of a list of infrastructure and public service priorities and; 3) a more analytical consideration of the issues around governance and consultation. As of February 2014, this last discussion is, however, still in its infancy.

The involvement of the Ombudsman has conferred legitimacy on the discussion process, as has the proactive presence of the Vice Presidency of the Republic. However, a number of strategic questions still remain: 1) the involvement of some ADIs that are not recognised by most of the indigenous community mem-

bers and the attempt of supposed traditional organisations to establish themselves as valid negotiators in all negotiation processes, including the consultation anticipated for the El Diquís Hydro-electric Power Project; 2) the lack of concrete commitments on the part of the state to resolving structural problems, particularly the regularisation of the indigenous territories; and 3) the lack of financial commitment to defray the infrastructure investments included on the list of works that forms the so-called development plan coordinated by the Ministry of Planning. According to indigenous leaders from Térraba, including Jefry Villanueva, various indigenous territories such as Térraba and Salitre have proposed concrete actions to recover their lands from the hands of non-indigenous individuals and have received no satisfactory responses.

According to the Ombudsman:

There is a need to consolidate the round table as a permanent forum for dialogue between the government and the indigenous peoples, in which representatives from different public institutions with indigenous responsibilities participate, along with indigenous representatives appointed by the indigenous peoples through a process of democratic indigenous election. However, this kind of space, the sign of a true participatory democracy, requires the support of the state, above all given that it relates to the indigenous population, which has little access to economic resources with which to finance the costs of their participation; it also requires a transparent and depoliticised agenda based on an assessment of the state of indigenous rights, monitored by means of an action plan, with clearly defined deadlines and responsibilities, such that progress does not depend on the will or interest of officials to comply with the agreements.²

One issue still outstanding in the current discussions is that of defining indigenous consultation procedures. The indigenous peoples have made discussion of this issue conditional on concrete results in terms of resolving structural problems such as territorial regularisation. With regard to consultation, they will need to insist that the consultation method is designed in a participatory manner and on the fact that the generic "protocols" proposed will not ensure that the procedures are relevant or appropriate to each people's and each territory's own power systems or to the different issues requiring consultation. A consultation on the extractive

industries is different from one on an intercultural education policy or one on the management of protected areas.

Development plans

In 2002, the Ministry of National Planning and Economic Policy (Mideplan) published a National Indigenous Peoples' Development Plan that was produced without any consultation of the indigenous representative organisations and which enshrined a development concept alien to the desires and interests of indigenous peoples. In October 2013, as part of the activities coordinated by the South Pacific round table, the same ministry presented a draft version of a development plan for the indigenous peoples of the cantons of Buenos Aires and Pérez Zeledón.³ This plan was the result of a dialogue between representatives of the indigenous territories of the area (Rey Curre, Cabagra, Térraba, Ujarrás, Salitre, China Kichá and Boruca), the ministries of Social Well-being, Culture and Youth, National Planning and Economic Policy, Public Security and Public Education plus the Institute of Rural Development and the National Department for Community Development. This plan, like that produced in 2002, was completely alien to indigenous concepts of development and was limited to listing physical works and programmatic public service actions. The plan also failed to establish institutional commitments with regard to financing the anticipated works.

The plan is divided into specific programmes for each one of the seven territories, listing the needs and works necessary to overcome the lack of infrastructure. The strategic areas proposed by the ministry⁴ ignore the structural roots of indigenous exclusion in the country, particularly rights to political self-determination, to territory, to consultation and to take decisions regarding their own development. At the same time, the Plan views the indigenous territories in a segmented form and proposes separate actions as opposed to an integral regional indigenous development plan. Common problems are thus overlooked and separate lists of work are produced for contiguous territories. Such a way of focusing on indigenous development planning would seem to correspond to a divisionist approach to the territories and peoples and has not been seen in the region for decades, since the formation of the Dike Aboriginal Regional Association and FRENAPI, which propose an integral and coordinated vision of development involving common political lines and actions for all of the region's peoples and territories.

Conflicts over use of indigenous forests

In Costa Rica, the Environmental Services Programme (PSA) provides annual payments for forest conservation. Some indigenous territories have registered for this programme and their development associations are receiving significant yearly amounts that are not subject to state control as, once disbursed, they are considered private money. This fact, added to the lack of legitimacy of the development associations, has resulted in a lack of transparency in the handling and distribution of these funds. This has generated internal tensions and continues to do so. One noteworthy fact is that part of the money received has been invested in public works which should ordinarily be funded out of the normal state budgets, such as roads, bridges, schools, health centres and so on. The state covers the cost of this work in the rest of the (non-indigenous) country and yet, on the indigenous territories, which are already marginalised and suffering the highest levels of poverty in the country, money made from conserving nature using indigenous labour is being used to finance a withdrawal of the public sector from its obligations towards an important sector of society. This issue has become all the more important following the announcement, in 2013, of the next round of REDD+ funding for the country, which the state has announced will be implemented using the same modalities as the PSA funds. For a start, the state refused to allow any consultation regarding the implementation modalities for REDD funds, in December 2013, stating that there was no time and demanding, on this basis, that the indigenous authorities approve them as they stood and stating that, if they refused to do so, they would not be allowed access to this money. By then stating that the REDD funds would be governed by the same regulations as the PSA, they have totally excluded traditional forest uses and placed them under the category of absolute protection, harming indigenous production systems and, as has been indicated by indigenous leaders,⁵ destroying forests which have, for centuries, been managed in such a way as to give them their current form and level of conservation. Traditional forest use does not harm forest integrity and forms the heart of indigenous production systems and ways of life. Different organisations have thus proposed designing an environmental service system on indigenous territories from a perspective of self-determination and an ethnic and culturally-sensitive approach.

The right to consultation

Denying the right to consultation is a constant in relations between the state and Costa Rica's indigenous peoples. There are some processes which the institutions call consultation but which are limited to holding informative workshops with territorial leaders or with the Governing Boards of ADIs whose legitimacy, as already noted, has been seriously questioned. In 2013, the Ministry of Culture and Youth began a process of consultation on its cultural policy in all of the country's indigenous territories. Although not based on a methodology designed in a participatory manner (in the form of a "consultation on the consultation"), it was possibly, not counting the consultation on the draft bill of law on indigenous autonomy (which has spent the last two decades in congress without being approved), the most inclusive consultation experience the country has ever had. According to some indigenous leaders, however, the way in which it was formulated, without any prior methodological consultation, does affect its legitimacy. This raises concerns regarding the legitimacy of the generic consultation protocols that are being produced without taking each particular people and situation into consideration.

Omission and inaction as a state policy

Year after year it has been noted in these reports that, although indigenist policies are incoherent and backwards looking, without any real ambition in the face of the demands and needs of the communities, a more representative image of Costa Rican indigenism would actually be one that focuses on its omission, inaction and lack concrete actions. The state is generally deaf to such demands or proposes discussion and negotiation mechanisms that end up watering down good intentions until they are never implemented and are left "for the next government".

Two years ago, the National Children's Board (PANI) took a number of children away from their Ngäbe mothers, who were begging on the streets of San José, on the pretext that they were not being properly looked after. The Ngäbe come as temporary workers from Panama during the coffee harvest, and are subjected to exploitation and overcrowding on the part of their bosses. The Costa Rican Coffee Institute has established that, given the nature of their contracts, there is no obligation to provide these workers with any social security. This

means that that while the men harvest the coffee, many women choose to beg in the hope that they will make enough money to survive. Without the money to travel back from Panama when necessary, or to hire a lawyer, these women are going through hell trying to recover their children. Xiomara García, a young girl removed from her mother in October 2011 is missing and no-one knows if she has been given up for adoption or is being temporarily homed.

In the Cabécar region of Tayní, which borders on the transnational banana plantations in Valle de la Estrella, a mortality rate of 60 per thousand was estimated last year (seven times the national average) and a campaign was launched to denounce this to the international organisations and finally get the Limón municipality to build a bridge over the Estrella River, which is vital for the indigenous population to be able to move freely.

In July 2013, the media reported that people dressed in military uniform, and masquerading as missionaries, were arriving by helicopter in the mountainous region of Talamanca. They were presumed to be Canadian, and probably from mining companies. The news resulted in no action from the Costa Rican state, either to protect its indigenous citizens, who were receiving death threats and being assaulted, or to defend national sovereignty.

The indigenous Térraba leader, Jefry Rivera, was brutally attacked in September 2013 as he was trying to telephone through a complaint of illegal logging in the territory by non-indigenous persons. This crime not only went unpunished but no action was taken to protect the territory's natural resources.

And so it goes on. Not without reason did the UN representative in Costa Rica, Yoriko Yosukawa, who is participating in the round table dialogue established by the government, call the Costa Rican state to task at a press conference in September 2013, stating:

The indigenous people are suffering a serious lag and significant inequality in rights and development. They are lagging behind in terms of basic rights, such as access to education, technology and work (...) There are efforts, such as the reform of the education sub-system for indigenous communities, but extraordinary efforts are needed to close this gap.⁶

With a new government soon to take office (May 2014), and given that Chinchilla Miranda's administration has passed without having had almost any effect on indigenous issues, there remains tremendous heartache regarding the fact that

Costa Rican indigenist policy has historically acted as a smoke screen. It is apparent that, hidden behind absolutely insufficient and, often, inefficient works and actions, there lies a lack of any real interest in the future of the country's indigenous peoples. ○

Notes and references

- 1 These countries are: El Salvador, Honduras, Chile, Uruguay and Costa Rica. **Gonzalo Aguilar, Sandra La Fosse, Hugo Rojas, Rebeca Steward**, 2010: *Análisis comparado del reconocimiento constitucional de los pueblos indígenas en América Latina*. New York: Conflict Prevention and Peace Forum.
- 2 Álvaro Paniagua, Ombudsman. Interview for this article. February 2014.
- 3 **Ministry of National Planning and Economic Policy**, 2013: *Plan de Desarrollo de Pueblos Indígenas de los Cantones Buenos Aires y Pérez Zeledón*. San José: Mideplan.
- 4 The areas included in the plan are: youth, women, the elderly, drug consumption, social well-being, economy and production, environment, community infrastructure, housing, health, education and cultural identity.
- 5 Interviews with Donald Rojas Maroto, Hugo Lázaro and the Governing Board of Aradikes in February 2014.
- 6 "Líder de la ONU en Costa Rica: 'Indígenas tienen serio rezago en derechos y desarrollo social'", *La Nación*, 23 September 2013.

Carlos Camacho Nassar is an anthropologist specialising in international development. He has conducted a number of studies into indigenous peoples, conflicts, refugees, displaced and returning indigenous populations and intercultural public policies in Guinea, Mexico, Belize, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Ecuador, Chile, Paraguay and Bolivia.

Marcos Guevara Berger is an anthropologist specialising in indigenous peoples and human rights. He has conducted ethnological studies of indigenous peoples in Costa Rica, Panamá and the Central American region, in environmental, legal and political fields. He is a lecturer at the University of Costa Rica.

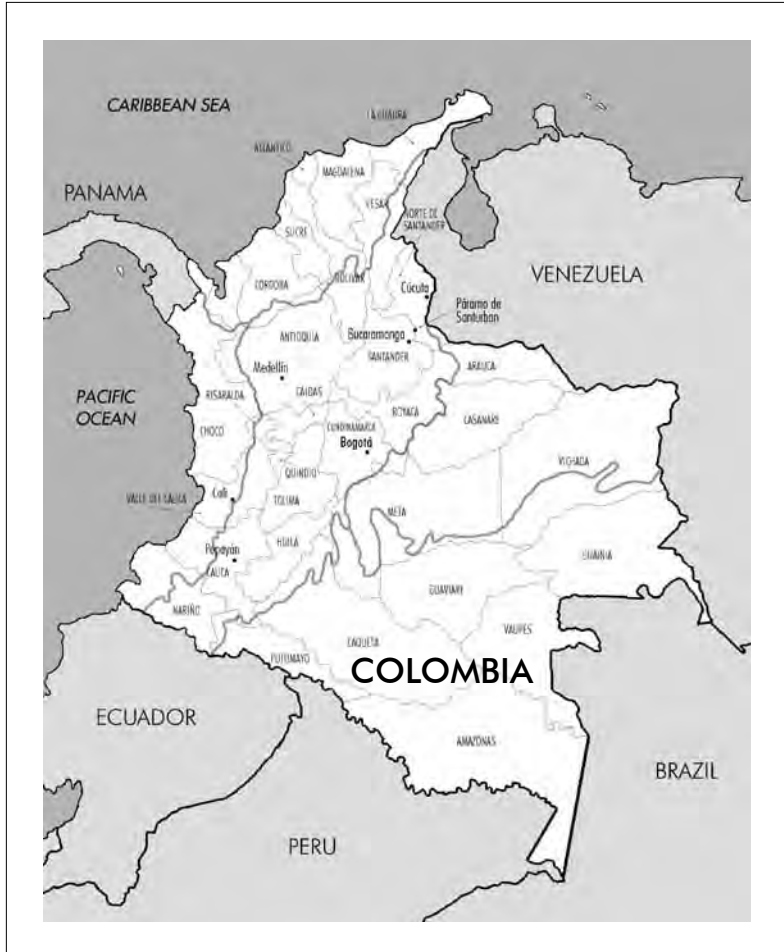


SOUTH AMERICA

COLOMBIA

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

2013 was not an easy year for Colombia. In addition to the structural weaknesses in the economy (high unemployment rate,¹ deindustrialisation, poor quality and cover of education, lagging science and technology, entrepreneurship and regional development,² dilapidated health system, drugs trafficking and armed conflict), there was a wave of social protests throughout the country: agricultural strike, transport services strike, health workers' strike, student demonstrations against the educational reforms, environmentalist demonstrations and strong peasant farmer protests in Catatumbo.



For its part, the government was able to claim economic growth of more than 4%, the product of the mining and energy sectors which, along with the illegal economy, continue to determine the direction and rhythm of the Colombian economy. Despite the havoc being caused by mining (both legal and illegal) on all territories of peasant farmers, black and indigenous peoples, and which has led to a growing call for a moratorium on mining in various parts of the country, President Juan Manuel Santos has insisted on holding the “mining locomotive” on course,

ignoring what is going on around him and failing to make the necessary social changes demanded by the country. President Santos has put all his political capital into, and is focusing all his government's efforts on, a peace accord with the guerrilla organisation, the Revolutionary Armed Forces of Colombia (FARC), and a definitive end to the armed conflict, and it is on this that his re-election will depend.

Peace and post-conflict

The report of the National Centre for Historical Memory (*Centro Nacional de Memoria Histórica*), published in July 2012, indicates that between 1958 and 2012, 218,024 people died due to the armed conflict, of which 177,307 (81%) were civilians. It also shows that, during a lesser period of time (1996-2012), 4.7 million peasant farmers were displaced from their lands. These figures reveal some of the reasons why a peace agreement with the FARC and an end to the armed conflict is so necessary. There are other reasons, however: apart from the cost in lives and families uprooted from their lands, the war has robbed Colombia of considerable resources that could have been used for social causes, in a country where 40% of the population lives below the poverty line.

The paradox, however, is that after half a century of armed struggle, these peasant militias have lost sight of their goal of an egalitarian society and become focused purely on the money they are able to obtain from growing and selling illegal drugs. The ideological reasons that may have justified such armed action in the beginning have thus lost their weight. The crux of this paradox, however, is that this armed struggle has not contributed to reducing social injustice but, in nearly all cases, has increased it, since: "After more than half a century of guerrilla activity, the rich are richer, the poor are as poor as they always were and rural property is more concentrated than ever".³

There are therefore no practical reasons that would support a belief that this internal war could bring an end to the country's inequalities. Perhaps the most significant practical reason that led to these peace negotiations, however, is the fact that there is now an understanding that the State is unable to defeat the guerrillas militarily but that, equally, the guerrillas will never successfully take power by force. To continue this armed conflict would thus only perpetuate the suffering of Colombian society, condemning several generations to the same fate.

This peace process is having to endure conflicts, however. One reason for this is that a certain sector of Colombian society is benefiting from this violence, as it has enabled it to take property and resources (land, primarily) illegally or at very little cost. There is, however, a consensus in Colombia that peace will require deep reforms both of the State and of Colombian society. It will require, above all, that conditions are established in which people are once more able to trust government institutions and the justice system. This will not be possible, however, unless reparations are made for the wounds of the internal war, with land returned to the displaced peasants and the urgent social needs in the countryside addressed. It was precisely this lack of attention and abandonment which led to the recent agricultural strike that shook the country. Most urgent of all, the structural inequalities in landholding that have been at the root of all wars suffered by Colombia need to be rectified, as it is this rural landholding model that has been damaging the country for many years.⁴

Such directions in the peace process indicate the need for a public agenda to face up to the challenges of the post-conflict situation and take up the path of reconciliation for Colombian society. It is thus extremely important that the new government and Congress are able to identify with the expectations for peace and commit to the social and economic reforms that the post-conflict situation requires.

However, this mutual understanding on the part of Colombians pales beside the country's polarisation over the issue of peace and how to achieve it. For former President Álvaro Uribe (2002-2010) and his supporters, peace will not be achieved unless and until the FARC are brought to justice. The current choice of seeking a negotiated peace is, for them, a "submission of the State to the terrorists". Alejandro Ordoñez, the Attorney-General, and the powerful Cattle Farming Federation (*Federación de Ganaderos*) have allied themselves with this "anti-peace negotiations" sector. The general opinion is, nonetheless, that the negotiations have passed a critical threshold and that, unless a major event with harmful consequences for the process should occur, there should be no reason for any of the parties to walk away from the table.⁵

Congressional and presidential elections

The political environment was defined by the peace process in 2013 and this remains central to the public agenda in 2014. The issue is now becoming so polar-

ised that there is speculation that Colombians will vote simply either “for peace or for war” in the upcoming legislative and presidential elections in 2014.

Competing in the March elections are two parties and two leaders who cannot be distinguished so much on their electoral manifestos as on their style of governing. On the one hand, the current President, Juan Manuel Santos, from the “U” Party (National Unity), On the other hand is former President Álvaro Uribe, from the “Uribe Democratic Centre” (UDC) party.

The 2014 elections will decide Colombia’s future direction: peace or war. This will be an indicator of the FARC’s true power, which lies not in its military strength but in its capacity to influence the elections.

By the end of the year, the electoral debate had become polarised, reaching a climax with the removal of Bogota’s Mayor and ex-guerrilla, Gustavo Petro, by the Attorney-General, Alejandro Ordoñez. All political forces and movements stepped up and took sides in this dispute. The indigenous people, allied with the sacked Mayor, sent 500 indigenous guards from Cauca to “provide him with protection”.

With things as they stand, 2014 is set to be a turbulent year replete with uncertainty for all political parties. The polarisation means that the minority parties are losing votes, and most of them (old and new) may find they are built on sand if they do not reach the 3% electoral threshold required for future elections. Among them are the parties of the left (*Polo Democrático Alternativo*, *Movimiento Progresistas*, *Partido Verde*) and those of the indigenous and Afro-Colombian populations, which could lose their legal status or have no parliamentary representation beyond the special constituency allocated to them.

The Colombian political situation and indigenous peoples

The indigenous peoples were not completely removed from the country’s social and political upheaval during 2013. They did not, however, have the option of participating in the Havana peace dialogues, as these were between the forces directly involved in the conflict. They also did not have any chance of influencing these negotiations in order to ensure that the agreements did not affect their interests. Above all, however, they did not feel represented by any of the parties involved in the negotiations and so, on 12 October, indigenous organisations from a number of departments began a protest that paralysed various indigenous ar-

eas in Cauca, Valle, Antioquia, Risaralda, Tolima and Huila for two weeks. This demonstration mobilised around 40,000 indigenous individuals and formally ended only when a series of agreements were reached with the national government in the La María Reservation (Cauca).

Indigenous involvement in the national protests (agricultural strike) diminished when the real meaning and objectives of these protests became unclear. The indigenous people were dubious as to the involvement of the organised “political forces” of the peasants and settlers, with whom they have had serious difficulties in the past due to their demands for “Peasant Reservations” to be established in indigenous zones or on territories bordering their reservations.

To understand this political logic and the hesitancy with which the indigenous peoples have observed the agricultural protests, we need to look back over the history of relations between the political parties and indigenous peoples. At the end of the 1960s, when the peasant protests for land commenced, the political sectors of the left who were close to them became trapped in a logic that justified the gaining of this land by any means, ignoring the reality in search of an imaginary design. Being great pragmatists, the indigenous people had the good sense not to let themselves be distracted by such imaginary causes and threw all their efforts into recovering the land of their ancestors. In fact, this led to a rift between the peasant and the indigenous movements. In the current environment, with the FARC negotiating the country’s future rural order, the indigenous peoples’ fear and mistrust of the peasants and settlers in their regions has been revived, guided by forces of the left (*Marcha Patriótica*).

The uncertainty created among the indigenous peoples by the agreements being reached on Colombia’s rural issues in the Havana negotiations, along with the advance of mining, hydrocarbon and agro-industrial companies onto their lands, aspiring to take over vast territories with the government’s blessing, has meant that the first of the agreements signed with the government by the *Minga Indígena y Popular* related to the lands and territories of indigenous peoples and their legal security, aimed at ensuring that these lands will not be affected by subsequent provisions or agreements with mining companies or with other forces aimed at establishing “Peasant Reservations” in the post-conflict scenario. One of the most important indigenous achievements in these negotiations was that the government undertook to make a number of amendments to Decrees 1987 of 2013 (agrarian pact) and 1465 of 2013 (special agrarian procedures to clarify ownership), aimed at legally protecting the indigenous ancestral territories.

In order to prevent changes that could affect their peoples, and to secure territories for those communities that do not yet hold title to the lands they traditionally inhabit, the indigenous peoples obtained a commitment from the government to “document, issue and submit to the Management Board of the Colombian Institute for Rural Development, INCODER, a target of 400 files on the expansion, constitution and regularisation of Indigenous Reservations”.

Other specific demands from the agreements were aimed in a similar direction: the integral adoption of the UN Declaration on the Rights of Indigenous Peoples; the demilitarisation of indigenous territories; the dismantling of the consolidation plans;⁶ and, naturally, respect for the exercise of territorial control by means of indigenous guards. Although no progress has been made on the issue of mega-mining on indigenous territories, the government has undertaken to establish a working commission headed by the Ministry of Mines and Energy to consider indigenous objections and come to an agreement.

II Regional Amazonian Summit

Under the slogan of “Together for the defence of the Amazon and a living planet”, a hundred or so indigenous leaders from the Amazon Basin met on 13, 14 and 15 December in Villavicencio (Colombia) to hold the II Regional Amazonian Summit, organised by the Coordinating Body of Indigenous Organisations of the Amazon Basin (COICA). The first summit was held two years ago in Manaus (Brazil). The aim in Manaus was to make the organisations more aware of the importance of cultural diversity for the existence and protection of biological diversity, to gain a greater understanding of the interdependence between the two and to demand the right of these peoples - who live in, from and, above all, with the forest - not to have this natural order and these relations changed by economic systems that are appropriating the natural assets of the Amazon for commercial purposes. This was symbolically represented in another of the summit’s slogans: “We are people without owners, just like life”. This summit resulted in a mandate on: “Indigenous action for life”.

Consistent with the “Manaus Mandate”, the II Amazonian Summit had two primary objectives: 1) to take stock of the megaprojects, planned or being implemented, which are seriously affecting Amazonian natural landscapes, endangering not only the future of 380 indigenous peoples (of which around 70

live in complete isolation from Western society or in initial contact) but also risking the extinction of thousands of life forms that make the Amazon the most diverse place on the planet; 2) to agree a new mandate and establish a common work agenda to defend the living spaces of indigenous peoples, calling also upon their allies and the friends of biodiversity to renew their trust, gain renewed motivation and reinforce their efforts to prevent the plundering of the Amazon. As one of the leaders stated: "Alone, we cannot face the powerful and egotistical interests that are coming for the natural assets of our Amazon and who care nothing for the diversity of life, far less for the well-being of the peoples who live in harmony with it".

The issues raised at this summit included: 1) an analysis of the impacts of the economic projects being implemented by the Initiative for the Integration of Regional Infrastructure (IIRSA), with funding from the Brazilian National Development Bank, the World Bank and the Inter-American Development Bank in the context of the South American Council for Infrastructure and Planning's (COSIPLAN) plans and agreements to integrate the regional infrastructure of the member countries of the South American Union of Nations (UNASUR); 2) developmentalism, extractivism, rights and alternatives; 3) the Amazonian Full Life Plan and its components; and 4) regional and global alliances and advocacy. As can be seen, the issues are all closely related. They all focus on conducting an analysis of the mega-works linked to exploitation of minerals and hydrocarbons, soils, etc., and their impact on the Amazonian territories.

Alongside this, stock was taken of the legal basis the indigenous peoples can use to oppose this initiative and seek alternatives for the defence of their rights. It is important to highlight the realistic spirit of the leaders with regard to negotiating this issue, given that all States, even those of a "left-wing" bent, are favourable to mineral and hydrocarbon exploitation due to the demands of the world market, thus relegating the private interests and rights of their inhabitants, in this case the indigenous peoples, to a secondary position. And this is the point: it is strategic for governments to have a progressive image, as this has the advantage that people do not mobilise against a progressive government that has been elected by the poorest of the poor, as this would be "playing into the enemy's hands". The enormous advantage enjoyed by these progressive governments is that the sectors of the right will also not mobilise against the "mining locomotive", and certainly not for environmental reasons, for when has

the political right ever been interested in the environment or in respecting indigenous territories?

What then is the difference between the environmental and indigenous rights policies of progressive governments such as that of Evo Morales, who supports the colonization of the TIPNIS region in Bolivia, or Rafael Correa, who allocates oil concessions on indigenous territories in Ecuador, and that of the neoliberal government of Juan Manuel Santos, who promotes large-scale mining on the territories of indigenous peoples in Colombia?

Unfortunately, no such discussion took place, as it would have been significant for this summit to be able to establish a common agenda of work to defend indigenous peoples' territories and natural resources. As COICA's general coordinator, Edwin Vásquez, said at the opening of the summit: "With the megaprojects that are planned for the Amazon, they are saying they want us to integrate but, in reality, their intention is for us to disintegrate".

IX Congress of COICA

With the II Summit at an end, the following day saw the start of the IX Congress of COICA. The main objectives of this Congress were: 1) to analyse the new proposals, guidelines and mandates resulting from the II Summit and design a political strategy and action plan to breathe life into them; and 2) to elect a new Governing Body. The analyses in the documents resulting from the II Summit were not fully developed, perhaps because of the absence of the Brazilian delegation, which represents half of the indigenous peoples of the Amazon Basin.

As was expected, the Coordinator, Edwin Vásquez, from the Huitoto ethnic group of Peru, was re-elected. The other Governing Body members elected were: Jocelyn Therese (Deputy Coordinator, from FOAG, French Guyana); Jorge Furagaru (Climate Change and Biodiversity, from OPIAC, Colombia); Nelly Romero (International Relations and Cooperation, from CIDOB, Bolivia); Guillermo Arana (Territories and Natural Resources, from ORPIA, Venezuela); and Josien Tokoe (Gender, Women and Family, from OIS, Surinam).

The "Education, Science and Technology" and "Communication and Health" portfolios attracted no candidates and so their appointment was left to COICA's Governing Board. Henry Cabria Medina, president of the host organisation, OPIAC, who was in charge of organising both the II Amazonian Summit and the

IX Congress of COICA, closed the event by stating his pleasure at how both events had taken place.

It was noteworthy that the current Colombian Minister of the Interior, Dr. Aurelio Iragorri Valencia, was present at COICA's Congress, as he comes from one of the "highest ranking" families in Cauca department. Iragorri commended the indigenous people for having conserved the heritage that is the Amazon: "It is we who are the devastators, the whites, as opposed to the age-old preservation maintained by the indigenous peoples," he explained. Wearing a feather headdress and an indigenous necklace, and in front of the Amazon's leaders and elders, he solemnly undertook "to establish non-aggression pacts for the ecosystem and to promote preservation and protection policies to care for the Amazon". We do not know what opinion these words elicited from his indigenous countrymen and women from Cauca (quite possibly surprise). Nor do we know what his boss, President Santos, will think of this statement. Perhaps he would have said the same. After all, at the end of the day, he is a man for all seasons. ○

Notes and references

- 1 Although the government is celebrating a single-digit unemployment rate, the truth is that production and trade are increasingly taking place in the street, with the result that informal employment now stands at 60%.
- 2 Exports have been less dynamic over the last decade and, compared with the more developed economies with which Colombia signed FTAs, have grown the least, a sign of growing deindustrialisation: Colombia exports goods of low added value to these countries and imports products of high added value from them.
- 3 Daniel Samper Pizano: "Trece razones para convencer a las FARC". EL TIEMPO.COM, 17-8-2013. While 1% of landowners held 32% of registered land (excluding indigenous reservations) in 1984, by 1997 they held 45% (excluding indigenous reservations and the collective territories of black communities). By 2002, this figures was more than 50%.
- 4 Jaramillo Jaramillo, Efraín, "Colombia: El paro agrario y la lucha por la tierra", in: <http://servindi.org/actualidad/93510>
- 5 The rumours going around about attacks on Uribe and the Attorney-General, who form the main opposition to the peace process, are enough to make your hair stand on end.
- 6 The government is required "within a period of no more than six months to discuss and issue a regulatory decree for Law 21 of 1991 based on the jurisprudence of the Inter-American Human Rights System".

Efraín Jaramillo Jaramillo is an anthropologist with the Jenzera Work Collective. He has supported ethno-development plans with various of Colombia's indigenous peoples. With others involved in the indigenous struggle for land, he runs the Inter-ethnic School for Conflict Resolution, which advocates the creation of inter-ethnic territories in a number of Pacific regions.

VENEZUELA

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

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

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

Death of President Chávez

Venezuela's socio-political development during 2013 was marked by the death on 5 March of President Hugo Chávez Frías. His efforts to obtain the recognition, visibility, enhancement, social inclusion and political participation of indigenous peoples had been decisive in all progress made in this regard since 1998. The indigenous movement, its leaders and organisations chose to recognise President Chávez' achievements posthumously by massively attending the state funerals organised in Caracas, alongside hundreds of thousands of other people.

Elections and political polarisation

Chávez' death led to early elections being called, on 14 April 2013, in which Nicolás Maduro was elected President of the Republic. Maduro was victorious in 9 of the 11 municipalities with a largely indigenous population. The losing candidate rejected the results and called on his followers to express their anger on the streets. This resulted in 11 people losing their lives, among them children, and dozens more being wounded as they celebrated Maduro's victory in different parts of the country. Added to the attacks on government institutions, health centres and governing party offices, this meant that the political polarisation between those supporting the Bolivarian Revolution and those opposing it had once again been revived. Elections for the local and regional levels of governments (Town Halls and Municipal Councils) thus took place on 8 December 2013 against this highly polarised backdrop. Political parties and organisations supporting the national government were victorious in over 70% of the local town hall elections, and in 10 of the 11 municipalities with a majority indigenous population.

Public policies and international development and regulations

The *Plan de la Patria*

The *Plan de la Patria* ('Plan for the Fatherland') was one of President Chávez' electoral proposals, presented as the Second Socialist Plan for the Economic and Social Development of the Nation 2013 – 2019, and was taken up by President Maduro and approved by means of the Law of December 2013.¹

The *Plan de la Patria* establishes five Historic Objectives. In relation to indigenous peoples specifically, it proposes important directions for their human rights, one of the most significant being Historic Objective 2, which states among other things the intention: "To promote the inclusion and good living of indigenous peoples. To speed up the demarcation of indigenous territories, through the provision of property titles to their communities. To guarantee the allocation of decent housing to vulnerable indigenous communities, respecting their culture and traditions. To promote the training, education and financing of socio-productive units in indigenous communities, respecting their traditional practices and forms of organisation." In addition, Historic Objective 4 aims: "To contribute to developing a new



international geopolitics in which a multi-centric and multi-polar world will take shape, enabling a balanced universe to be achieved and world peace to be ensured”.

The *Plan de la Patria* contains the most important aspirations and objectives of the indigenous peoples and their organisations but it also establishes a commitment to developing a diversified eco-socialist production model that seeks to overthrow capitalism and, in particular, oil profiteering. In addition to developing agricultural activities and industrialisation to satisfy the basic needs of the population, it therefore also anticipates a substantial expansion of developmentalist extraction activities, including oil, gas and petrochemicals (the economic sectors

from which Venezuela gains most revenues for the public purse and foreign exchange for the country), as well as other mining (gold, diamonds, coltan, bauxite, iron, nickel, phosphoric rock, feldspar, coal and others) and primary sector activities (logging). Although the Plan states that the country's economic development should be sensitive to environmental protection, it therefore runs the risk of prioritising the developmentalist paradigms that are still at the forefront of Venezuela's economic theory and practice. Hydrocarbon and mining activities on their lands represent an imminent threat to indigenous peoples' human rights. It is therefore essential to advocate respect for their prior consultation in relation to all economic activities affecting them, and to lobby for the creation of spaces in which to negotiate with the public authorities in order to address these issues.

The indigenous ministry

The Ministry of Popular Power for Indigenous Peoples was created in 2007. Since then, all the ministers, deputy ministers and other high-ranking executives have been indigenous. President Maduro ratified Aloha Nuñez, from the Wayuu people, as Minister in 2013; she had previously been appointed by President Chávez at the end of 2012.

The ministry's public policies throughout 2013 continued to be aimed at providing direct assistance to the indigenous population and tackling their immediate problems: direct delivery of food, donations, tools, clothing or housing, along with the organisation of extraordinary health campaigns. Most of these activities are conducted as part of the Guaicapuro Social Mission. Unfortunately, structural policies aimed at protecting indigenous rights have been relegated to the back burner, including the direction and coordination of indigenous peoples' public policies developed by the public institutions and the demarcation of indigenous lands.

Special indigenous jurisdiction

The National Assembly did not approve the Special Law on Indigenous Jurisdiction in 2013 and parliament chose to continue the process of public consultation and popular participation to produce this proposal. Although the indigenous juris-

diction, recognised by the National Constitution and the Law on Indigenous Peoples and Communities, remains operational in the country and considers and rules on criminal and civil cases between indigenous individuals, the approval of this Special Law is essential in order to be able to clearly define the limits and methods of coordination between the general and indigenous jurisdictions. Otherwise, conflicts of competence will continue to arise between both jurisdictions. Not only does this create a situation of legal insecurity but, on occasions, it means that cases are resolved in violation of the rights of indigenous peoples.

Indigenous movement

Venezuela's indigenous movement has more recently focused on coordinating its grassroots organisations, particularly in Amazonas and Bolívar states, through the Coordinating Body of Indigenous Organisations of the Amazon (COIAM). During 2013, weekly meetings were held with the aim of producing a political agenda specific to these areas, and this resulted in a strategy of reaching out to the national government in order to obtain information on and discuss the mining projects that are likely to affect their territories, land demarcations, and the serious health problems and healthcare apparent in some sectors. In terms of mining, attempts to enter into discussions have yet to bear fruit and the indigenous movement is awaiting a response from the national government. In terms of health, however, the change in minister in this area has resulted in new opportunities for dialogue and joint planning of care for those peoples who find themselves in an emergency situation due to different epidemics and the deteriorating healthcare situation over the last two years.

Demarcation and recognition of indigenous lands

On 28 March 2013, the National Commission for Housing and Lands of Indigenous Peoples and Communities, chaired by the Executive Vice President of the Republic, formally issued 14 titles for demarcated lands to the Kariña (Anzoátegui and Sucre), Cumanagoto (Anzoátegui), Pumé (Apure), Mapoyo (Bolívar), Pemón (Bolívar) and Warao (Delta Amacuro) peoples. The national government indicated that, on this occasion, 1,024,387 ha had been returned to the native peoples.²

The Ministry of Popular Power for Indigenous Peoples stated on 8 October 2013 that the national government had issued 80 collective land titles to indigenous peoples in all, covering an area of more than 2,800,000 ha. It furthermore indicated that, of 108 requests submitted in this regard, 80 had now been resolved, and it established a goal of finalising the 28 remaining requests by the end of 2014, without prejudice to the submission of new ones.³

There has been a formal policy of demarcating land and issuing the corresponding collective property titles to the indigenous peoples in Venezuela since this was recognised as a human right in the 1999 Constitution. This process has been ongoing since the creation of the National Commission for Demarcation of the Habitat and Lands of Indigenous Peoples and Communities in 2001. However, the Constitution established a two-year period for this to take place; 14 years have now passed, demonstrating that progress has been slow and sporadic. The demarcations approved have responded, in large part, to requests emanating from a self-demarcation process taken up by the indigenous peoples and their organisations themselves; there are, nonetheless, numerous indigenous peoples and communities that have not been able to conduct such processes themselves and it is the state's duty to do this for them, ensuring that all those concerned are involved. It is, moreover, difficult to assess the progress made in the demarcations as there is a lack of information available regarding the cases opened and the land titles issued.

Mining and indigenous peoples' rights

Coal mining project and thermo-electric plant in Zulia state

During 2013, Zulia Regional Government, in coordination with the Ministry of Popular Power for Electrical Energy, announced that coal mining was to be further developed in this state, along with the construction of a coal-fired power station, in order to meet the people's needs for electricity. It proposed continuing to develop coal mining, firstly, in Guasare, Socuy, Maché and Cachirí and, later, throughout the whole of the Perijá Mountains in Zulia, which overlaps with the territories of the indigenous Wayuu, Barí, Yukpa and Japreria peoples. These activities will have a negative impact on both the environment and the indigenous communities.⁴ A group of indigenous and social organisations has therefore called on the public authorities to rectify these plans, in accordance with the *Plan*

de la Patria, and to choose alternatives that will reduce the environmental impact and, above all, not to expand mining into the Perijá Mountains.⁵ In addition, they have demanded that indigenous peoples be consulted before these plans are implemented.

Arco Minero del Orinoco project

On 1 March 2013, the Coordinating Body of Indigenous Organisations of the Amazon (COIAM) publicly stated its “concern at the different plans and projects for supposed mining development that have been announced by the national government and which have appeared publicly in different public and private media, referring primarily to the implementation of the so-called ARCO MINERO DEL ORINOCO (2011) project and the Agreement with the Chinese transnational company ‘Citic Group’ (2012), as well as our rejection of the Arco Minero del Orinoco project’s implementation without consultation, as the main policy aimed at promoting the exploration and exploitation of the different minerals existing in the Guayana region, affecting our territories and socio-cultural integrity. This developmentalist and extractivist policy has clear capitalist overtones and is in contrast to our conception of life and Mother Nature as a fundamental asset for collective sustenance.”

In particular, the organisation questioned the exploration and prospecting for different minerals in Amazonas state (Chinese fields in Ocamo – Yanomami territory, Cacurí - Ye’kuana territory, Solano – Arawako territory, Santa Bárbara – multiethnic territory, and Puerto Ayacucho – multiethnic territory), particularly before the demarcation of indigenous lands has been completed.

For these reasons, it called on “the national government [to] urgently REVIEW these projects and not implement them on indigenous territories and communities due to the possible destructive environmental and socio-cultural impacts, and also proposes an in-depth review of its indigenous policy to ensure that it promotes the development of sustainable projects on indigenous territories and communities in the south of the country that respect and guarantee their ways of life and the environmental integrity of the Amazon, in harmony with global planetary protection.”⁶

In June 2013, COIAM spokespersons travelled to Caracas to present these concerns and proposals to the Standing Committee for Indigenous Peoples of the National Assembly, the Indigenous Parliament of America, the Latin American

Parliament, the National Prosecutor with Indigenous Competence and the Ombudsman. However, they could not be received by the Vice President of the Republic or the Minister of Popular Power for Indigenous Peoples.⁷ As of the date of writing, there has been no response from the national government with regard to commencing a dialogue.

Illegal mining in the Caura River basin

Despite the government's efforts, illegal mining has continued in the upper Caura, Sucre municipality, Bolívar state, affecting the indigenous Sanema and Ye'kuana peoples, and resulting in mercury contamination of the area's rivers.⁸ The indigenous organisation Kuyujani has repeatedly denounced this situation, which is affecting the lives, health and culture of the indigenous peoples.⁹ These mining activities are being conducted primarily by foreigners coming from Brazil, Colombia and Guyana. Venezuelans are also involved, however, including indigenous peoples who practise mining as a means of subsistence.¹⁰

On 8 February 2013, a group of indigenous people kidnapped 43 Venezuelan soldiers in Urimán, in the south east of Bolívar state, in protest at Operation "Arekuna", an armed forces campaign to eradicate illegal mining in the area. They released them on 10 February following various agreements with the Governor of Bolívar state and the Minister of Popular Power for Indigenous Peoples, which included: the commencement of mining activity on the indigenous territory of the Pemón people under the supervision of the indigenous authorities, an end to the military operation, the regular delivery of fuel at market prices and a revival of the supply planes. Indigenous people are currently able to extract gold and diamonds on a small scale, in open violation of the provisions of effective legislation, including the Organic Law on Indigenous Peoples and Communities.

Illegal mining in Amazonas state

Illegal mining continues on the indigenous territories of Amazonas state. The indigenous organisation Yanomami Horonami has denounced the fact that, during 2013, it obtained information on the existence of illegal mining sites in Alto Ocamo, Alto Siapa, Cerro Delgado Chalbaud (source of the Orinoco), the Haximú-Yaritha-Harau area and the Sierra Parima. It stated that the illegal miners, coming

mostly from Brazil and Colombia, were continuing to open up illegal landing strips and assault the Yanomami.

The Yukpa people's struggle for their territories

On 3 March 2013, Chief Sabino Romero was murdered. He was an indigenous leader who had led the struggle of the Yukpa people for their ancestral lands in the Sierra de Perijá, Zulia state. He had been the object of numerous death threats due to his indomitable attitude towards the cattle ranchers and public authorities. Several of his close family and friends have also been murdered, including his father, José Manuel Romero. Despite repeated requests to the authorities, the necessary protection measures were never put in place for Sabino Romero and his family. During the subsequent investigations and criminal process, five local police officers from the Machiques local authority were arrested but *Sociedad Homo y Natura* has publicly stated that the architects of these actions were in actual fact the cattle ranchers who are taking Yukpa lands, and specifically members of the Machiques cattle ranching association – GADEMA, who have not been investigated for this crime.¹¹ In addition, the children of Chief Sabino have suffered persecution at the hands of the police, army and justice system.¹² Two of his sons, Isidro and Sabino, have been unduly accused of kidnapping. His son Silverio was recently the victim of an attempted murder in his own community, allegedly at the orders of the Machiques cattle ranchers.¹³

The self-demarcation of the Yukpa people's lands covers approximately 285,000 ha but the collective property titles issued do not cover this area and have been issued as separate community plots. A number of communities are therefore continuing to demand respect for the self-demarcation and recognition of the habitat and lands of all the Yukpa people collectively and not on a community-by-community basis.

CERD concluding observations

The UN Committee for the Elimination of Racial Discrimination (CERD) received reports 19 to 21 from Venezuela on compliance with the Convention on the Elimination of Racial Discrimination at its 83rd period of sessions (12-30 August

2013). The Committee generally recognised the progress made in the measures, programmes and social development plans that have included indigenous peoples in terms of reducing the racial and structural discrimination existing in the state. Additionally, a series of specific observations were made, including:

Census and public policy indicators. The Committee welcomed the fact that the state had included questions on indigenous self-identification in the 14th Population and Housing Census of 2011, and invited the government to produce indicators that would enable it to gain a better overview of the situation in which indigenous communities are living. In this regard, it took note of the fact that, during the period 1999 – 2012, 62.5% of the national public budget had been devoted to social investment but regretted the fact that there was no information on the specific percentage aimed at indigenous peoples.

Yanomami people. The Committee recognised the state's efforts to protect indigenous peoples in the Amazonian region but noted its concern at the situation of the Yanomami people, particularly due to the presence of, and aggression from, illegal miners. In this regard, it "urges the State Party to intensify the protection provided to indigenous peoples living in the Amazon region and recommends that an exhaustive investigation be conducted into the acts of violence being perpetrated against members of the Yanomami people by illegal miners."

Yukpa people. The Committee expressed its "great concern at the serious acts of violence occurring in the Perijá Mountains, where there have been clashes between indigenous peoples and people occupying the lands", particularly the attacks on the lives and physical integrity of the Yukpa people, including the murder of Chief Sabino Romero and other members of his family. It particularly regretted "that such actions are the consequence of a lack of land demarcation" and recommended that these actions be investigated, further acts of violence be prevented and the demarcation of indigenous territories be sped up.

Traditional indigenous justice. The Committee expressed its concern at not having obtained adequate and sufficient information from the state in this regard. It also urged the state to ensure that the draft bill of law on special indigenous jurisdiction was approved and that it has “the primary objective of regularising and harmonising the functions, competences and responsibilities of the indigenous and national justice systems”. ○

Notes and references

- 1 Official Journal of the Bolivarian Republic of Venezuela No. Ext. 6,119, of 4 December 2013.
- 2 <http://www.aporrea.org/actualidad/n225794.html>
- 3 Report published by the Venezuelan News Agency on 8 October 2013.
- 4 Documents published by the indigenist organisation Sociedad Homo y Natura: Arias will again impose coal as a way of life on Zulia state, Arias and Chacón united to open a coal power station in Zulia, and new coal mines - Sociedad Homo et Natura and Chacón and Arias and coal powered electricity in Zulia.
- 5 Open letter to the Governor of Zulia State and the Minister of Popular Power for Electrical Energy on the historical dilemma that building an electricity power plant using coal from Guasare as fuel implies, dated 21 November 2013, signed among others by Colectivo la Mancha, Colectivo La Voz del Monte, Wainjirawa, Colectivo Cimarrón, El Güiro, Colectivo Soles, Colectivo Nevado, Colectivos Encuentros, Sociedad Homo et Natura, Asashi Ittanobibay, Hijos de Limber, Colectivo Enfocate, Maikiiralaasali, Unir Readic, MEMA-Mercado Ecológico de Maracaibo, Hnos. Riflito, Cumbleafro Zulia and Foro Nigale.
- 6 Statement from the Coordinating Body of Indigenous Organisations of Amazonas State (COIAM) on the national government’s mining policy and state plans affecting the constitutional rights of indigenous peoples, 1 March 2013, signed by the Organización Indígena Piaroa Unidos del Sipapo (OIPUS), Organización Ye’kuana del Alto Ventuari (KUYUNU), Organización Yanomami (HORONAMI), Organización Mujeres Indígenas de Amazonas (OMIDA), Asociación de Maestros Piaroa (Madoya Huarijja), Organización Piaroa del Cataniapo “Reyö Aje”, la Organización Indígena de Río Negro (UCIABYRN), Organización Yabarana del Parucito (OIYAPAM), Organización Piaroa de Manapiare, Organización Ye’kuana del Alto Orinoco (KUYUJANI Originario), and the Movimiento Político Pueblo Unido Multiétnico de Amazonas (PUAMA).
- 7 Press release from the Coordinating Body of Indigenous Organisations of Amazonas State (COIAM): Indigenous Amazonian Organisations grouped together in “COIAM” travel to Caracas to discuss the government’s new mining policy with public institutions and call for a moratorium on mining projects on their territories.
- 8 Mérida Declaration of the National Governing Board (CDN) of the Venezuelan Association for the Advancement of Science (AsoVAC), 16 March 2013.
- 9 http://www.correodelcaroni.com/index.php?option=com_content&view=article&id=228422:resurgen-reclamos-indigenas-en-el-caura&catid=69:ciudad-bolvar&Itemid=119
- 10 Mining on ancestral lands: rights and duties of indigenous peoples. 2013, year of change for sector 7 Gran Sabana municipality. Manuela Gallini,= Fundación Mujeres del Agua.

- 11 Documents published by the indigenist organisation Sociedad Homo y Natura: Chávez and Sabino two popular symbols between Guacaipuro and Bolívar, 12 October No cattle ranchers detained, 4 months after Sabino's murder: no trial, no land for those who suffered most and Arias Cárdenas: who paid to murder Sabino?
- 12 Documents published by the indigenist organisation Sociedad Homo y Natura: By accusing Sabino's children they hope to save the cattle ranchers involved in his murder.
- 13 <http://www.aporrea.org/actualidad/a179608.html>

Aimé Tillett is a member of the Socio-environmental Working Group of the Amazon
- WATANIBA.

SURINAME

Indigenous peoples in Suriname number 20,344 people, or approximately 3.8% of the total population of 541,638¹ (census 2012). The four most numerous Indigenous peoples are the Kali'ña (Caribs), Lokono (Arawaks), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian Indigenous peoples in the south-west and south of Suriname, including the Akurio, Apalai, Wai-Wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. The Kali'ña and Lokono live mainly in the northern part of the country and are sometimes referred to as "lowland" Indigenous peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as "highland" peoples.

Suriname is one of the few countries in South America that has not ratified ILO Convention 169. It did vote in favour of adopting the UN Declaration on the Rights of Indigenous Peoples in 2007, but the legislative system of Suriname, based on colonial legislation, does not recognize Indigenous or tribal peoples, and Suriname has no legislation governing Indigenous peoples' land or other rights. This forms a major threat to the survival and well-being, and respect for the rights, of Indigenous and tribal peoples, particularly given the strong focus that is now being placed on Suriname's many natural resources (including bauxite, gold, water, forests and biodiversity).

Land rights issues

2013 brought no substantive developments with regard to recognition of the rights of Indigenous and tribal peoples in Suriname.

One significant action, of which the results have yet to be seen, was the appointment of a "presidential commissioner on land rights" as advisor to the president. This person is tasked to work towards a solution for the long-standing land rights issue - an express priority of the current government. With the appointment of the new commissioner, the "regular" meetings between Indigenous and tribal

peoples and the Ministry of Regional Development on land rights issues were discontinued, and the proposals developed thus far, as well as the reports of previous government commissions on land rights, will only be considered as “background information” by the newly-appointed commissioner. Participants in the meetings held so far have stated that they feel as if they are starting all over again but have also expressed their continued desire for constructive dialogue.

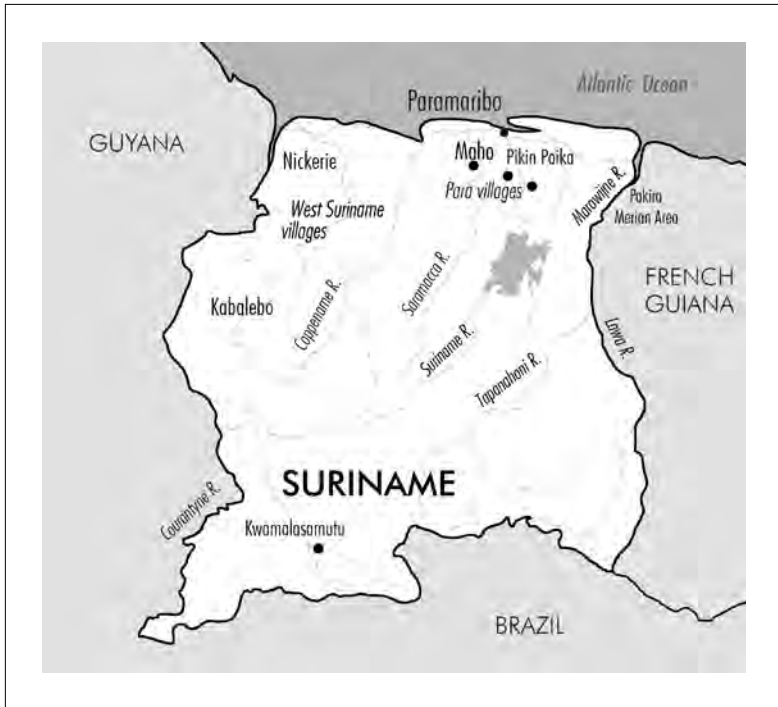
The commissioner has held initial meetings with Indigenous and tribal peoples’ representatives, informing them of the government’s position, namely that a solution must be found that will fit within the “Surinamese reality”, in which there are currently no legislative provisions for collective rights. He also stated that, for now, three actions would be pursued: legal recognition of traditional authorities, a broad awareness raising campaign on the rights of Indigenous and tribal peoples, and the development of a protocol on free, prior and informed consent. At the time of writing this article, work on these topics has yet to start. The core issue, namely land rights, will be taken up after the initial work has been evaluated.

Another noteworthy political development during the year was the appointment of a cabinet minister (of the Ministry of Spatial Planning, Land and Forest Management) and a district commissioner (for the administrative resort of Kabalebo in West Suriname) of Amerindian descent; both stated that they would undertake efforts aimed at faster development for Indigenous peoples in Suriname.

Cases considered by the Inter-American Human Rights System

Two cases submitted by Indigenous communities to the Inter-American Commission on Human Rights (IACHR) continued to be under consideration in 2013. The case of the community of Maho against the State of Suriname was declared admissible on 19 March.² The government has, meanwhile, still not acted on the precautionary measures that the Commission issued in December 2010³ with regard to “tak[ing] the necessary measures to ensure that the Maho community can survive on the 65 hectares that have been reserved for it free from incursions from persons alien to the community until the Commission has decided on the merits of the petition”. A hearing in this case is expected in 2014.

The case of eight Kali’na and Lokono Indigenous communities in East Suriname against the State of Suriname in relation to the violation of Indigenous



peoples' ownership rights over ancestral lands and resources, inequity in law and access to justice⁴ was submitted to the Inter-American Court of Human Rights by the IACHR in January 2014.⁵

In spite of the long-passed December 2010 deadline for implementation of the judgement of the Inter-American Court of Human Rights in the case of the Saramaka Maroon tribal people against the State of Suriname,⁶ no legislative actions have been taken in this case either. This judgement obliges Suriname, among other things, to adopt national legislation and standards to demarcate and legally recognize the collective legal status and ownership of the Saramaka Maroon people over their traditional tribal lands, and to respect their right to free, prior and informed consent.

Aware of the delay in implementing the decisions and recommendations of the Inter-American Human Rights System, a delegation of the IACHR visited Suriname in January 2013.⁷ The delegation noted that the government officials with

whom it met were very frank and open in recognizing the seriousness of the human rights challenges affecting the country, and expressed a willingness to work towards finding solutions.

Continued threats to Indigenous peoples' rights

In the absence of legal protection, violations of and threats against Indigenous and tribal peoples' rights continued in 2013, particularly in relation to the issuing of concessions for natural resource exploration and large-scale infrastructure projects in Indigenous or tribal territories without their full and effective participation in decision-making. The construction of a new highway from the capital, Paramaribo, to the international airport in the district of Para was met with surprise by the village of Witsanti, which was not even informed of the location of the highway until bulldozers from the Chinese company, Dalian, were about to demolish one of their village homes.⁸ The village chief demanded prior information as well as an environmental and social impact assessment (ESIA) to be carried out before further work continued. Another village in the district of Wanica, Pikin Poika, which has a long-standing conflict with a land-lease owner who is claiming part of the village's ancestral territory, was confronted with a newspaper report stating that 500 land development plots in the land-lease had been "given as a present" to the President of Suriname in order to support the government's housing construction programme.

The state oil company, Staatsolie, started oil explorations in the Nickerie district, in or around rivers on which the Indigenous villages of Lokono Shikuabana (Post Utrecht) and Cupido depend. An ESIA on the impacts of the initial explorations was undertaken by a consultant contracted by Staatsolie, to whom the community expressed certain reservations, including with regard to the lack of full and prior information regarding the impact on their hunting and fishing activities. Based on the consultant's report, however, Staatsolie concluded that the community was not opposed to the drilling.

In response to the concerns of Indigenous and tribal peoples, the president dismissed the much-debated Tapajai hydroelectric power initiative in Southern Suriname,⁹ which would have affected many Indigenous communities in different ways, ranging from less water in the rivers they depend on to full submersion of their villages and displacement. However, the director of Staatsolie, who was in

charge of the feasibility study, said that he firmly believed the project should and would be put on the table again.

Mining concessions continued to cause tension during 2013 for tribal Maroon communities. To their surprise, a number of tribal Maroon communities discovered that their ancestral lands were included in mining concessions, including the villages of Wanhatti, Santigrón, Adjoemakondre and Pakira.¹⁰ Two other areas, of the Saramaka Maroon (Nieuw Koffiekamp) and Paramaka Maroon people (Merian area) were confronted with a similar situation involving the large multinational companies lamgold (Canada) and Newmont (USA) respectively. At Nieuw Koffiekamp, shooting broke out when security forces from lamgold tried to chase away illegal gold miners who claimed that they were using their ancestral lands.¹¹ In the Paramaka Merian region, where villagers were relocated in favour of the multinational's gold mining concession, conflicts arose among traditional authorities during their negotiations with the government commission tasked with preparing a new gold mining agreement with Newmont, each accusing the other of having been bribed or following personal interests. The conflicts were only temporarily tempered, and flared up again in December.¹²

The pleas of a member of parliament to settle the land rights issue before entering into major deals with the mining companies did not change the government's decision.¹³ An agreement with lamgold with regard to gold mining concessions in the Rosebel area (Brokopondo) was endorsed by the National Assembly (Parliament) of Suriname in April¹⁴ and, later, after further negotiations, an agreement for gold mining in the Merian area in East Suriname was concluded with Newmont,¹⁵ who will work in a joint venture with Suralco, the Surinamese subsidiary of USA's Alcoa mining company, under the name of "Surgold". Falling gold prices have, however, triggered lamgold's decision to unilaterally postpone promised investments in the sector, and the government is considering legal options against this decision.¹⁶

REDD

After previous submissions failed to gain approval, in particular due to the limited meaningful participation of Indigenous and tribal peoples in their elaboration, the Government of Suriname finally obtained approval for its renewed REDD Readiness Preparation Proposal (R-PP) to the Forest Carbon Partnership Facility

(FCPF) of the World Bank.¹⁷ The approval was not unconditional though; after continued concerns about their participation were voiced in the meeting of the Participants Committee by, among others, the Association of Indigenous Village Leaders in Suriname, VIDS, and the NGO Forest Peoples Programme, the committee adopted a resolution outlining some specific conditions related to the more effective participation of stakeholders and consideration of the rights of Indigenous and tribal peoples in implementing the R-PP. In the subsequent deliberations around writing the R-PP project, with UNDP as delivery partner, VIDS and others have again raised concerns about the materialization of provisions that will guarantee the effective participation of Indigenous and tribal peoples in actual decision-making.

Other activities and developments

As the structure of the traditional Indigenous authorities, VIDS has continued to strengthen its institutions. In various regions, hearings and discussions were held with Indigenous communities on the potential introduction of “*dorpsreglementen*” (village regulations), written instruments for improving village governance through, for example, guiding transparent and participatory decision-making and setting out rules for leadership changes in the communities. VIDS also continued its role as mediator for the communities in actual changes of leadership, thus also ensuring the grounding and strengthening of the traditional authority system.

One significant development was the signing of a Memorandum of Understanding between VIDS and the Dutch National Museum of Ethnology (Rijksmuseum Volkenkunde) in Leiden, the Netherlands, regarding cooperation on the analysis of extensive manuscripts regarding the culture of the Kali’na and Lokono peoples of Suriname, which were rediscovered in the museum in 2011 (see *The Indigenous World 2012*).¹⁸

In December, a successful regional conference of Trio peoples’ authorities from Brazil and Suriname was held in the village of Kwamalasamutu, the residence of the paramount chief of the Trio, co-organized by VIDS, a Brazilian support organization, Iepé, and the Indigenous organization, Apitikaxi. This formed part of a series of meetings in a Guyana Shield project being run by Iepé. The meeting focused on strengthening the traditional leadership, the recognition of land rights and common social issues confronting the Trio in both countries. The

conference closed with a declaration calling for continued mutual cooperation and coordination, and demands for respect for Indigenous peoples' rights, including to lands and resources, public services and free movement between communities on either side of the state borders. ○

Notes and references

- 1 The population is highly ethnically and religiously diverse, consisting of Hindustani (27.4%), Maroons ("Bushnegroes", 21.7%), Creoles (16%), Javanese (14%), mixed (13%), Indigenous peoples ("Amerindians", 3.8%) and Chinese (1.5%) (*census 2012*). At least 15 different languages are spoken on a daily basis in Suriname but the only official language is Dutch, while the *lingua franca* used in less formal conversations is *Sranan Tongo* (Surinamese).
- 2 <http://www.oas.org/es/cidh/decisiones/2013/SUAD1621-09ES.doc>
- 3 <http://www.cidh.oas.org/medidas/2010.en.htm>
- 4 <http://www.cidh.oas.org/annualrep/2007eng/Suriname198.07eng.htm>
- 5 http://www.oas.org/en/iachr/media_center/PReleases/2014/009.asp
- 6 http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf
- 7 <http://www.devsur.com/iachr-concludes-working-visit-to-suriname/2013/02/12/>
- 8 <http://www.devsur.com/villagers-feel-threatened-by-new-highway-development/2013/10/31/>
- 9 <http://www.president.gov.sr/sr/kabinet-van-de-president/actueel/er-is-geld-voor-de-uitvoering-van-het-beleid.aspx> (in Dutch); <http://www.devsur.com/tapajai-hydro-energy-project-off-the-table/2013/05/01/> (older news item; in English)
- 10 <http://archieff.dwtonline.com/artikel/?n=164405> (in Dutch)
- 11 <http://archieff.dwtonline.com/artikel/?n=166411> (in Dutch)
- 12 <http://archieff.dwtonline.com/artikel/?n=178805>
- 13 <http://archieff.dwtonline.com/artikel/?n=150338>
- 14 <http://www.devsur.com/green-light-for-new-iamgold-deal/2013/04/14/>
- 15 <http://www.reuters.com/article/2013/06/08/suriname-newmont-idUSL1N0EK0J320130608>
- 16 <http://dwtonline.com/laatste-nieuws/2014/02/28/newmont-beslist-tweede-kwartaal-over-start-suriname> (in Dutch)
- 17 <http://www.forestcarbonpartnership.org/Node/175>
- 18 http://www.culturalheritageconnections.org/wiki/Penard_project:_the_manuscript_of_the_Kari%E2%80%99na

Max Ooft is Policy Officer at the Bureau of the Association of Indigenous Village Leaders in Suriname (*Vereniging van Inheemse Dorpshoofden in Suriname, VIDS*). He holds a doctorandus (*drs*) in medical sciences and a Master's in Business Administration (*MBA*).

FRENCH GUIANA

French Guiana is an overseas department and region of France on the north Atlantic coast of South America and thus part of the European Union. Guiana has borders with Brazil and Suriname and is one of the largest and greenest of the French departments (around 94% of its territory is covered by tropical forest). Its total size is 83,534 km² and 80% of its 250,109 population (2013) live along its 320-km-long Atlantic coast. The interior (90% of the territory) is covered by dense tropical forest and is only accessible by boat along the Maroni (separating Surinam from Guyana), Mana, Sinnamary, Approuague and Oyapock (separating Guiana from Brazil) rivers. Since 2007, 33,900 km² of Amazonian forest (located upon the communes of Camopi, Maripasoula, Papaïchton, Saint-Élie and Saül) was protected as the Guiana Amazonian Park, one of the nine national parks of France.

Around 40 % of the population are Creole, 40% are from Brazil, Suriname, Haiti, and the French Antilles, 8 % are European, and 5 % are Asian (Hmong, Javanese, Vietnamese, Chinese etc.). The interior of the country is mainly inhabited by communities of Bushinenges (of African descent), number 4 000 and Amerindians. The indigenous peoples of Guiana, the Amerindians, number between 3,500 and 7,000 people. The Palikur (between 600 and 1,000 speakers) live in the coastal region (Maccouria) and at the mouth of the Oyapock River, close to the border with Brazil. The Lokono (Arawak) population, with 150-200 speakers, is settled around the outskirts of the capital, Cayena, and Saint-Laurent-du-Maroni, while the Kali'na (between 2,000 and 4,000 speakers) are found to the west (Awala-Yalimapo, Saint-Laurent-du-Maroni) along the coast towards Kourou. The Wayana (200-900 speakers) live in the south of the department (Antecume-Pata, Elaé, Twenke, in the upper Maroni), and the Teko or Emerillon, with 200-400 speakers and the Wayampi (400-600 speakers) are found in the upper Oyapock.

Regardless of the geographic area in which they live, these indigenous people have maintained a common way of life based on subsistence

activities: hunting, fishing and slash-and-burn agriculture. Many of them, particularly those living along the coast, have become westernised but maintain strong links with their culture of origin.

France has not ratified the Indigenous and Tribal Peoples' Convention 169 of the ILO, but voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. France does not recognise collective rights for any groups within its territory in French Guiana, but in 1987 it recognized areas of special use rights (Zones de Droits d'Usage) for the Amerindian population, and in 2010, an advisory council for the Amerindian and Bushinenges population (Conseil consultatif des populations amérindiennes et bushinenges de Guyane) was established to take on a consultative role with regards to projects that may impact on their culture.

Institutional development

In January 2013, a consultation was held regarding the proposal to turn the French department Guiana into a "single regional authority" (*collectivité unique*), replacing both the general council and the regional council, a proposal which the people proved favourable towards. This was followed by a period of consultation between the Regional and General Councils of Guiana, through the elected ad hoc joint commission, which then met with the French government and President of the Republic. This single authority is expected to enter officially into force at the time of the forthcoming elections for general (2014) and regional (2015) councillors.

Gold washing

The extraction and washing of illegal gold is wreaking havoc in Guiana, and its main victims are the indigenous Wayana, Teko and Wayapi peoples from the regions of the upper Maroni and upper Oyapock.

The areas in which these communities live have become heavily contaminated with mercury from gold washing (even within the Guiana Amazonian Park).

The authorities have officially recorded 771 illegal sites (and more than 12,000 illegal workers, most of them Brazilian).

The NGO Guiana Solidarity (ASG) has been taking blood samples from the Wayana indigenous population of the upper Maroni since 2004 with the aim of establishing their levels of mercury poisoning. The most recent analyses conducted on adult members of the Cayodé population (November 2013) showed the highest levels recorded to date, with average hair mercury levels of 14.49 g/g (three times higher than the maximum limit set by the World Health Organisation: 5.5 g/g). These people are therefore at very serious risk, with the children being especially vulnerable, to the extent that a large number of these children are likely to have their physical and cognitive development irretrievably damaged. To these health problems must be added issues of safety (death threats from illegal gold prospectors are commonplace), the looting of their homes, the disappearance of wild animals and a scarcity of fish. Through their legal advisor, William Bourdon, the Organisation of Indigenous Nations of Guiana (ONAG) and Guiana Solidarity have sent a letter to the Prefect of Guiana with regard to a “preliminary appeal in a liability action against the French state for the deficient actions of the administration” given the great harm that is being suffered by the indigenous peoples of the Maroni Basin as a consequence of contamination caused by gold washing activities.

International Day of the World’s Indigenous Peoples

For the third consecutive year, Guiana’s indigenous population celebrated the International Day of the World’s Indigenous Peoples on 9 August this year. Through an initiative of the Guiana Region, the day began with a shamanic ceremony in the morning, followed by a colourful and festively-decorated procession. Particularly noteworthy was the fact that the participants in the event carried four banners stating the three main demands of the event: 1) no to illegal gold washing (at the head of the procession); 2) recognition of the traditional indigenous peoples’ authorities; and 3) ratification of ILO Convention 169.

In addition, during the day, two related conferences took place, one on the future of the indigenous languages of Guiana and the other on suicide among the indigenous peoples.

The spokesperson of the Federation of Indigenous Organisations of Guiana (FOAG), J. R. Thérèse, presented a Declaration from the indigenous peoples of



Guiana to the regional government. In this he called, among other things, for support from the new national financial programme for the construction and running of an indigenous intercultural community centre in the Capital, Cayenne, the aim of which would be to ensure and encourage the educational achievement of indigenous students.

Regional seminars on customary law

During 2013, a number of seminars took place with the aim of consulting traditional leaders throughout Guiana (west, east and central coast) on issues of cus-

tomary law, the traditional authorities and rights of collective use. The aim of these seminars was to make known the expectations, concerns and recommendations of indigenous peoples with regard to the future prospect of a “single regional authority”.

These expectations were analysed in a congress held on 6 May in the presence of general and regional councillors, at which the payment of traditional leaders was discussed. The General Council currently guarantees a monthly payment to 48 indigenous and Bushinengue traditional leaders. The legal continuation of this payment to Guiana’s traditional leaders in the context of the future single authority will be considered at the next congress.

Guiana Amazonian Park Charter

From 11 January to 11 February 2013, a public survey took place in Guiana on the planned Guiana Amazonian Park (PAG) Charter, organised by the Department for the Environment, Planning and Housing (DEAL). The survey was conducted in Cayenne, the sub-prefecture of Saint-Laurent-du-Maroni, the town councils and annexes of the affected populations and the populations of Trois-Sauts, Twenke and Antecume-Pata.

The report of the commission responsible for the survey was published on 11 March and gave a “favourable opinion on the planned Charter; however, to meet international commitments made by the French state through the Convention on Biological Diversity and the Nagoya Protocol, it should be noted that access and benefit-sharing related to energy resources needs to obtain the prior consent of the communities affected”.

Indigenous suicide

In 2013, Action for Development, Education and Research (ADER) revealed data corresponding to the period 2009-2013 regarding rates of suicide and attempted suicide among the indigenous populations of the upper Maroni. The average annual rate was 2.6 suicides and 8.6 attempted suicides among a population of 1,200 inhabitants, in other words a rate 13 times higher than the French national average. Suicide was found to be more prevalent among men, and attempted

suicide among women. Another epidemiological feature was the rate of suicide among young people under the age of 25, who accounted for more than half of all cases. Lastly, the most commonly-used methods were shooting and hanging. Factors such as insecurity (resulting from the illegal gold washing), river contamination (with mercury), sedentarisation, an inappropriate education system, addiction, the generation gap and difficulties in accessing the health system are all reasons underlying this suicide rate, which is a problem not only for the people of the upper Maroni but many other indigenous peoples too. ○

Jean Pierre Havard is president of Guiana Solidarity, which works primarily on issues of health in the local communities by studying mercury levels in the soil.

Patrick Kulesza is executive director of GITPA, (PARIS).

Rachel Merlet is an anthropologist working for ADER as coordinator of the community health programme "Promoting well-being, suicide prevention and access to health", aimed at indigenous teenagers and young adults in Maripasoula commune, upper Maroni.

ECUADOR

Ecuador's total population numbers some 15,682,792 inhabitants, and includes 14 nationalities accounting for around 1,100,000 people, all joined together in a series of local, regional and national organisations. 60.3% of the Andean Kichwa live in six provinces in the Central-North Mountains; 24.1% live in the Amazon region and belong to ten nationalities; 7.3% live in the Southern Mountains; and the remaining 8.3% live in the Coastal region and the Galapagos Islands. 78.5% still live in rural areas and 21.5% in urban areas.

The current Constitution of the Republic recognises the country as a “...constitutional state of law and social justice, democratic, sovereign, independent, unitary, intercultural, multinational and secular”. Over the last five years, the country has undergone a series of political and institutional reforms. At the same time, however, enforcing and guaranteeing the collective rights recognised in the Constitution has become a challenge to the process, and a permanent point of disagreement between the government, headed by the economist Rafael Correa, and the indigenous social organisations. The government's economic action has been largely marked by an opening up of the extractive industries - oil, copper and gold - to foreign investment, either of Chinese or Belarussian origin, or from other Latin American countries such as Brazil, Chile or Argentina. This has resulted in risk to and impacts on the territorial and cultural integrity of various indigenous peoples, and an uncertainty created around the true validity of the broad collective rights enshrined in the Constitution.

Five years have passed since the country's new Political Constitution was approved in a referendum. Since then, the context has been a heterogeneous and complex one in which expectations for reform and change have varied. The state has established ambiguous policies: redistributive on the one hand, based on a strengthening of the welfare state, yet extractive/primary-exporting on the other, based on promoting increased oil exploitation and control over its reve-



nues, in addition to increased recovery of taxes. Although oil production represents only 12-13% of GDP, it forms the main source of tax revenues. Between 2007 and 2013, oil prices fluctuated between USD 80 and USD 100 a barrel, and these revenues were supplemented with higher taxes: in 2007, the state levied USD 5.144 million while, by 2013, the figure had increased to USD 12.758 million and evasion had fallen from 60% to 30%, according to official sources.¹ The end is looming for the primary export model based on the oil industry and so the government has opted to replace it with large-scale mining.

Despite the above, the revenues obtained have not covered the high cost of social investment, which has resulted in a deficit of more than four billion dollars, largely financed by Chinese bonds and loans.² The rate of income poverty has fallen to less than 28%, a 21.8 percentage point drop in just eight years. Measurements based on other parameters, however, such as unsatisfied basic needs (UBN) or broken down by ethnic group show a different story: poverty affects 86.1% of the indigenous population, for example, as opposed to 54.6% of the

mestizo and 45.9% of the white population.³ Following the elections of 17 February, 2013 was marked by a political consolidation of the Alianza País (AP) government, amid a climate of tension and conflict related to mining concessions and the opening of a new call for tenders for oil contracts (See *The Indigenous World 2012*). These elections were the culmination of a long period of electioneering: Correa won the election with 57.2% of the vote and his AP movement won 97 of a possible 137 seats in the National Assembly. The self-named “National Coordinating Body of the Left” (*Coordinadora Nacional de las Izquierdas*), in opposition to the government and close to the indigenous movement headed by the Confederation of Indigenous Nationalities of Ecuador (CONAIE), won scarcely 3.2% of the national vote.⁴

A few days later, three peasant leaders who had been convicted of blockading the public highway in 2010 during protests at the so-called “Water Law” being implemented in Azuay province, in the south of the country, were released from prison.⁵ This case is just one in a long list of oil and mining-related conflicts erupting in the southern Andean region and in the Amazonian south-east of the country. While the average number of social protests taking place has remained relatively constant over the last two years (between 50 and 80 protests each month), most have been locally-based and comparatively smaller than those recorded over the 2010-2011 period.⁶

Based on more than three decades of negative experiences in the Amazonian north-east, the local, peasant and indigenous communities fear that these mining and oil projects will result in harmful consequences such as the exhaustion or destruction of water sources, contamination, huge amounts of waste, their dispossession from their lands and the displacement or expulsion of communities.

Faced with these fears, the legal reforms promoted by the government to establish higher levels of compensation and participation in royalties have divided opinion and created internal divisions within many of the indigenous organisations regarding government programmes.

Throughout the year, the dynamic was one of increasing tension coupled with the state’s enduring apathy with regard to guaranteeing the collective rights of indigenous peoples or overcoming the vertical and exclusive relationships that persist in spite of the country’s new legal environment.

Peoples in voluntary isolation on the verge of annihilation

In March 2013, news emerged from the Waorani territory of events linked to the deaths of an elderly couple, Ompure and Buganey, in Yarentaro, and the subsequent revenge organised by one of their sons that resulted in a massacre of Taromenane families, particularly women and children. In his book *“Una Tragedia Ocultada”*⁷ (A Hidden Tragedy) (2013), the chronicler and Capuchin missionary, Miguel Ángel Cabodevilla, focuses his attention on a detailed reconstruction of events based on testimonies that bear witness to the highly foreseeable spiralling of a conflict involving the Waorani, on the one hand, and the Tagaeri and Taromenane, on the other.

The Waorani established contact with evangelical missionaries in the mid-1950s, accepting their presence from that point on. These missionaries promoted an aggressive programme of religious induction by establishing, and maintaining control over, the education system. One of the Waorani sub-groups, the Tagaeri, chose not to be involved in this but to remain isolated from the outside world.⁸ Since then, an extensive and complex plot of inter-family arguments has resulted in violent clashes which, over the course of the last two decades, has resulted in more than 60 deaths. In 1999, the government of President Mahuad established a so-called “Intangible Tagaeri-Taromenane Zone”⁹ within the Waorani ancestral territory, which overlaps with the Yasuní National Park. The aim was to permanently exclude all extractive activity and foreign presence from their land. Subsequent incidents and deaths in this area, never clarified between those involved, forced the state to establish a Precautionary Measures Plan between 2003 and 2006 in order to try and neutralise the factors that were threatening these groups living in voluntary isolation.

On 5 March 2013, following the violent murder of the elderly Waorani couple who were living apart on the borders of the intangible zone, supposedly at the hands of indigenous Taromenane, two groups of Waorani prepared to avenge their deaths: they bought arms and munitions in the town of Coca, planned their raid and embarked on a several-day-long campaign, culminating in their reconaissance of a Taromenane hamlet where they conducted a brutal and indiscriminate attack that tragically resulted in the deaths of many isolated indigenous people, including children. Two girls were forcibly taken alive following the traumatic murder of their mother.

Although Cabodevilla notes that the warring Waorani themselves must take primary responsibility for these massacres, he also points to the “state’s apathy” and asks how the Ecuadorian state, with a Precautionary Measures Plan in place, was unable to prevent these deaths. The possible answers he gives can all be traced back to one fundamental issue: the lack of state institutional capacity to guarantee the protection and enforcement of individual and collective rights, particularly of these vulnerable peoples.

The state’s reaction to these events was both delayed and controversial. Eight months after having under-estimated or minimised the events, the Public Prosecutor pressed charges against the Waorani (relating to genocide) and one of the kidnapped girls was rescued in a confused operation on the part of both the Ministry of the Interior and the Public Prosecutor’s Office. According to the anthropologist, Fernando García, “...this will be the first time a case of this kind has been prosecuted and so it is felt that there should be a dialogue between Waorani representatives and the traditional justice system, as a crime such as this cannot go unpunished.”¹⁰

Public policies on oil

In 2007, at the initiative of various environmental organisations, the Ecuadorian government proposed leaving some of the country’s oil in the ground instead of extracting it. This related to reserves of approximately 900 millions of barrels of crude oil located in a hydro-carboniferous complex comprising three fields: Ishpingo, Tambococha and Tiputini (the ITT block) in the Yasuní National Park. It agreed to do this in exchange for the equivalent of at least half the income the state would have obtained had it exploited the oil. “The current value of tax revenues that would have been created by extracting the oil from ITT has been estimated at 7,200 million dollars, so the minimum capital of the Yasuní-ITT Fund shall be 3,600 million dollars, to be raised over a 13-year period.”¹¹ Following its presentation to the United Nations, the Yasuní-ITT Initiative gained considerable recognition, to the point where, in 2010, an International Trust agreement was signed and a major international fundraising campaign launched.¹²

Germany became one of the main international partners in this venture, establishing a bilateral agreement in which it committed to providing 34.5 million

euros for the environmental conservation of Yasuní, which was to include improvements in the living conditions of the local communities living there.¹³

Six years after this pioneering and innovative proposal was created, however, and against a backdrop of global problems such as climate change, the energy mix and post-development, President Correa announced the cancellation of the Yasuní-ITT Initiative on 15 August this year: "...with deep sadness, but with absolute responsibility towards our people and history, I have had to take one of the most difficult decisions of my government ... I have signed an executive decree cancelling the Yasuní-ITT trusteeships and thus putting an end to the initiative (...) The initiative was ahead of its time and could not and did not want to be understood by the international community. The fundamental reason for the failure (of the project) is that the world is a global hypocrite," he said.¹⁴

To formalise this decision, which he described as necessary, Correa signed Decree No. 74 establishing that the National Assembly would be asked to declare exploitation of the Yasuní oil fields to be of national interest. This would affect at least one-thousandth of the National Park, which has a total area of more than one million hectares. The decree establishes the cancellation of the trusteeships administering the resources that had been offered in return for not exploiting 920 million barrels of oil from the ITT fields.¹⁵

Disagreement with and rejection of Correa's decision was not long in the coming, both from inside and outside the country. For several days, in different towns around the country, student associations, environmental groups, intellectuals, human rights associations and indigenous organisations all came together in protest marches and vigils.

On 5 September, Tarquino Orellana, a councillor from Cuenca town filed a complaint for unconstitutionality against Decree No. 74. "This is a precautionary measure against the President and the Assembly to get them to suspend the procedure declaring the exploitation of crude oil in the National Park (Yasuní) to be of national interest."¹⁶ On 3 October, the National Assembly authorised drilling in the ITT fields but made it conditional upon the fulfilment of certain standards minimising the environmental impact and effects on the ancestral peoples - including uncontacted groups - living in the area. The Assembly resolution, essential for the government to be able to commence drilling in Block 43 (or the ITT block), was approved by 108 of the Assembly members present at the session.¹⁷

In the face of the decision of the government and Assembly, the social organisations decided to try to prevent the ITT oil project from being implemented

by calling for and holding a referendum. Represented by the well-known lawyer, Julio César Trujillo, they have put the following formal question to the Constitutional Court: “Do you agree that the Ecuadorian government should keep the crude oil in ITT, known as Block 43, in the ground indefinitely?” The social groups have to gather more than 600,000 signatures for the state to authorise the holding of this referendum.¹⁸

Franco Viteri, president of the Government of Original Nations of the Ecuadorian Amazon (GONOA) – the former Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE) - said: “We support the referendum. But the exploitation or not of Yasuní must not take place as rapidly as the government would like because, first, you have to verify what is going on in the reserve and assess the social impact that this will cause. We have proposed a march to Yasuní so that all the social actors can visit the area”.¹⁹

Alongside this, the process for the XI Round of Tenders and bids for 13 oil fields continued and, in November 2012, an initial call was put out. The Ecuadorian Ministry of Hydrocarbons opened two bids from the “Andes” company, of Chinese capital, one from the subsidiary of Repsol in Cuba and one from a consortium of state companies: Petroamazonas (Ecuador), ENAP (Chile) and Belorunefit (Belarus).²⁰

In light of the above, and with the support of the main indigenous organisations, including CONAIE, GONOA and ECUARUNARI, the Coordinating Body of Pastaza Indigenous Women (COMNAP) organised the “March of Amazonian Women for Life” from the town of Puyo, in the Central Amazon, to the capital, Quito.²¹ “We cannot permit this situation. If they decide to extract the oil with all the consequences this will have on an intangible and megadiverse area, what will we do, our families and children?” emphasised Mayra Santi, a member of the Sarayaku community. “...they don’t want to receive the Amazonian women in the Assembly but then the footballers turn up and they open the doors wide,” exclaimed Zoila Castillo, a leader of the Bobonaza Basin Territorial Organisation of Pastaza.²² GONOA (the main Amazonian indigenous confederation) issued a press release in which it gave its full support to this protest on the part of its grassroots members, headed by women leaders from the Kichwa, Sapara, Shiwiar and Waorani nations and the *mestizo* population, given the lack of consultation in the Amazon regarding the XI Oil Round, and recent events such as the failure of the Yasuní ITT initiative.

The opening session of the bidding process, held in Quito on 27 and 28 November, was rejected by a hundred or so environmentalists and indigenous leaders opposed to expanding the oil frontier in the central and south Amazon. That same day, the Chilean Ambassador to Ecuador, Juan Pablo Lira, and the general representative of Belorusneft, Andrei Nikonkov, were attacked outside the offices of the Ministry of Hydrocarbons, causing the Public Prosecutor to press charges against some of the demonstrators, including a number of indigenous leaders who were present. In the light of this case, the Ministry of the Environment also decided, by means of Agreement No. 125 of 4 December, to dissolve the Pachamama Foundation.²³

At a press conference, GONOAIE and the Shuar, Achuar, Andoa and Shiwiar nations, accompanied by CONAIE's president, Humberto Cholango, labelled the XI South-eastern Round unconstitutional. GONOAIE's president, Franco Viteri, warned that the bidding process was in violation of human rights as it was being conducted without the prior, free and informed consultation of the indigenous peoples and nations. For his part, the president of the Achuar Nation of Ecuador (NAE), Jaime Vargas, indicated that they would take up their right to resist any oil company trying to enter their territories.

The Chevron-Exxon case

Against the backdrop of the government's decision regarding Yasuni-ITT and the XI Bidding Round, the conflict surrounding the social and indigenous organisations affected by the operations of the Exxon Petroleum company (now Chevron-Exxon) in Ecuador between 1964 and 1991 intensified, given the transnational's refusal to abide by the ruling of the Sucumbíos Court, issued in 2011 following a court case lasting more than 10 years, which requires it to pay 19 billion dollars for the environmental damage caused to an extensive area of the North-eastern Amazon and the attempts on the lives of more than 30,000 inhabitants.²⁴

Shortly before the Ecuadorian court ruled against Chevron, in February 2011, the company filed another case, under the Racketeer Influenced and Corrupt Organizations (RICO) Act. This law is aimed at fighting organised crime in the United States. The case was filed against the 47 Ecuadorians who signed the original lawsuit against the oil giant, along with their lawyers, consultants and scientific advisors in the U.S., including various activists, groups such as Amazon

Watch and Rainforest Action Network, and a number of journalists and bloggers. The RICO case is now being used by the oil company to try to avoid paying the fine in different jurisdictions around the world.

Chevron has at least 2,000 lawyers from 60 different law firms at its disposal in this case and is currently spending approximately USD 400 million per year on legal fees to maintain false Ecuadorian witnesses in the U.S.²⁵

“Texaco spilt some 71 million litres of waste and 64 million litres of oil over two million hectares of the Ecuadorian Amazon. After concluding its operations in the country, it could have repaired the damage but it has not done so. The people affected by the transnational company, organised into the Amazonian Defence Front, decided to file claims for fair reparation. In reaction, the North American corporation, cornered by the evidence, has attacked - through the courts and the media - not the plaintiffs but the Ecuadorian state itself,” said Ricardo Patiño, Minister for Foreign Affairs. Chevron is hoping that Ecuador will take responsibility for the damage the company caused to nature and human life and pay for what it did. “This is the height of cynicism. But truth will out. Chevron-Texaco’s criminal actions cannot be hidden,” he maintained.²⁶ ○

Notes and references

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- 11 Cf. Larrea, Carlos. "La Iniciativa Yasuní-ITT: Una opción factible hacia la equidad y sustentabilidad", in **Vallejo M.C, et.al.** "La Iniciativa Yasuní-ITT desde una Perspectiva Multicriterial", Quito: Flacso-UASB-FODM, 2013. Available at: <http://www.planificacion.gob.ec/wp-content/uploads/downloads/2012/08/La-Iniciativa-Yasuni-Itt-desde-una-perspectiva-multicriterial.pdf>
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- 21 Cf. the video "Mujeres Amazónicas por la Vida", at: <http://www.youtube.com/watch?v=JpEbQnFk1gU>

- 22 Cf. “Todos nos escuchan, excepto el gobierno, dicen las mujeres amazónicas”. Multicanal Zamora. 22.10.2013. Available at: <http://www.multicanalcatamayo.com/todos-nos-escuchan-excepto-el-gobierno-dicen-las-mujeres-amazonicas/>
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Pablo Ortiz-T holds a doctorate in Latin American Cultural Studies and a Master’s degree in Political and Social Sciences. He has worked for a number of years as advisor to the Andean and Amazonian indigenous organisations. He is currently lecturing on post-graduate social science courses at various universities, and is on the teaching staff of the School of Sociology and Political Sciences of the Central University of Ecuador. You can contact him on: mushukster@gmail.com or pablo.ortiz@uasb.edu.ec

PERU

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

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

The government of former army officer Ollanta Humala Tasso proved a disappointment to the country’s indigenous peoples in 2013. Humala ended his second year in office on 28 July 2013 amidst socio-environmental tensions caused by his continuation of the policy of his predecessor, Alan García Pérez, of taking actions aimed at encouraging large-scale investment in the extractive industries, to the detriment of the individual and collective rights of the indigenous peoples. Evidence of this can be seen in the important and timely 2013 Alternative Report on compliance with ILO Convention 169, a report that is produced each year by the indigenous organisations of the Unity Pact, with the support of the Indigenous Peoples’ Working Group of the National Human Rights Coordinating Body.¹

Territories and natural resources

Social conflict is erupting at different points around the country, primarily in the regions with the greatest number of mining and hydrocarbon concessions.² Such concessions are being granted without informing or previously consulting the populations affected and without any prior assessment of the territory. Neither the population living in the concession area nor the local authorities are receiving any information on the mining concessions, which cover 26,000,752 hectares (21% of the national territory), 48.6% of which overlaps with indigenous and peasant community lands.

The pressure on communal territories can be seen in land purchasing processes, where the flow of information is often very asymmetrical, leading to unfair and imbalanced agreements between the parties. At the same time, there has been no real progress in the titling of communal lands, undermining the right to territory and the system for protecting the communities' land, as there is no governing body or authority responsible for land titling, as has been noted by the Ombudsman.³

Of the 6,069 peasant communities and 1,469 native communities recognised by the Body for the Formalisation of Informal Ownership (COFOPRI), some 16% still do not have a property title. Between 2006 and 2010, only 19 titles were granted to native communities and 23 territorial extensions were undertaken. Since then, and since the transfer of COFOPRI's powers to the regional governments, no titles have been granted to the Amazonian communities, and only four to peasant communities.

This lack of protection of indigenous territorial rights is exacerbated by the state's persistent granting of third party rights of use over the natural resources located on indigenous territories, both titled and untitled, such as for example the right of free entry and occupation granted to the Pluspetrol company in the Amazonian region of Loreto.⁴

Public institutions

Under President Ollanta Humala's government, the functions of the National Institute for the Development of Andean, Amazonian and Afroperuvian Peoples (INDEPA) have been partially subsumed by the Vice-Ministry for Interculturality,



attached to the Ministry of Culture. As the state authority for indigenous peoples, the vice-ministry exhibits weaknesses given that it lacks formal spaces for dialogue with, and the effective participation of, the indigenous organisations. During 2013, the Peruvian state thus maintained the unreliable public indigenous institutionality that has been characteristic of previous governments.

In April 2013, a working team on this issue proposed creating a body that would: a) exercise intra- and inter-governmental stewardship of indigenous policies; b) include the effective participation of indigenous peoples' representatives

through a permanent evaluation and proposals mechanism; c) be a national entity with decentralised regional bodies; and d) have access to the highest level of government in order to be able to effectively influence government decisions.

While the Vice-Minister for Interculturality distracted indigenous representation with a working group that held eight sessions over 120 days, the Culture Sector was redesigned without their involvement, and approved by means of Supreme Decree 005-2013-MC of 20 June 2013 reforming the Vice-Ministry of Interculturality, changing its general directorates and creating new departments within each of them. The indigenous organisations' request to create a Ministry for Indigenous and Native Peoples as an institution at the highest level of government power was overlooked by a national government that lacks any will to strengthen the material aspects of indigenous issues, as shall be seen below.

Poor prior consultation

The approval of the Law on Prior Consultation, in September 2011, initially aroused a great deal of enthusiasm and expectations, despite criticism of some of its articles. Next came a second stage, in which its implementing regulations needed to be issued, completed in 2013, and then a third stage, now described by different analysts as one of "serious crisis and stagnation of prior consultation".⁵

The indigenous organisations and other human rights bodies consider it a serious obstacle and contradiction that the prior consultation process is the responsibility of the very same public sectors that are responsible for promoting the measures requiring consultation, as in the case of the Energy and Mines sector, which is more interested in "removing" the obstacles to private investment than ensuring effective fulfilment of the right to prior consultation.

To this must be added the restrictive criterion that requires the governing body⁶ to identify the peoples and communities subject to the right of consultation by reducing the analysis to two objective elements: indigenous language and communal lands, both of which must be present to prove the historic continuity of an indigenous people.

Moreover, different government spokespersons do not recognise the peasant communities of the coast and Andes as indigenous peoples. The Prime Minister, Juan Jiménez Mayor, announced in April 2013 that 14 mining projects would not be subject to prior consultation, in a clear attempt to "unblock" this process. President Ollanta

Humala also declared, in a televised interview on 28 April, that prior consultation was aimed primarily at Amazonian and “uncontacted” peoples, thus demonstrating a serious ignorance with regard to the situation of these peoples. He further publicly denied the indigenous identity of the Andean and coastal peasant communities by wrongly indicating that they were created by the Agrarian Reform.

Another limitation is the restrictive vision of the consultation conditions contained in the Methodological Guide published on 2 April. Quite apart from the fact that the indigenous peoples were not consulted about this guide, it does not specify the notion of “directly affecting”, and it does not clearly define the cases when consent is compulsory nor the times when consultation has to be applied, leaving it to the sectors responsible to establish this. In addition, the indigenous organisations are maintaining their demand to amend seven articles of Law 29785 on Prior Consultation and its Regulations as they set a standard below that contained in ILO Convention 169.

In December, at the end of his official visit to Peru, the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya stated that although the Peruvian state had made important progress by implementing a legal framework for prior consultation: “It [was] still in a process of building its capacity to implement the prior consultation in methodological, logistical and budgetary terms”. He stressed that a necessary condition for implementing consultation was the creation of an “atmosphere of mutual trust” but that this trust was being affected by the “devastating consequences of extractive projects” on indigenous territories.⁷ It should be noted in this respect that, in 2013, the Ministry of the Environment declared a state of environmental emergency in the Al Pastaza, Tigre and Corrientes river basins following a campaign promoted by the Puinamudt Platform, made up of indigenous federations affected by 40 years of oil activity.⁸

Criminalisation

The policy of criminalising social protest that was commenced under Alan García Pérez’s government (2006-2011) has been intensified by President Ollanta Humala, with constant and systematic assaults on indigenous leaders defending their collective rights to life and territory. The state and the power groups continue to depict the community leaders as violent, irrational “anti-mining” individuals opposed to development in order to thus attempt to legitimise a policy of criminalisa-

tion via the use of extreme public force, the criminal prosecution of leaders and the militarisation of indigenous territories.

The coercion continues through the abusive use of force and lethal arms, including weapons of war, as a recurrent practice. This has resulted in the deaths of 29 civilians following interventions of the forces of law and order in situations of social protest. 86% of those killed were shot, 10% were children and 45% were indigenous or participating in protests related to violations of indigenous peoples' rights.

One worrying phenomenon is the growing intervention of the Armed Forces in internal control operations. As of July last year, eight authorisations had been given for the Armed Forces to intervene in situations of social conflict and five of these were in situations where a state of emergency had been declared.

In practice, this policy of criminalisation is aimed at turning the right of free expression and protest into a crime by means of "preventive" complaints; it interprets criminal law broadly and illegally in order to lock up leaders on the basis of unfounded criminal proceedings; it spreads the threat of 25-year and life sentences; it applies the concept of alleged incitement or chain of command to the leaders, turning the exercise of a right into a crime and committing gross violations of due process at the different stages of criminal proceedings by imposing arbitrary changes of jurisdiction and ordering multiple trials for the same offences. For example, in the context of the protests against the Conga mining project, there are 73 cases underway against 303 individuals involved in defending the rights of the communities affected.

The unjust, inhuman and illegal case of three Amazonian indigenous individuals, Feliciano Cahuasa, Asterio Pujupat and Danny López, deprived of their freedom since 2009 following the Bagua events, is worthy of particular note. A group is promoting the "I am Bagua" campaign on their behalf, calling for their immediate release or, at worst, that they should be held in their own community.⁹

Peoples in isolation and initial contact

The indigenous peoples in isolation and initial contact – also known as "autonomous peoples" by the Inter-Ethnic Association for Development of the Peruvian Amazon (AIDSESP) – are considered to be among the most vulnerable of groups, given their lack of defences to combat the normally common and curable viral and infectious diseases found in the surrounding environment.

In the 1980s, nearly half of the Nahua population died following contact with Shell workers who were exploring in the Camisea region. This led the state, in 1990, to create the Kugapakori Nahua Nanti and Others Territorial Reserve (RTKNN) as a state reserve. The new legal framework for peoples in isolation and initial contact, expressed in Law 28736 of 2006 and its regulations, approved in 2007, establishes that the existing territorial reserves should become “indigenous reserves”, the difference being that these latter establish a weaker system of protection because they permit extractive activities within them when declared of national interest and when an environmental impact assessment (EIA) has been approved.

In 2003, after the Camisea Project was allocated part of the RTKNN, Supreme Decree 028-2003-AG was enacted, prohibiting the granting of new rights over the use of natural resources, a decree that the government is now trying to circumvent once more. Indigenous and human rights organisations are now warning of the serious danger of extermination that extending the Camisea activities in Plot 88 would imply, a plot being managed by a consortium headed by Pluspetrol. 75% of the gas project is located on 23% of the reserve.

On 13 December, at the end of his one-week official visit to Peru, the UN Special Rapporteur, James Anaya, recommended with regard to this project that the government and the company act with the maximum of care and not proceed with the proposed expansion “without ensuring in advance and conclusively that it would not violate their human rights”. In this regard, he proposed, among other things, that “the government conduct an exhaustive study with the participation of all interested parties and competent experts on the presence and conditions of uncontacted indigenous peoples and groups in the area of Plot 88”.¹⁰

On 14 December, Paulo Vilca Arpasi, former Vice-Minister of Interculturality, admitted that his resignation in July had been due to “political pressure” from the government aimed at getting certain investments approved.¹¹ Vilca had made 83 observations on the project’s EIA, which were mysteriously withdrawn hours after their publication on the ministry’s web page, and then later left unanswered. His replacement, Patricia Balbuena, made only 37 observations on the EIA, all of which were rectified by the company at the start of 2014, thus giving free rein to the expansion project despite the risk of affecting the right to life, health and integrity of “extremely vulnerable” populations living on the reserve. This includes the Nanti population, among whom acute diarrhoea was recorded in 2013. A Health Situation Analysis was conducted following this episode but the Vice-Minister decided not to wait for the results.

AIDSEP has denounced this threat to the survival of the population on the reserve and, along with other civil society institutions, is demanding that the Peruvian state apply a Protection Plan to the reserve, something that was abandoned years ago, and implement strict protection protocols for the indigenous peoples in voluntary isolation along with protection and contact protocols for the indigenous peoples in initial contact. ○

Notes and references

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- 6 Directive 03-2012/MC governing the operations of the Official Database of Indigenous and Native Peoples.
- 7 See: A summary of the preliminary statement of James Anaya following his visit to Peru, at: <http://servindi.org/actualidad/97885>
- 8 See *Observatorio Petrolero de la Plataforma Puimadut integrada por la Federación de Comunidades Nativas del Corrientes (FECONACO)*, the *Federación de Comunidades Nativas del Alto Tigre (FECONAT)*, the *Federación Indígena Quechua del Pastaza (FEDIQUEP)* and the *Asociación Cocama de Desarrollo y Conservación San Pablo de Tipishca (ACODECOSPAT)*. See at: <http://observatoriopetrolero.org/>
- 9 See: *A cuatro años del Baguazo los únicos privados de libertad son tres indígenas inocentes*, at: <http://servindi.org/actualidad/88546>
- 10 See: A summary of the preliminary statement of James Anaya following his visit to Peru, at: <http://servindi.org/actualidad/97885>
- 11 See: <http://servindi.org/actualidad/97875>

Jorge Agurto is a journalist and social communicator. He is president of the Intercultural Communication Services association, Servindi.

Website: www.servindi.org - E-mail: jorgeagurto@gmail.com

BOLIVIA

According to preliminary data from the most recent national census (2012), published in 2013, 2.8 million people over the age of 15 – or 41% of the total population above 15 years of age – are of indigenous origin. There are 36 recognised indigenous peoples, the largest being the Quechua and the Aymara, who live in the western Andes. The 34 indigenous peoples who live in the eastern lowlands of the country include the Chiquitano, Guaraní and Mojeño peoples. To date, the indigenous peoples have consolidated almost 20 million hectares of land as collective property under the status of Native Community Lands (*Tierras Comunitarias de Origen / TCO*) – approximately 20 % of the total land area. With the approval of Decree Number 727/10, the TCOs took the constitutional name of Peasant Native Indigenous Territory (*Territorio Indígena Originario Campesino - TIOC*). Bolivia has been a party to ILO Convention 169 since 1991 and has ratified CEDAW, ICERD, CRC, ICESCR and ICCPR. The UN Declaration on the Rights of Indigenous Peoples was approved by means of Law No. 3760, on 7 November 2007. In 2014, Bolivia is due to discuss eight laws of relevance to indigenous peoples.¹

Election of governor for Beni department

On 20 January 2013, the 2013 Beni special gubernatorial election was held to replace the interim governor of Beni Department with an elected executive who will serve until 2015. Beni department is located in the north-east of the country, in the lowlands, and is generally the point of departure for the most significant protest marches organised by Bolivia's indigenous peoples, including in relation to the IXth March in defence of the Isiboro Sécure National Park Indigenous Territory (TIPNIS) (see *The Indigenous World 2013*).

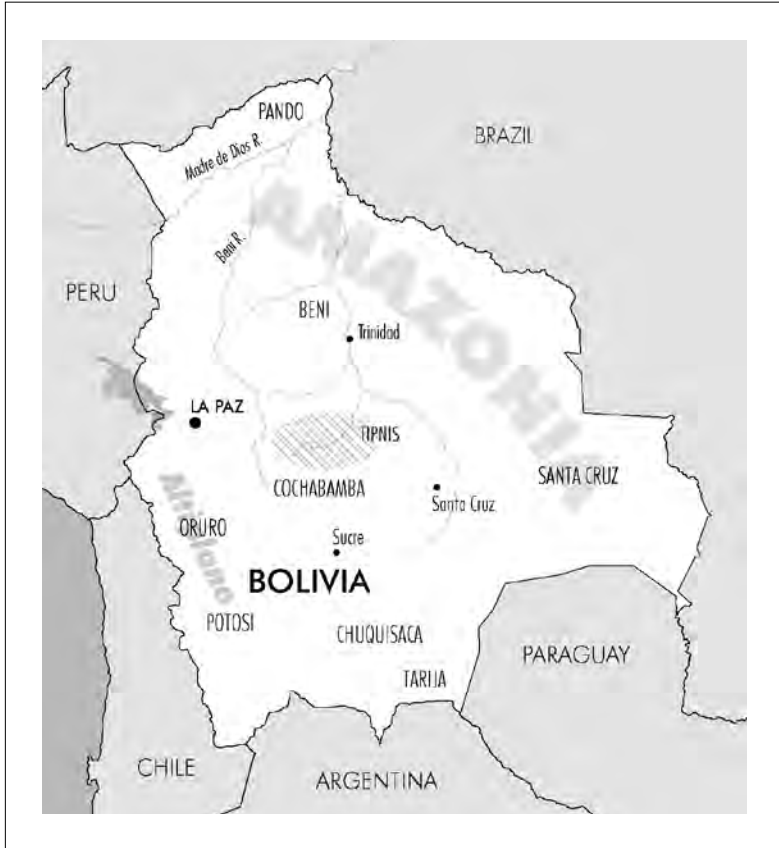
Two years ago, the Beni Governor, Ernesto Suárez Sattori, from the right wing "Beni First" ("*Primero el Beni*") opposition party, resigned following allegations of corruption made by the national government. The post has been held in the interim period by Evo Morales' Movement to Socialism (MAS).

The interim governor played an important role in the conflict over the planned highway through TIPNIS, by supporting the central governments' harassment of the demonstrators, mobilising resources, the armed forces and the whole state apparatus in order to neutralise the different actions undertaken by the indigenous people in defence of their rights. The TIPNIS conflict thus had an important impact on the electoral process and on the results of the elections for the new governor.

The MAS electoral campaign was led by President Evo Morales in person and by the candidate, Yessica Jordan, a former Bolivian beauty queen and, paradoxically, the daughter of a prominent Beni cattle ranching family. The process was plagued by offers of projects, gifts, inaugurations of large works and involved high spending of public financial resources. The opposition party Beni First selected Carmelo Lens, a former civil servant with a technical profile, as their candidate. With a much more austere campaign than that of the MAS, he obtained 54% of the vote, as opposed to 42% for the MAS and a minuscule 2.8% for the indigenous candidate, Pedro Nuni. Following the elections, this latter agreed to head the regional government's Indigenous Peoples' Unit, a personal decision that was not supported by his organisation, the CPEMB.² In his initial declarations, Lens made it known that the highway would not be built through TIPNIS, in recognition of indigenous demands in this regard.

Prosecution of indigenous leaders defending TIPNIS

On 20 June, Gumercindo Pradel, leader of the Indigenous Council of the South (CONISUR) – an organisation from the settlement area outside of TIPNIS and representing the national government in the area – tried to hold a meeting with the authorities to replace the TIPNIS leadership and overturn the decision not to build the highway. The TIPNIS authorities decided to expel Pradel's delegation, applying indigenous justice and creating a commotion among those present. The Public Prosecutor's Office then commenced legal proceedings against the TIPNIS authorities in question, and particularly against Pedro Nuni Caity, Director of the Indigenous Peoples Unit of Beni Government, Adolfo Chávez Beyuma, President of CIDOB and Fernando Vargas Mosúa, President of the TIPNIS regional office.³ Arrest warrants were issued in their names with the aim of prosecuting them through the ordinary justice system.



These leaders took a number of legal actions but, faced with the systematic rejection of these by the justice system, they decided to take refuge in the TIPNIS regional offices in Trinidad, protected by a guard of indigenous individuals and supporters for almost four months. The case reached the Constitutional Court, which accepted full competence to hear it and overturned the arrest warrants. Once notified, the leaders left the TIPNIS offices, free for the moment. Such political persecution on the part of the government ensures that the indigenous organisations are intimidated and prevented from exercising the authority and mandate conferred on them by the people they represent. This makes their social

situation precarious and complicates the co-existence of the communities at local level.

The Population and Housing Census

The results of the Population and Housing Census conducted in November 2012 were made known in 2013. These indicate that the total population of Bolivia is 10,27,254 and that the most populated department is Santa Cruz with 2,655,084 inhabitants.⁴

Data on indigenous self-identification for the population above 15 years old was also published and shows a significant fall in numbers in both absolute and relative terms: a little more than 2.8 million people identified themselves as belonging to one of the indigenous peoples living in the country: 2.4 million in the highlands and 178,000 in the lowlands.

The numbers identifying as Aymara and Quechua fell by 6.83% and 17.76% respectively. In the case of the lowlands, the proportion of the three most representative peoples (Chiquitano, Guaraní and Mojeño) declined by an average 24.78%. The five largest peoples showed the greatest decline in both absolute and relative terms. However, information on the other peoples varied considerably. Some lowland peoples have expanded their numbers substantially, even some inexplicably so, such as the Araona, increasing from 90 to 910, and the Guarasuwè, from 9 to 42. The Yuki, who numbered 112 in 2001 have increased to 202.

The average recoveries noted involve a doubling or tripling of the 2001 population. In this regard, the Itonama, who live in the southern Amazon region, grew from 1,416 to 10,275 individuals, the Baure from 465 to 2,419, the Cayubaba from 326 to 1,424 and the Joaquiniano, from 169 to 2,797.

One of the reasons for this growth is an improvement in these peoples' living conditions, and the titling of their territories has played a major role in this regard. With more than 11 million hectares, the indigenous peoples of the lowlands are the people who have gained the most land, titled collectively in their favour since 1996, when the process of regularisation and titling ordered by the INRA Law No. 1715 began. Access to land has not solved their problems of marginalisation and exclusion once and for all but their growing socio-political involvement has ena-

bled them to attract the attention of different policies, primarily in terms of health, education and basic services, as well as access to political and cultural rights.

Despite the significant increase in numbers of some Amazonian peoples, however, indigenous peoples as a whole are not managing to reverse their downwards trend in absolute and relative terms. The figures show that, in 2001, there were almost 3.5 million indigenous peoples in Bolivia over the age of 15 and yet today there are only 2.8 million identifying as such. To these people must be added the Afro-Bolivians, who number 16,329.

As a result of the publication of the census data, a law was approved to bring legislative representation at department level into line with the new demographic realities. The number of representatives corresponding to indigenous peoples has not, in fact, changed and remains at seven direct representatives. The observations that indigenous organisations have been making since 2010 regarding constitutionality, however, are still relevant.⁵

Debates on the Law on Consultation

At the end of 2012, the government revived the initiative to adopt a Framework Law on Consultation in order to develop this right as anticipated in Article 30 of the Constitution. The Ministry of Government Affairs, the driving force behind this bill, organised a process of supposed “joint construction” of the draft law, involving only the leaders of organisations close to the government, however. Only a few leaders from the Guaraní People’s Assembly (APG) and the highland organisation, CONAMAQ, on clear conditions and under pressure,⁶ were able to participate, although their proposals and questions went unheeded. Below are some of the issues that were raised by the indigenous organisations but ignored:

1. The bill of law must be subject to a process of free, prior and informed consultation.
2. The so-called “intercultural communities” (settlers) have been included, extending the scope of the law to non-indigenous peoples.
3. Rejection of the “exceptions” to the consultation, i.e. when the State *would not conduct it*, a decision that is in the government’s hands due to “State or public security” issues that could be linked to situations of social conflict and thus prevent the legitimate exercise of the right of protest on

the part of the peoples affected. This was one of the articles most challenged by the organisations.

4. The State proposed that the consultation should be conducted before *the final decision on implementation of the project or adoption of the measure*, in clear contradiction with the international standard that the State is required to adhere to, namely that the process is a prior one “...before the design and implementation of natural resource exploitation projects on the lands and ancestral territories of the indigenous peoples...” (IACHR-Bolivia Report 2007), or “...prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of the resources.” (Art. 32.2 UN Declaration on the Rights of Indigenous Peoples).
5. In relation to consent, it was observed that the government’s bill stated that the consultation process was aimed at “...Reaching an agreement between the State and indigenous nations and peoples ... so that their development vision is incorporated into the implementation and execution of the legislative or administrative measure to achieve the philosophy of living well”, an entirely new aim – and clearly regressive in relation to the constitutional requirements and those of the international human rights instruments.

Attempts to unify CIDOB

The Confederation of Indigenous Peoples of the Lowlands (CIDOB) has, since July 2012, had its offices in Santa Cruz de la Sierra physically occupied by a group of its leaders, supported by the national government.

In September 2013, a number of CIDOB’s regional organisations began to discuss the possibility of convening a space in which to reunify the national organisation, holding a meeting the following month in Camiri. Although reunification is still an incipient process, given the enormous challenges facing it, the meeting served to sound out the possibilities of bringing the leaders together to establish a process that will help the national leadership, which is associated with the government party and the forces of the traditional right, to recover its political autonomy. With regard to this last point, significant agreements were reached with regard to political participation in the forthcoming elections (national elec-

tions December 2014), in which the indigenous peoples will run independently of the opposition parties but also rejecting the possibility of being associated with the government party, the MAS. This formal decision appears to rule out the possibility of confirming the alleged alliances between some CIDOB leaders and groups of the traditional right, rapprochements that were of a personal nature and not supported by the organisation as a whole, although the government used this as an excuse to intervene in the organisation.

The storming of CONAMAQ's offices

On 9 December, the day before the Consultation Law proposed by the government was rejected, CONAMAQ was preparing to hold its *Ja'cha Tantachawi*, the assembly to renew its native authorities. However, a group of leaders who had for some time been acting separately from the national organisation⁷ called a similar event in which a new leadership was elected, outside of the proper channels. A few hours later, the leaders elected in the event outside of CONAMAQ's official auspices decided to physically take over the organisation's offices. After a commotion that resulted in aggression on both sides, the police intervened, momentarily consolidating the storming of the offices. It was a situation similar to that of July 2012 when CIDOB's offices were taken. However, there was an immediate reaction and, within a few hours of a message being broadcast on the social networks and in other media, the offices were besieged by a large number of people rejecting the situation. The next day, the communities closest to La Paz mobilised and, in a march involving more than 1,000 indigenous authorities, made for their organisation's headquarters where they demanded that the government return the offices to their legitimate representatives. After some hesitancy, and seeing that it would not be easy to repeat the CIDOB situation, the parallel leaders decided that the physical occupation of the offices "was no longer a priority" and even admitted that "they now had new seals and letterheads" that they could use from any location. The government's public support of this leadership and complaints of financing of this parallel event, highlight the fragility of the government in its relations with the indigenous movement.

None of the proposals affecting indigenous rights have made any progress in the Legislative Assembly over the last year, precisely because of the situation of conflict and division that the government itself has encouraged. This latter has

not, however, been rewarded with general public support for their approval. These include the Law on Hydrocarbons, Mining, Prior Consultation, Lands and Forests, to name but a few. Although they have managed to bring projects violating indigenous rights to a temporary halt, the organisations that have been opposing the attempts to approve clearly regressive indigenous rights standards have paid the price of a fracturing of their local, regional or national bodies, as in the case of CIDOB and CONAMAQ.

Expulsion of Danish NGO

On 20 December, the Head of the Prime Minister's Office, Juan Ramón Quintana, suddenly announced that: "The Danish NGO IBIS is being thrown out as we have tired of its attitude and statements... which go beyond its mandate as an institution..". Given the government's failure to occupy CONAMAQ's offices, it decided to attack what was now the Achilles heel of the indigenous movement: the NGOs and international cooperation historically allied with its demands. Danish cooperation and IBIS in particular, were key in the consolidation of CONAMAQ as a representative movement of the struggle of indigenous peoples of the Bolivian Andes. They supported a large number of research studies along with social processes aimed at re-establishing the ancestral structures and their traditional territories. When the Constituent Assembly became a reality, they did not hesitate to support this process, joining many international NGOs to face up to the organised front that was counting on the failure of this body. It is hoped that IBIS' expulsion, due to a lack of - or incorrect - information on the part of the national government with regard to this organisation's work, is not the start of further unnecessary conflict. As has been the case with previous conflicts between the government and the indigenous peoples, it would only result in a mutual exhaustion that will instead simply bolster the true enemies of the plurinational state. ○

Notes and references

- 1 The laws under discussion are: 1. Framework Law on Consultation, 2. Law on Territorial Units (re. the issue of indigenous autonomy), 3. Legal Regulations, 4. Departmental statutes for the lowlands (Santa Cruz, Beni, Chuquisaca), where they have direct representation through their Assembly members), 5. Land Law, 6. Forests Law, 7. Mining Law, 8. Hydrocarbons Law

- 2 Office of the Mojeño Ethnic Peoples of Beni (*Central de Pueblos Étnicos Mojeños del Beni*).
- 3 Salvo Fernando Vargas; the other leaders were not present at the events although they contributed to the rapid mobilisation of the mayors. But they are also the most visible people in the conflict over the highway, being subjected constantly to public condemnation and aggression from the government.
- 4 <http://www.ine.gob.bo:8081/censo2012/PDF/resultadosCPV2012.pdf>
- 5 The indigenous peoples have to participate in the elections via political parties, in constituencies that do not correspond to their socio-cultural reality and without including the representation of all minority peoples.
- 6 The government is applying pressure through the granting or withdrawal of key support projects for the organisations, or the continuity of the titling process for the territories.
- 7 Indeed, they signed the official agreements on the government's Consultation Law, ignoring CONAMAQ's official position.

Leonardo Tamburini is a lawyer trained in natural resources, the environment and indigenous territorial rights with a human rights focus; he is currently the executive director of the Centre for Legal Studies and Social Research (*Centro de Estudios Jurídicos e Investigación Social/CEJIS*).

BRAZIL

Brazil covers an area of 851,196,500 hectares. The Indigenous Lands (*Terras Indígenas* or TIs) represent 654 areas with a total land mass of 115,499,953 hectares – 13.56% of the national territory. Most of the TIs are concentrated in the Legal Amazon: 417 areas totalling around 113,822,141 hectares. The remaining 1.39% is divided between the north-east, south-east, south and centre-west.

The demographic census carried out in Brazil in 2010 revealed that there were 817,000 people self-identifying as indigenous, or 0.42% of the total Brazilian population. In absolute terms, the Brazilian state with the largest number of indigenous inhabitants is Amazonas, with a population of around 168,000 indigenous individuals. In relative terms, the state with the greatest proportion of indigenous people is Roraima, where they represent 11% of the total population.¹ There are 305 different ethnic groups speaking 274 indigenous languages.

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

2013 was a year marked by tensions between Brazilian government policies and indigenous rights. Most significant was the government's lack of commitment to demarcating the indigenous territories, creating tension between the large land-owners, small farmers and indigenous population.

Failures to comply with ILO Convention 169 give a clear illustration of the government's position with regard to indigenous issues. In addition to the disputes mentioned above, there is a growing interest in mining companies, logging companies and, above all, in establishing hydroelectric power plants, as set out in the "Growth Acceleration Plan" (PAC). According to national projections, the "Ten-year Energy Plan 2021" states that the share of hydropower, Small Electrical



Stations (PCH), thermoelectric plants powered by biomass and wind energy will continue to grow over the next 10 years, with the Brazilian electricity mix remaining reliant on renewable energy sources, which will account for 83.9% by 2021.

The area of indigenous lands that these hydroelectric power plants are going to occupy is around 91,308 ha, threatening the culture, wildlife and plants of the indigenous territories³ and acting in flagrant violation of ILO Convention 169 and the 1988 Brazilian Constitution.

Article 6 of Convention 169 stipulates the need for the free, prior and informed consultation of the peoples affected, “through their representative institutions,

whenever consideration is being given to legislative or administrative measures which may affect them directly” and that consultations must take place “in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures”. It has, however, very often been the case in Brazil that consultations are simply mere formalities that do not truly take indigenous peoples’ views regarding these ventures into account. Such is the case, for example, of the Belo Monte Dam,⁴ where none of the collective agreements reached with the indigenous peoples have been kept, and the social and environmental impacts are already beginning to be felt:

On 15 May 2001, the Federal Public Prosecutor’s Office in Pará brought the first Public Civil Action against the Belo Monte hydroelectric Dam in response to a letter from the Juruna indigenous people More than 13 years on, ... their worst nightmares have come true. ... 20 cases have now been brought for numerous violations of environmental legislation and of the human rights of indigenous peoples, local settlers, fishers, farmers and inhabitants of the towns affected by the Dam, as enshrined in the Federal Constitution and in the international agreements to which Brazil is a party.⁵

Other projects suffering similar dilemmas in terms of their interpretation of the ILO Convention’s provisions are those planned in the hydrographic basin of the Tapajós River: the São Luiz do Tapajós Hydroelectric Dam and the Jatobá Hydroelectric Dam.

The Tapajós River is now one of the biggest scenarios of environmental conflict in Brazil. The national government is trying to install more than a dozen power stations on the Tapajós and its tributaries, the real impact of which – in terms of both people and environment - is impossible to measure. These dams will produce energy for the rich mining hub of Tapajós and Carajás. In addition, there are different bauxite mines operating in the river delta, such as Alcoa, in Juruti, and Mineração Rio do Norte, on the left bank of the Amazon. There are also new gold, bauxite and nickel mining projects in the region.

The Mundurucu communities are critical of the military force being used against them on the pretext of needing to protect the researchers who are entering their territories without their permission. The government’s actions are creating a “climate of terror” on these territories, and so they are denouncing:

*...the clear lack of compliance with the Federal Constitution and ILO Convention 169, of which Brazil is a signatory. Brazil made a commitment to conduct prior consultation regarding any project or government decision that might affect or change, permanently and irreversibly, the lives of indigenous, tribal and traditional peoples. It is therefore an established right that is being violated by the government through the authoritarian decisions of members of the judiciary. In shameful and cowardly rejection of the dignity of the indigenous peoples and the Brazilian state's responsibility, more than 140 Indians present in a meeting in Brasilia in June 2013 heard the Minister-in-Chief to the Secretary General of the Presidency of the Republic state that, 'even after public consultation, the Indians will not have the right to veto the construction of hydroelectric power plants.'*⁶

In the Santarém Charter,⁷ the indigenous peoples make known their feelings of injustice and indignation at these projects. They say they will resist, and they denounce the failure to comply with ILO Convention 169:

*(...)The indigenous peoples permanently affected by hydro-electric power plant projects in the Amazon were never consulted in advance, in the form established in the Brazilian Constitution and Convention 169. For this reason, the Brazilian government is having to answer three court cases filed by the Federal Public Prosecutor's Office in Pará and Mato Grosso.*⁸

For its part, the Federal Public Prosecutor's Office has defended the right of consultation of the indigenous Arara, Juruna and Mundurucu peoples, along with that of the peoples of the Xingu, Tapajós and Teles Pires rivers. A fourth action is being considered in defence of the right of the Kayabi, who are affected by the São Manoel Dam and who were never consulted. The concession for the dam is currently being negotiated but is at a standstill because the licence did not even anticipate an assessment of the environmental impact on the indigenous peoples.⁹

The Teles Pires hydroelectric Dam, being built on the Teles Pires River, has been the object of two Public Civil Actions on the part of the Federal Public Prosecutor's Office, which highlighted serious violations of rights and deficiencies in the Study of the Indigenous Component. It was decided to call a halt to the works in September 2013; however, yet again, at the request of the Government Attorney's Office, a so-called Suspension of Security was enforced by the President of

the Federal Supreme Court – alleging “serious violation of the economic order – and enabling the works to be continued to the detriment of fundamental human rights.”¹⁰

In the case of the hydroelectric dam on the Contingó River, in the Serra Raposo do Sol TI, the Mining and Energy Committee of the Chamber of Deputies approved Draft Legislative Decree 2540/06 of the Senate, authorising the construction of a hydroelectric power station on the Contingó River, in a region overlapping with the TI. The power station will affect an area in which groups such as the Macuxi and Ingarikó live, as well as threatening the peoples of Guiana.¹¹

The growing strength of this “anti-indigenist” policy can also be seen in the scarce number of indigenous lands approved (11) during Dilma Rousseff’s government, compared to previous presidents.

FUNAI, the body responsible for indigenous land demarcations, is under the umbrella of the Ministry of Justice, and indigenous leaders describe it as being slow and bureaucratic, with a constant lack of resources.

The number of indigenous lands demarcated, and the slow speed at which these processes are taking place, is creating tensions between indigenous peoples and small and large landowners. Last year, in particular, was notable for a growing indigenous discontent, with leaders travelling twice to Brasilia to protest at the Proposed Constitutional Amendment (PEC 251) aimed at transferring responsibility for the demarcation and approval of traditional lands from the executive to the legislature, both in relation to indigenous peoples and Afro communities, known as *quilombolas*, along with the creation of protected areas. This would form a real threat for these communities as most of the legislative seats are held by the Democratic Association of Ruralists, a party historically opposed to indigenous peoples. This manoeuvre could see Brazil regressing to colonial times or returning to an economy based on monoculture, with the extermination of the indigenous population.¹²

In addition to PEC 251, other decrees are threatening the rights of the traditional peoples and communities. Decree No. 7,957, of 12 March 2013, establishes the Permanent Cabinet of Integrated Management for Environmental Protection, regulates the Armed Forces’ action in relation to environmental protection; amends Decree No. 5,289 of 29 November 2004, and establishes other provisions. Ministerial Resolution 303, of 17 July 2012, mentions among its various conditions: “(XVII) the expansion of already demarcated indigenous lands is prohibited”; “(VI) the actions of the Armed Forces and Federal Police in indige-

nous areas, within the scope of their powers, remains assured and will take place regardless of the consultation of the indigenous communities involved or FUNAI”; “(VII) Indian usufruct shall not prevent the establishment, by the Federal Union, of public facilities, communication networks, highways and transport routes, in addition to the necessary constructions for the provision of public services for the union, particularly health and education.”¹³ In addition, there is Draft Additional Law 227, and other initiatives, on the part of both the executive and the legislature, that infringe the Federal Constitution and ILO Convention 169. This draft initiative aims to create an additional law related to Article 231 of the Federal Constitution – “on Indians” – highlighting exceptions to the indigenous right of exclusive use of their traditional lands in cases of significant public interest on the part of the Union. Such exceptions include the exploitation of indigenous lands by agribusiness, mining companies, and the construction of works linked to national, state and municipal interests. These exceptions could result in the extermination of a whole indigenous people.

A clear objective can be perceived behind these measures, namely the interests of the Ruralist Party combined with those of large mining companies, who are trying to circumvent indigenous rights and lay hold of the power not to demarcate the country’s indigenous lands.

The situation in Mato Grosso do Sul

Mato Grosso do Sul is the Brazilian state with the second largest indigenous population, around 74,000 individuals belonging to five different peoples. It is also the state with the most land conflicts, indigenous murders and the highest rate of suicide and violence among the indigenous population itself. Faced with this cruel reality, land conflict can be seen as the root of this situation, which has persisted since the beginning of the last century.¹⁴ Over the last four years, there has been an intensification of conflicts, caused by continual attacks on the part of landowners aimed at preventing the recovery of indigenous lands. According to the Indigenist Missionary Council, CIMI, indigenous peoples are claiming 123 territories in Mato Grosso do Sul and yet, in 71 of these, no measures have yet been taken to commence the demarcation process. The Guarani-Kaiowá leaders have submitted an initial list of eight territories, totalling 70,000 ha, the regularisa-

tion of which they consider to be a priority. The first three are Ivycatu, in Japorã, Potrero Guaçu, in Paranhos, and Nãnde Ru Marangatu, in Antônio João.

In addition, the indigenous peoples have commenced a series of land recoveries, including the following:

- On 15 September 2013, the Apyka`l-Kaiwa-Guarani community reclaimed their traditional land in Dourados municipality. This community has been living on the edges of the BR-463 highway linking Dourados city and Ponta Porã.
- On 12 September 2013, around 50 Terena families took over two estates superimposed on the Limão Verde TI, in Aquidauana. The area identified as traditional territory was approved by the national government in 2003 but the people living in the rural properties never completely withdrew, and at least 2,000 hectares therefore still remain in their hands, out of a total of 5,300 hectares identified by the decision.
- On 25 August 2013, around 300 indigenous individuals from the Kadiweu people reclaimed some 24 estates illegally established on the indigenous territory, which was demarcated in 1900 and approved in 1984 in Porto Mourtinho municipality. Historic documents prove that the Kadiweu territory was given to them during the Second Empire, at the end of the 19th century. At the beginning of the 20th century, the land was demarcated with an area of 585,000 hectares.
- On 2 October 2013, a group of 30 Terena leaders occupied the São Pedro do Pantanal estate, in Miranda, Pantanal region. Leased out to cattle farmers, the property directly impinges on the Cachoeirinha indigenous land, declared by the Ministry of Justice in 2007.
- On 30 May 2013, Oziel Gabriel, a 35-year-old indigenous individual, was murdered in an estate taken over by the Terena in Sidrolândia, Mato Grosso do Sul. In June, one of Oziel's cousins, Josiel Gabriel Alves, 34, was shot nearby.
- On 17 December 2013, the restitution of one of 14 estates that has 5,000 Guaraní Nandeva living on it in Tekoha Yvy Katu was suspended. The indigenous people stated that they were not going to comply with other court rulings and that they were "ready to die". They called on the national government to complete the land demarcation process, declared an indigenous land in 2005.

According to CIMI's Executive Secretary Cleber Bizzato,¹⁵ more than 20 demarcation processes are sitting on the Minister of Justice's desk waiting for a decision regarding the signing of ministerial orders¹⁶ to declare them traditional indigenous lands. Decree 1775/96 establishes a 30-day period in which the ministry should take a decision but this is not being met.¹⁷

The indigenous leaders are also demanding that the landowners stop filing requests for the recovery of their property and that the government ensure their people's security in the conflict areas plus appropriate living conditions for at least 15 indigenous settlements until the demarcations have been concluded for the land they are claiming. There are at least 30 settlements in this state that are in a very vulnerable situation, many of them living along the sides of highways.¹⁸ Of the six indigenous lands approved in Mato Grosso do Sul, all have suffered conflicts with landowners who insist on remaining in the area. The most recent case involved the Tekoha Arroio Korá, in Paranhos. In 2013 the indigenous people, fed up with waiting for a ruling from the Federal Supreme Court - Minister Gilmar Mendes had seized part of the land for the landowners days after the approval in 2009 – took back part of the land still in the hands of the invaders. They were violently attacked by a group of gunmen who fired on the indigenous people for several hours. A child was killed in this attack.¹⁹

Tired of listening to empty promises, around 1,300 indigenous individuals marched to Brasília on 4 December 2013 to protest at the changes in the indigenous land demarcation process. The march, organised by the Coordinating Body of Indigenous Peoples of Brazil (APIB) and participants of the National Conference of Indigenous Health, ended at the offices of the Ministry of Justice and a *Public Letter from the Indigenous Peoples of Brazil* was presented to President Dilma Rousseff, in which they stated:

We know, Madam President, that all these instruments are seeking to prevent the recognition and demarcation of the indigenous lands and make this unviable, to re-open and revise indigenous land demarcation processes that have already been completed; and to facilitate the invasion, exploitation and commercialisation of our territories and their wealth. We therefore reiterate the content of all documents that the different demonstrations of our peoples and organisations have made public, intended for your knowledge, these last years. In the current case of the ministerial order, we understand that it was produced to prevent the viable demarcation of our lands, seeking to promote

the interests of large landowners, agribusiness and other capital interests (miners, loggers, agro-industrialists, contractors, etc.) eager for these territories. From this perspective, Madam President, your government will unfortunately go down in history as a truly ‘anti-indigenous’ government; the one that demarcated the least indigenous lands and the one that made the most progress in restricting or suppressing the rights of Brazil’s indigenous peoples. If any of the above is not true, Madam President, then prove it to us by addressing the following demands, most of which have formed the object of discussion between yourself and our peoples’ representatives.²⁰

Conclusion

The National Confederation of Agriculture (CAN) has published its 2013 balance sheet, which indicates that Brazil’s agribusiness now contributes a trillion of the country’s gross domestic product (GDP). This represents a 3.6% growth in sector GDP as compared with 2012, with soya accounting for 14% of Brazilian exports. In addition, it should be noted that Brazil’s energy goal, as noted above, is to generate a further 31.7 GW through the construction of hydro-electric power stations in the country. All this information clearly shows Brazil’s developmentalist project and, in this regard, the country’s indigenous peoples are calling for respect for indigenous rights, Brazil’s constitution and international agreements, in particular ILO Convention 169. ○

Notes and references

- 1 http://www.vermelho.org.br/noticia.php?id_noticia=153663&id_secao=1
- 2 Sources from the Socio-Environmental Institute. www.socioambiental.com
- 3 *The Indigenous World 2013*, published by IWGIA.
- 4 According to the ILO document (page 942), “the Committee points out that, according to Article 15 of the Convention, the Government has an obligation to consult the indigenous peoples before undertaking or permitting any programmes for the exploitation of resources pertaining to their lands,” affirming that Belo Monte could alter the navigability of the Xingu, as well as the flora and fauna and climate of the region. These impacts, states the ILO, “go further than the flooding of lands or the displacement of the peoples concerned.” http://ilo.ch/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174843.pdf
- 5 <http://www.institutocarbonobrasil.org.br/artigos/noticia=73600>
- 6 Santarém Charter. Santarém, Pará, 30 August 2013.

- 7 <http://www.ihu.unisinos.br/noticias/523410-carta-de-santarem>
- 8 Idem
- 9 <http://www.brasildefato.com.br/node/13138>
- 10 <http://www.institutocarbonobrasil.org.br/artigos/noticia=736001>
- 11 In June of this year, the Roraima Indigenous Council (CIR) held the I Meeting of Indigenous Peoples of Frontera with the theme "A look at ILO Convention 169", in the Lago Caracaraná Regional Centre in the Raposa Serra do Sol TI, bringing together more than 100 indigenous leaders from countries bordering Brazil, Guiana and Venezuela. <http://www.cir.org.br/index.php/component/k2/item/293-construcao-de-hidrelétrica-ameaça-os-povos-ind%C3%ADgenas-da-guiana%E2%80%8F>
- 12 <http://www.socioambiental.org/pt-br/noticias-socioambientais/justica-manda-suspender-o-licenciamento-da-belo-sun-mineracao>
- 13 <http://www.agu.gov.br/sistemas/site/PaginasInternas/NormasInternas/AtoDetalhado.aspx?idAto=596939>
- 14 See *The Indigenous World 2013*.
- 15 <http://www.redebrasilatual.com.br/cidadania/2013/01/funai-reconhece-territorio-indigena-no-mato-grosso-do-sul>
- 16 Administrative document that contains instructions on the application of laws and regulations, recommendations of a general nature and rules for service implementation.
- 17 **Cleber Cesar Bizatto**: "Dedobramento da Conjuntura Indigenista: Governo investe na desmobilização dos povos indígenas". www.cimi.org
- 18 <http://www.socioambiental.org/pt-br/node/2344>
- 19 <http://www.cimi.org.br/site/pt-br/index.php?system=news&action=read&id=7065>
- 20 <http://racismoambiental.net.br/2013/12/carta-publica-dos-povos-indigenas-do-brasil-a-presidenta-dilma-rousseff-durante-a-v-conferencia-nacional-de-saude-indigena/>

Maria de Lourdes Beldi de Alcantara is an anthropologist and works as an invited professor in medical anthropology at the Faculty of Medicine, São Paulo. She is coordinator of the Support Group for Guaraní Youth of Mato Grosso do Sul (GAPK/AJI).

PARAGUAY

There are approximately 112,848 indigenous people living in Paraguay, belonging to 19 peoples from five different linguistic families: Guaraní (Aché, Avá Guaraní, Mbya, Pai Tavytera, Guaraní Ñandeva, Guaraní Occidental), Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Angaité, Guaná), Mataco Mataguayo (Nivaclé, Maká, Manjui), Zamuco (Ayoreo, Yvytoso, Tomáraho) and Guaicurú (Qom).¹ According to preliminary data from the 2012 National Census of Indigenous Population and Housing, published in 2013, the Oriental region is home to the highest proportion of indigenous peoples (52.3%) while the Chaco region has the greatest diversity of peoples. They form, in all, 531 communities and 241 villages.

Although the indigenous peoples of Paraguay represent a great diversity and cultural wealth for the country, they are the victims of systematic and structural discrimination on the part of both state and non-indigenous society. In this regard, they are the poorest, most excluded and most marginalised sector of the country's population.²

In this context, all indigenous rights – civil, cultural, economic, social and political – are constantly violated and neglected, primarily due to the fact that indigenous peoples' traditional and ancestral territories are invaded and destructed and the indigenous population dispossessed of the lands, which are central for their physical and cultural survival as peoples.

Paraguay has ratified the main international human rights instruments and enjoys a favourable legal framework for the recognition of indigenous peoples' rights, having transposed ILO Convention 169 into its domestic legislation in 1993 as Law 234/93. Paraguay also voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, the state is mainstreaming, interpreting and applying these instruments inadequately, if at all, meaning that the fundamental rights of indigenous peoples are constantly being violated by the executive, legislative and judicial state powers.



The consequences of the parliamentary *coup*

Following the 2013 general election, when the new government of Horacio Cartes came to power, the irregularities committed during the removal of President Fernando Lugo began to come to light.

In June 2012, Paraguay's democratic process was blatantly and openly suspended with the impeachment of former President Fernando Lugo, a process in which the political parties of the right, with the support of the dominant classes, violated human, civil and political rights.

Subsequently, with the inauguration of Vice President Federico Franco as *de facto* President, in terms of indigenous rights, the principle of non-regression was permanently violated, above all for cultural, economic and social rights. The brief period of Federico Franco's government was marked by corruption, along with the clear promotion of agribusiness and livestock rearing, to the detriment of the indigenous communities. This political and economic system remains in force, given the deepening of the neoliberal model being implemented by the current president, businessman Horacio Cartes.

General elections: violation of civil and political rights

During the 2013 general elections, indigenous participation took place against a backdrop of age-old and deep-rooted practices of discrimination and exclusion, with few polling stations authorised in areas of high indigenous population, low participation in the different political parties, and practices aimed at unlawfully influencing voters' electoral choice.

In this regard, the political parties with the strongest finances availed themselves of two practices that undermine the right to free and secret suffrage: "transportation" and "corralling". The indigenous communities are generally located far from the main roads with few, if any, means of transport and no money to be able to travel to exercise their right to vote. The political parties exploit this situation by making transport available to take indigenous people to the polling stations, thus buying their vote. The second method, "corralling", consists of enclosing considerable numbers of indigenous people in open-air fenced spaces close to the polling stations some days or weeks prior to the elections and not allowing them to leave. This is in order to "condition the vote of the people locked there so they do not have a chance to sell their vote to others".³

In some parts of the country, indigenous people outnumber non-indigenous. And yet in the Chaco region, for example, of the 43 polling stations authorised by the Court of Electoral Justice, just three are located in indigenous communities, the rest being more than 20 kms away. Indigenous peoples are thus denied the possibility of being electoral authorities or even of participating in electoral monitoring at the polling stations. Since 2003, the indigenous peoples have shown a clear interest in participating in and occupying decision-making positions at departmental level, promoting candidates from within their own movements along-

side those from the political parties but, unlike in previous years, there was little indigenous presence on the lists in 2013.⁴ The Paraguayan state needs to amend the electoral system to ensure that there is a minimum percentage of indigenous parliamentary representation. This is necessary in order to comply with the principles of democratic, participatory and pluralist democracy, as well as the principle of non-discrimination, established in Articles 1 and 46 respectively of the Paraguayan Constitution.

Corruption as an element of indigenous rights violations

In November 2012, following the *coup* that ousted Fernando Lugo, the former President of the Paraguayan Indigenous Institute (INDI), Rubén Darío Quesnel, among other acts of unprecedented corruption, sold 25,000 hectares of ancestral lands belonging to the Cuyabía community of the Ayoreo people in the Chaco region, on which 19 indigenous families were living. This criminal act was achieved with the help of Julia Beatriz Vargas Mesa, who illegally purchased the lands, and Justina Maribel Esteche Bareiro, who was the notary that authorised and signed the contract of sale. However, in an exemplary act of resistance, organisation and mobilisation, the indigenous Ayoreo came out in protest, setting up road blocks and demanding reparation of their rights in order to ensure that, despite the formal transfer of ownership, the community would still be able to live on its lands.

The case was denounced to the Special Unit for Economic Crimes and Corruption of the Public Prosecutor's Office, as it was considered a flagrant transgression of the National Constitution, given that Article 64 clearly establishes that indigenous lands are inalienable, indivisible and immune from confiscation or transfer. This case will be one of the few to result in a public hearing in 2014 and it is hoped that a conviction will ensue for crimes of misappropriation and abandonment relating to the lands of Cuyabía and exposing the 19 families in the community to a situation of defencelessness and vulnerability, in violation of their rights to life and physical integrity.

In addition, there is sufficient evidence to suspect, as established by the Public Prosecutor's Office, that Mr Rubén Quesnel also embezzled 3,127,191,527 Guaraníes (around USD 683,000) intended for a community development project for two communities with rulings from the Inter-American Court of Human Rights.

These are the Yakye Axa and Sawhoyamaxa communities, both from the Enxet Sur people and located in Presidente Hayes department in the Chaco region. Given the serious nature of these actions, the three defendants are currently being held on remand. The accounts were INDI's responsibility but separate from the institution's annual budget. This money was destined for a community development fund (to finance educational, housing, farming and health projects), to be implemented once their lands had been returned and the communities were living on them.

Cases with rulings from the Inter-American Court of Human Rights

In the case of the Yakye Axa community,⁵ the state purchased lands for their re-settlement – not those that were claimed – almost two years ago. It should be noted that the Paraguayan state, in this case, was convicted by the Inter-American Court of Human Rights in 2005, on the basis that denying them their lands was also denying them the possibility of life. Despite now having its own lands, the community currently remains alongside the Rafael Franco highway in the Chaco Region as it has done for the last two decades, as there has been no progress in constructing a passable road to the new lands, making relocation impossible (see also *The Indigenous World 2013*).

In the case of the Sawhoyamaxa community,⁶ it was decided in an historic act in March 2013 that they would re-occupy their lands; “more than 20 years after having been thrown off our ancestral lands and having to live along the highway, seeing how cattle now occupy the place where we used to live, where our parents and grandparents lived, we have now decided to go back and occupy Sawhoyamaxa, our ancestral lands”.⁷ This decision was taken after years of watching how the state, despite being convicted a second time by the Inter-American Court, did not comply with the ruling. Congress is currently considering a draft Law on Expropriation, which would require the current owner of the lands to sell them to the state so that they can be returned to their original owner: the Sawhoyamaxa community. After three decades of struggle, the families will thus be able to plan their future on their ancestral territories, and not alongside a highway that leads only to the cities, far removed from their culture.

The third case is that of the Xákmok Kásek community⁸ of the Sanapaná people, also located in Presidente Hayes department. The ruling in this case was

even more specific than the previous ones, stating that if their lands were not returned within three years, the state would have to pay monthly compensation to the community. This deadline was reached in 2013 but the state requested an extension. This was granted by the Court, despite no negotiations having been commenced in those three years, or approaches made to the owner of the Xákmok Kásek lands.

A green desert? The chainsaw brings with it a silent death

The Paraguayan Chaco is being deforested at breakneck speed to the benefit of the region's livestock rearing model.⁹ This is the reality of the Ayoreo Totobiegosode and the Jonoine-urasade indigenous peoples – who are living in voluntary isolation – and whose rights to life, community property and to exercise autonomy within the Ayoreo Totobiegosode Cultural and Natural Heritage Zone, in Alto Paraguay department, are being systematically violated. In this context, during the recent decades of resistance, struggle and care of their territory, the indigenous people have even been denounced by the Public Prosecutor's Office of Filadelfia for squatting on their own lands. At the same time, among other outrages, the state has granted permits to private companies to deforest part of this territory, as well as to fence off indigenous territories. The opening of trails and clearings continued in the heart of the southern zone of their territories throughout 2013 but it was no longer the River Plate S.A. company but Yaguareté Porá S.A.¹⁰ that was endangering the lives of those living in voluntary isolation and using the trails in this area. The Chaidi and Arocojandi communities, who hold the title to their lands, also had an area of 15,000 hectares invaded, and a large number of endangered tree species removed. Faced with such violations, and the lack of any state response, the Payipie Ichadie Totobiegosode Organisation (OPIT), supported by other indigenous organisations, mobilised for several weeks, setting up road blocks and managing to bring the deforestation to a halt. However, a lack of state sanctions against these companies only replicates, year after year, this lack of any guarantees aimed at protecting the life of indigenous peoples living in voluntary isolation and the heritage of these peoples.

Evictions

Over the last year, the worst human rights violations against indigenous peoples were largely observed in the Chaco region. However, the pattern of human rights violations in the Eastern region (Oriental) continued with deforestation and harassment by businessmen dedicated to soybean monocropping, livestock rearing and drugs trafficking.

In Amambay and Concepción departments that border Brazil, a prolonged drought caused fires to spread across the pastures that the cattle farmers produce for their cows, and which are invading indigenous lands, leading to houses being burned in the Pai Tavytera communities. As the fires become more frequent, the forests are declining and the pastureland is spreading, forcing these people to find money to repair the damage and thus benefiting the cattle farmers, who need good pasturelands on which to expand their businesses. Slowly, the indigenous communities are thus being moved off their lands. Local governments have done very little in such cases, either in terms of mitigating the fires or preventing them.

Another problem in this area is drugs and human trafficking. Although there were no murders this year, violence is widespread. This year, a report was published denouncing cases of young indigenous victims of human trafficking, a problem which had not been fully recognised before.¹¹

In other places the problem is soya, as in the case of the Makutinga community of the Mbya Guaraní people, located in San Rafael district, Itapúa department. This community has been permanently hounded by peasant farmers and businessmen since INDI authorised a transfer in 2002 enabling 763 hectares to be titled on behalf of the community. Since then, they have suffered invasions of their lands and various attempts of eviction. The most serious attempt involved machinery, and destroyed everything that had been achieved through the native forest reforestation programme promoted by the state. This was justified on the basis of a document that referred to the supposed sale of the indigenous lands by means of a dubious title that was superimposed on that of the indigenous peoples.

This last case clearly demonstrates the lack of state guarantees with regard to respect for communal property rights, along with the discrimination, even within the legal system, being suffered by the indigenous communities. Thus while the

state endeavours to criminalise landless peasant families under the crime of squatting when they occupy private ranches, its institutions tolerate and even facilitate invasions of legally recognised indigenous territories. This is a clear illustration of the current discrimination, which is simply an extension of the historic process of dispossession and violation of indigenous peoples' rights in Paraguay. With few exceptions, therefore, the state's actions give credence to the Inter-American Court's view that the Paraguayan state is "a fugitive from justice".

Recommendations

- Establish polling stations within the communities or in areas with the highest concentration of indigenous population.
- Create mechanisms that will ensure that indigenous peoples are consulted with regard to all state bodies and policies that involve them.
- Comply with the requirements of the rulings of the Inter-American Court of Human Rights in the cases of the Yakye Axa, Sawhoyamaya and Xákmok Kásek communities, and also comply with the friendly settlement reached with Kelyenmagategma.
- Allocate a larger budget for land purchases and reintroduce the involvement of indigenous community and organisation representatives so that they can actively participate in INDI's plans.
- Design and implement integral policies for the protection and enjoyment of the territorial rights of indigenous peoples, speeding up the transfer and titling of communities.
- Design and implement, in a consultative and participatory manner with the indigenous peoples, an environmental law that protects indigenous territories in order to guarantee their sources of life and their culture, taking into account the different realities such as, for example, that of the Ayoreo living in voluntary isolation.
- Investigate the murders of indigenous Pai Tavytera in the departments of Concepción and Amambay, and identify and prosecute those responsible, producing an adequate protection plan for these communities. ○

Notes and references

- 1 There is no mention of the Toba ethnic group of the Maskoy linguistic family in the 2012 National Census of Indigenous Population and Housing.
- 2 This can be seen in the data provided by the 2008 Survey of Indigenous Households from the DGEEC.
- 3 **European Union Election Observation Mission, 2013: Final Report – General Elections**, European Union, p. 21.
- 4 Boquerón department in the Chaco was the only one to run indigenous candidates. Most striking was the presence of a list for the Departmental Authority made up primarily of indigenous women aligned with the Kuña Pyrenda movement. They did not win. However, the Partido Colorado (ANR), which did run an indigenous candidate, won a seat on the Departmental Authority.
- 5 Ruling of the Inter-American Court, 2005, at http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_esp.pdf
- 6 Ruling of the Inter-American Court, 2006, at http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_esp2.pdf
- 7 Press release from the Sawhoyamaya community dated 21 March 2013 at: <http://es.scribd.com/doc/131690067/Comunicado-Sawhoyamaya-03-2013>
- 8 Ruling of the Inter-American Court, 2010, at http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf
- 9 In 2013, 14,000 hectares of Chaco woodland disappeared (see www.gat.org.py)
- 10 This is a transnational company that claims to comply with international standards and respect the environment. On this basis, it is creating a private reserve on lands claimed by the Totobiegosode, with state approval, and endangering groups of indigenous peoples living in voluntary isolation given that the deforestation is continuing.
- 11 For more information see **Base Investigaciones Sociales**, 2013: *Problemática de violencia y trata contra mujeres jóvenes indígenas (demanda al Estado paraguay)*, Asunción. Available at: http://www.baseis.org.py/base/h_libros.php

Lorna Quiroga is a sociologist and member of the field and research unit of the organisation for indigenous peoples from the Chaco, Tierraviva.

Maximiliano Mendieta Miranda is a lawyer, activist and human rights defender. He is a member of the legal department of Tierraviva.

ARGENTINA

Argentina is a federal state comprising 23 provinces with a total population of over 40 million. The results of the Additional Survey on Indigenous Populations (2004-5), published by the National Institute for Statistics and Census, gives a total of 600,329 people who recognise themselves as descending from or belonging to an indigenous people.¹ The indigenous organisations do not believe this to be a credible number, however, for various reasons: because the methodology used in the survey was inadequate, because a large number of indigenous people live in urban areas where the survey could not be fully conducted and because there are still many people in the country who hide their indigenous identity for fear of discrimination. It should also be noted that, when the survey was designed in 2001, it was based on the existence of 18 different peoples in the country whereas now there are more than 34. This shows that there has been a notable increase in awareness amongst indigenous people in terms of their ethnic belonging.

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

The situation of indigenous peoples in this country can be summed up in two sentences: “We are experiencing a re-colonisation of global capitalism and are working to free ourselves from a state that remains colonial...” but “We are on our feet, we are continuing our struggle”. This was how two leaders put it at the National Summit of Indigenous Peoples and Organisations.

National Summit of Indigenous Peoples and Organisations

The National Summit of Indigenous Peoples and Organisations was undoubtedly the most important event of the year. For three days in June 2013, representatives from the organisations, leaders and members of more than 15 peoples, met in Formosa Province to debate territorial rights, extractivism, justice, criminalisation and legal reforms. Of particular interest was the proposal to include indigenous communal ownership in the Civil Code. On conclusion of the summit, the participants marched through Formosa town and then travelled to Buenos Aires where they held a vigil in the hope that the President would receive them, enabling them to present her with a document.² However, this did not happen. This document set out five main issues:

Territories

The state of progress in the surveys established by Law No. 26,160 was analysed. The Indigenous Peoples' Human Rights Observatory noted that after the new four-year extension for the conclusion of the Territorial Survey Programme for Indigenous Communities, which the National Institute for Indigenous Affairs (INAI) has to carry out in compliance with Article 14.2 of ILO Convention 169, the results achieved are highly unsatisfactory. This programme commenced in 2006 when the stated law was passed; the demarcation of indigenous lands was to be concluded within a four-year period. At the end of this period, a new law was passed to extend the period; this process has now been extended to at least 11 years, until 2017. This is a significant delay, and lacks any rational justification. According to information from INAI, by the end of 2013, out of a total of 1,578 indigenous communities in the country, only 223 (14.13%) had received an official resolution determining the lands traditionally occupied. This negligible percentage, after seven years of work, is even worse in provinces where there are significant conflicts over the lack of enforcement of indigenous rights. In areas where the programme's implementation is most necessary and urgent, the work has hardly even begun. A total of 1,021 indigenous communities (65% of the total) live in the provinces of Salta, Jujuy, Formosa, Chaco and Neuquén, where only 53 communities have obtained official recognition of their possession (5.2%). In Formosa and Neuquén, the provinces with the highest levels of violence towards in-



indigenous peoples on the part of the local governments, no community has managed to get their possession officially established. In Salta Province, with 383 communities, only 10 have had the survey completed. Of the 101 communities in Chaco, only two have had their traditional occupation recognised. More than 15 members of indigenous peoples have died in recent years due to clashes with the

police or landowners in the context of disputes over recognition of their lands, most in the above stated provinces.

Criminalisation of social protest

The criminalisation of indigenous protest by the provincial criminal courts is reaching alarming levels and repression seems to be the state's main response to demands for compliance with indigenous rights. The extension of the deadline for the law noted above is virtual recognition of the state's lack of will to implement this law. INAI has concealed this lack of compliance by failing to provide accurate data and by manipulating the figures. As an example, although Argentina's last report to the Human Rights Council referred to 15 to 18 million hectares to be surveyed, for internal use and with the aim of covering up the implementation gap, INAI's 2013 report to Congress mentioned only 9 million hectares. The number of communities to be surveyed was also reduced, stating that there were 950, contradicting previous official reports in order to conceal the poor level of implementation. There is no prospect of a reversal of these extreme administrative delays. At the current rate (80 communities a year), it will take almost another 17 years for the programme to be concluded, suggesting there will be a likely increase in indigenous protests and demonstrations, as well as in state repression. It should also be noted that, even if this current programme of surveys were to be implemented according to the timescale demanded by the indigenous peoples, it would still only go part way to fulfilling the state's obligations given that it does not include the titling of the lands nor the resolution of indigenous claims for territories taken from them. The President of INAI has publicly and repeatedly stated that his organisation is opposed both to the return of ancestral lands and to the application of the UN Declaration on the Rights of Indigenous Peoples.

Extractivism

The Argentine government is continuing to offer incentives to oil, mineral, soya and logging companies. In the face of impassive officials, the advance of these companies onto the indigenous territories seems unstoppable. Two of the first companies, Chevron and Barrick Gold, were heavily criticised at the summit for forming one of the worst threats to territorial rights.

Persecution and violence

Those attending the Indigenous Summit elected Félix Díaz, leader of the Qom people, to be their spokesperson, as being symbolic in Formosa Province of the persecution being conducted by the state against indigenous peoples. Members of his family are being continually harassed by the local police and assaulted in attempts to make Díaz give up his claim to ownership of La Primavera territory.³

Reform of the Civil Code

Indigenous activism continued throughout the year, aimed at challenging the official draft reform of the Civil and Commercial Code. This code was attempting to restrict recognised rights of possession and ownership of traditionally occupied lands to legally-registered indigenous communities, ignoring the people. On the other hand, by approving indigenous community ownership, this would henceforward be defined as a right in rem. Through its statements and interventions in public hearings, the indigenous movement has achieved a suspension of this reform and, instead, is requesting that indigenous ownership be established by means of a special law.

Lack of recognition of the duty to consult

One of the most likely reasons behind this official lack of will to enforce indigenous rights lies in the recent expansion of extractive projects on community lands. The plans for large-scale mining, clearing of native forests for farming enterprises and oil exploitation using new environmentally-damaging methods are all aimed at incorporating lands thus far considered “marginal” into the business dynamic. It is on these lands that numerous indigenous communities are suffering interference from official or private entities, failing to respect their right to free, prior and informed consent.

Numerous large-scale agriculture, livestock and forestation projects have been approved by the state in northern Argentina, on lands traditionally occupied by indigenous communities but to whom neither their right of possession nor ownership has been recognised, nor their right to prior consultation. In Salta Province, the clearing of the Chaco’s forests is continuing unabated. Since Forests Law

26331 was passed in 2007, 350,000 hectares have been cleared, of which 100,000 were protected by law. Despite a suspension ordered by the Supreme Court of Justice in 2007, more than 50,000 hectares have been cleared in four departments alone. According to a recent Greenpeace report, the province intends to quadruple its livestock numbers by 2030, which will result in the clearance of up to a further 3 million hectares.⁴ At Ballivián, in San Martín department, where more than 90,000 hectares have already been cleared since the interim measure ordered by the Supreme Court, the Wichí and criollo communities endure a life without water, food or sanitation, literally encircled by the deforestation.⁵

The communities only become aware of such authorisations on the day that the machinery and company workers arrive to tear down their forests. Community resistance invariably gives rise to police and court interventions in favour of the companies, as has been the case in Salta, Jujuy, Formosa and Chaco recently, with the result that many indigenous individuals end up in prison or on trial charged with criminal activity.

The same lack of consultation is visible in the mining and oil projects being implemented. In 2013, the majority state-owned oil company, Y.P.F., in association with the multinational Chevron, announced and started up large-scale exploitation of the geological formation known as the “Vaca Muerta” in Neuquén Province using the process known as “hydraulic fracturing”. This is affecting the territory of 20 communities, who were not consulted and did not participate in any way in the impact assessment conducted for this “unconventional” method, which is being justifiably challenged given the environmental damage it causes.

No legislation has been passed in Argentina that would require the state to conduct adequate consultation processes with the indigenous organisations of peoples affected by economic enterprises planned on their lands. This omission is one of the issues that is currently causing most conflict and its consequences are resulting in widespread victories for business interests, in contrast to the provisions of ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and the case law of the international human rights bodies.

In addition, no legislation has been passed to regulate indigenous peoples’ right to consultation and to participate in the legislative or regulatory processes affecting them. This is giving rise to a state practice, at both federal and provincial level, of ruling on issues that directly affect indigenous peoples without any involvement from them.

The most significant recent case in this regard was the process of elaborating and approving the draft Civil and Commercial Code for the country. Many of its provisions relating to the status of indigenous communities and their right to traditionally-occupied lands did not meet minimum internationally-recognised human rights standards. Only at the end of 2013 did the state appear to change its position when the draft was passed with all conflictual provisions regarding indigenous peoples removed, their consideration being deferred until a special law could be passed in this regard. The draft will again be considered by the Chamber of Deputies in 2014 and it is to be hoped that this decision will be maintained. However, there has been no official mention of the fact that this future “special law” will be produced with the involvement of the indigenous peoples and in consultation with them.

More recently, a special state-appointed commission has produced and published a draft Criminal Code containing various references to indigenous peoples, but also failing to organise any kind of consultation with the representative institutions of these peoples.

Legal proceedings underway to demand compliance with the right to consultation are being delayed beyond all reason. After 11 years, in December 2013, the Supreme Court declared a Neuquén provincial decree governing the constitution and functioning of the indigenous communities invalid, as it was passed without their involvement and with opposition from all indigenous institutions. Another case against the same province, which was lodged in 2003 following the incorporation of indigenous communities into a state municipal body without consulting them, still has not been ruled on.

The incomprehensible judicial situation in the case of Lhaka Honhat vs the Argentine State

Two years have passed since the Inter-American Commission on Human Rights (IACHR) issued its Merits Report No. 2/12. Yet the Lhaka Honhat Association of Aboriginal Communities is still waiting for the Argentine state to comply with this Commission’s recommendations. The report established a three-month period in which the state was to delimit, demarcate and title the lands traditionally occupied by the communities in the Salta Chaco Region, as one single area and with one single title on behalf of all the communities. Between 2000 and 2005, Lhaka Hon-

hat continued a friendly process with the state and the Commission but, in 2005, the Salta government unilaterally withdrew from this process. In 2006, the IACHR formally admitted the petition by means of Report No. 78.⁶ In 2012 came the Merits Report. After 13 years and successive extensions to allow the state to comply with the recommendations of this report, the Association's members are now asking: what is the IACHR waiting for? Surely this incomprehensible case of a denial of justice should now be referred to the Inter-American Court of Human Rights? Who is protecting our rights?

The above is a summary of the state of constitutional recognition of rights that are claimed but have not been implemented. The Argentine government has preferred symbolic gestures to implementing an effective policy of reparations; quite clearly, the interests and protests of the indigenous peoples are not on the same footing as those of officials, who are more concerned with maintaining power and governability. ○

Notes and references

- 1 Instituto Nacional de Estadística y Censos (INDEC), 2004: *Resultados de la Encuesta Complementaria de Pueblos Indígenas*—ECPI— surveyed in 2004.
http://www.indec.mecon.ar/webcenso/ECPI/index_ecpi.asp
- 2 More information can be found at <http://agenciacta.org/spip.php?article8792>
- 3 <http://argentina.indymedia.org/news/2013/12/851426.php>
- 4 <http://www.greenpeace.org/argentina/Global/argentina/report/2013/bosques/Informe-Salta-2013-FINAL.pdf>
- 5 <http://www.nuevodiariodesalta.com.ar/noticias/1131/impulsan-un-desmonte-que-condenaria-las-comunidade.html>
- 6 www.cidh.oas.org/annualrep/2006sp/Argentina12094sp.htm

Morita Carrasco is an anthropologist from the University of Buenos Aires. Since 1998, she has been working as an advisor to the Lhaka Honhat organisation in Salta and the Centre for Legal and Social Studies, CELS in relation to the Lhaka Honhat case before the Inter-American Commission on Human Rights.

Neuquén Indigenous Peoples' Human Rights Observatory

CHILE

The population that self-identifies as belonging to or descended from one of the nine indigenous peoples recognised under Chilean law¹ numbers 1,369,563 people, or 8% of the country's total population.² It comprises the following peoples: Aymara (0.59%); Lickanantay (0.14%); Quechua (0.07%); Colla (0.06%) and Diaguita (0.06%); the inhabitants of the Andean valleys and highlands of the north; Rapa Nui from Polynesian *Te Pito o Te Henua* (Easter Island) (0.03%); Mapuche (6.97%) from the temperate and rainy *Wallmapu* in the south; Kawashkar (0.01%) and Yamana (0.01%) from the southern Patagonian canals.³

Chile's constitution, which dates from 1980, during the time of the military dictatorship, still fails to recognise indigenous peoples and their rights. The planned reform of the Political Constitution and recognition of indigenous rights that has been before the National Congress since 2007-2008 continued to make no progress during 2013.

The indigenous peoples are governed by Law No. 19,253 of 1993 on the "promotion, protection and development of indigenous peoples", a law that does not meet international legal standards on the rights of indigenous peoples. Another regulation that recognises and governs the exercise of the rights of Chile's indigenous peoples is Law No. 20,049, enacted in 2008, which "creates coastal marine spaces for native peoples" and which, to date, has come up against different institutional barriers to its implementation. ILO Convention 169 was ratified by Chile in 2008, and came into force in September 2009. However, its implementation has thus far been wholly insufficient, particularly in the case of the right to prior consultation.

Regulation governing indigenous consultation (S.D. No. 66)

In 2012, the executive submitted a Proposed New Regulation on Consultation to the Council of the National Corporation for Indigenous Development (CONADI), to be distributed to the indigenous peoples with a view to commencing a process

of consultation. This proposal was a far cry from the international standards set in relation to the right to consultation and the mechanisms proposed represented a serious violation of indigenous rights. This process has been challenged by a number of indigenous peoples' organisations due to the fact that, when it called for a "Consensus Committee" to be formed, the invitation was not extended to all indigenous sectors, with the result that those who did participate in the process lacked sufficient legitimacy to be considered the "representative institutions of the indigenous peoples".

Despite the deficient form and content of this proposal, the Ministry of Social Development approved the regulation governing indigenous consultation by means of Supreme Decree (S.D.) No. 66 dated 15 November 2013. It was signed symbolically in Temuco by the President of the Republic on 22nd of the same month.

With regard to the substantive content of Decree No.66, Article 7 provides that only those legislative and administrative measures that "directly cause a significant and specific impact on indigenous peoples because of their status as such" shall be required to be put out to consultation. However, Article 6.2 of Convention 169 provides for consultation on all administrative and legislative measures that are likely to directly affect these peoples. In addition, Article 3 of the regulation establishes that the duty to consult shall be considered fulfilled when the body responsible has made the necessary efforts to reach an agreement or obtain the consent of the peoples affected, "even when it has not been possible to do so". This last phrase is in direct violation of the requirements of Article 6.2 of Convention 169, which establishes that the aim of the consultation is to reach an agreement or obtain consent.

Moreover, Article 4 of the regulation excludes regional administrative bodies with an important role in local management, such as the municipalities, from the obligation to conduct consultations, making this purely optional. Public companies and the Armed Forces enjoy a similar exemption. Finally, the regulation transfers responsibility for administrative measures adopted in the context of the Environmental Impact Assessment System (EIAS) to the regulation governing the EIAS.

Regulation governing the environmental impact assessment system (S.D. No. 40)

This regulation, enacted in 2012, was admitted by the Office of the National Comptroller General in January 2013, and approved and subsequently published



in the Official Gazette on 12 August 2013. It entered into full effect on 25 December 2013. It contains rules governing the “consultation” of indigenous peoples with regard to investment projects that are subject to an EIA. Rather than consultation processes, however, these should really be considered ways of communicating investment projects and disseminating information, given that if no agree-

ment is reached with the indigenous peoples then the projects can still be approved and implemented.

With regard to the substantive content of S.D. No. 40, as regards indigenous consultation there are a number of rules that fail to meet the standards established in ILO Convention 169. These relate to: a) limiting the requirement for prior consultation to high-impact projects; b) restricting consultation to cases that directly affect indigenous peoples, this being determined in advance by the authority (Articles 27 and 86); c) handing over sole responsibility for the design and implementation of consultation processes to the Environmental Assessment Department, without including the interested peoples (Article 85); d) expressly and *a priori* ruling out the need for prior consent under any circumstances (Articles 85, 92, 61, 83 and 27); e) establishing, for those cases where consultation is not required (projects of low environmental impact and/or with indirect effects), an optional dialogue body, the implementation of which is the prerogative of the authority (Articles 86, 83 and 27); f) establishing the circumstances under which the forced displacement of indigenous people is acceptable, in violation of the requirement for free, prior and informed consent imposed by Article 16 of Convention 169; g) failing to establish appropriate measures for indigenous peoples' participation in the procedure for popular participation, since observations have to be submitted in writing and no alternative mechanisms are envisaged, in addition to which legal status is required to be able to participate in the process, thus preventing the peoples' own organisations or institutions from being involved and contravening the intention of Convention 169 in this regard.

Faced with this imposition, in 2013 a number of indigenous organisations petitioned the courts requesting that this regulation be withdrawn. Unfortunately, their request was unreasonably rejected by the national courts, clearly demonstrating the denial of justice to which indigenous peoples are victim.

Situation of the indigenous lands

Another critical problem for indigenous peoples is the lack of a response to their demands for their ancestral lands and territories, in accordance with Convention 169. The policies promoted by CONADI, a body established under the provisions of Law 19,253 of 1993, continue to be insufficient to resolve the land problems affecting the different peoples, including the Mapuche and the Rapa Nui. CONA-

DI's restrictive interpretation of the concept of indigenous lands establishes that its Lands and Waters Fund should finance initiatives destined only to return those lands that are recognised as such through an original land title (*título de merced*) granted to the Mapuche by the state, or that were in the hands of the Mapuche communities during the agrarian reform process and which were later either returned to their previous non-indigenous owners or remained in the hands of the state following the 1973 military coup. Demands referring to ancestral title or customary use, as expounded in applicable international law, are not included within this interpretation.⁴

The state budget devoted to financing this Fund has continued to be insufficient. Although there is no clear information on the amount destined for this purpose, it is clear that this did not increase in 2013 in relation to previous years.

One worrying situation relates to the claims of the Rapa Nui people to ownership of their ancestrally occupied lands on Easter Island. In 1933, despite having been annexed by Chile via a treaty or "Memorandum of Understanding" in which the Rapa Nui retained ownership of their ancestral lands, Chile registered the lands as being owned by the state. Since the 1960s, different laws have been passed regularising lands in favour of the Rapa Nui but this has been achieved by transferring small family plots with individual title, in contravention of this people's communal ownership structure. Moreover, these transfers have been very limited, restricted primarily to the urban area of the island, with the Rapa Nui owning only 13% and more than 70% of the territory thus remaining under state ownership.⁵ No effective public policies have been promoted to reverse this reality since 2009, and this has generated social protest among the Rapa Nui who, as noted below, have found themselves criminalised by the state.

Planned investments on indigenous territories

The lands and territories that are legally and/or ancestrally owned by the indigenous peoples of Chile continue to be seriously threatened by a large number of extractive, productive or infrastructure projects. This is the result of sector legislation (Water Code, Mining Code, etc.) that has still not been adapted to ILO Convention 169, thus enabling third parties to establish rights over natural resources on these peoples' ancestral property.

In the case of the Mapuche territory in the Bío Bío, La Araucanía, Los Ríos and Los Lagos regions, logging and hydroelectric activity has intensified, along with salmon farming. The impacts of the logging industry are being felt primarily in Malleco province, which is being heavily affected by monocropping of eucalyptus and radiata pine, an activity being developed on the legally and/or ancestrally owned and claimed lands of the Mapuche. In addition, there has been a proliferation of hydroelectric projects in the mountains, threatening Mapuche communities. These include the Neltume hydroelectric plant of the transnational company Endesa-Grupo Enel, in Panguipulli commune (Los Ríos region) and which is located on Neltume Lake, the ancestral territory of the Juan Quintuman, Inalafken and Valeriano Cayicul communities. The discharge of waters from the plant into Neltume Lake will produce an increase in water level that will flood the *nguillatue*, the place where the most important Mapuche ceremony takes place, and which is therefore of immeasurable cultural significance to them. For this reason, the “temporary” flooding of the Ceremonial Complex of Neltume Lake, including the *nguillatuhue*, is of the utmost gravity. In addition, the project will seriously threaten the tourist trade of the communities mentioned, thus challenging their fundamental right to define their own development priorities.

Salmon farming projects are also ongoing or have been proposed in the mountain valleys of the Bío Bío in the south, most of them on rivers that form part of the ancestral and current habitat of Mapuche communities, seriously contaminating the water courses and affecting their material and cultural survival. To date, these projects have not been put out to consultation with the indigenous peoples affected, in line with Convention 169, and they are affecting the right to habitat as stated in this Convention, for which reason they are being rejected by the communities.

The boom in large-scale mining is continuing on the territory of the Andean peoples of the north of Chile (Aymara, Lickanantay, Quechua, Colla and Diaguita) which, in addition to extracting the mineral resources from the subsoil, also requires a huge amount of water to be removed from the indigenous ancestral lands. The mining model in the north of the country is thus taking ancestrally-used resources out of the territorial control of the indigenous communities, particularly the water on which indigenous economies have relied since time immemorial, and which has enabled them to preserve their culture in an extremely arid environment. The extractive industry is thus endangering the very existence of these communities, i.e. their traditional production activities and, at the end of the day,

their very presence on their territories. Some of the projects that have caused the most serious conflict are the Los Pumas mining project in the Lluta river basin and the Polloquere geothermal project in the Salar de Surire (Arica and Parinacota region); the Paguanta mining project (Tarapacá region); and the El Morro and Pascua Lama mining projects (Atacama region), which are large-scale projects that are making it impossible for the community to continue the agricultural activities it has undertaken since time immemorial and, moreover, compromising indigenous territorial rights and causing the displacement of Huascoalino live-stock herders (pastoralists from the high Andean cordillera).

Approval of these projects has resulted in violations of fundamental indigenous rights, in particular the right to consultation and protection, and has resulted in legal actions being taken through the national courts. It should be noted that the Chilean courts have ruled in favour of recognising the right to indigenous consultation (case of the Paguanta project⁶) and the right to indigenous property, including the specific features of the collective dimension of this right (case of the El Morro project⁷). As a result of these actions, the courts decreed a suspension of these project approvals until the legal infringements that resulted in the rights violations had been rectified, and demanded that these rights be guaranteed in line with the standards imposed by ILO Convention 169.⁸

Despite the ruling of the Supreme Court, on 22 October 2013 the Commission for Environmental Assessment of the Atacama Region again approved the project without fulfilling the requirement to consult the affected communities. The resolution was challenged by the communities through the courts. The courts issued a temporary injunction (suspending the effects of the challenged resolution) until the appeal could be resolved.

It should be noted that, following these rulings and the steps taken by the indigenous organisations, the state – through the Ministry of Environmental Assessment – did initiate *ad hoc* consultation processes in some of these projects (El Morro and Neltume, among others) during 2013. However, these process have been seriously questioned by the indigenous communities as they bear little resemblance to the international standards on the right to consultation.

The serious impact of the megaprojects being implemented on indigenous territories without these peoples' consent became clear following the drowning, in December 2013, of Nicolasa Quintreman, a well-known Pehuenche (subgroup of the Mapuche) leader opposed to the construction of the Ralco hydroelectric plant in the Upper Bío Bío, in the waters of the dam of the same name. The Ralco plant,

built by Endesa-España, came into operation in 2004, flooding some 3,500 hectares, most of which were legally owned by the Pehuenche, and causing the relocation of 675 people, 500 of whom were Pehuenche.⁹ This power plant was imposed without any consultation or consent. The compensation agreed by the Chilean state, following an amicable agreement through the Inter-American Commission on Human Rights in 2004, was never provided. This included compensation of a collective nature for the indigenous peoples and for the Pehuenche, along with individual compensation for the five Pehuenche plaintiffs. In 2009, the Alto Bío Bío commune, 49% of the population (of 5,000) of which live in poverty, was among the poorest communes in the country.¹⁰ This is despite the high profit margins of the controlling company, Endesa-Grupo Enel. As indicated by the historian Martin Correa: “The death of Nicolasa Quintremán in the artificial lake that was built is the clearest image of the outcomes of the construction of Ralco for the Pehuenche people. Nicolasa always said that building Ralco meant killing the river and, with it, his people”.¹¹

Political participation

Despite standing for political office through both independent candidates and through the Chilean political parties, indigenous peoples still have no representation in the National Congress. They further have no representatives within the Regional Councils (CORE) of the administrative regions that overlap with their ancestral territories. In August 2013, the Mapuche Wallmapuwen political party put various candidates forward for regional councillor posts to SERVEL (Electoral Service), but these individuals were overlooked by the Regional Director of this service in La Araucanía. The candidates took their case to the Regional Electoral Court (Case No. 1.255-2013), requesting that the stated candidacies be admitted. The appeal was subsequently rejected by this body, with the argument: “that ‘Wallmapuwen’ does not comply with the requirements established in Law No. 18,603 (Political Parties Act) to be considered a political party, as stated by the Regional Director of the Electoral Service, or the requirements of Article 85 of Law No. 19,175 (Government and Regional Administration Act), and so the request cannot be admitted.” Faced with this rejection of their candidates, on 4 October Wallmapuwen lodged an application for protection with the Temuco Court of Appeals (Case No. 13,878-2013), by means of which they called on the

Araucanía Electoral Court: “to indicate whether it accepted or rejected [the] stated candidates, and giving the corresponding reasons as necessary”. This application for protection was rejected by the Temuco Court of Appeals.

Criminalisation of indigenous social protest

Four cases remained open under the Anti-terrorist Law in 2013, by means of which 16 people are being accused. The hearing of 12 Mapuche people accused of terrorist crimes in the so-called “Tur Bus” case also took place in the context of this emergency law. All were acquitted, highlighting the inconsistencies in the state’s use of this law, which has been used to violate the procedural guarantees of the accused and thus enable their criminalisation. The high rate of acquittals obtained in cases recently pursued against the Mapuche under the Anti-terrorist Law illustrates how it is being used for political ends, at the discretion of the state.

Of the cases still open under this law, two – the “Fundo Brasil” and “Fundo San Leandro” cases – involve people who were minors at the time of being accused. This is similar to the “Peaje Quino” case, where the adults were acquitted of terrorist crimes but the trial of two minors is still pending. It should also be noted that, in the “Fundo Brasil” case, the young Mapuche, José Antonio Ñirripil, was sentenced to three years in prison and 18 months in a rehabilitation centre for the crime of causing fire in an inhabited place, the only proof being the statement of a co-defendant who acted as a “compensated informant” under the protection of the Anti-terrorist Law. The adults accused of crimes in these cases are still awaiting trial but have been released on bail.

In addition, other ordinary criminal sentences have continued to be passed against Mapuche community members who have participated in land claim processes. Such is the case of Fernando Millacheo from the Newen Mapu community and Cristian Levinao from the Rayen Mapu community, who were sentenced to 15 and 10 years in prison respectively for actions linked to the territorial conflict in the Chequenco area, Ercilla commune. Moreover, Luis Marileo was sentenced to 10 years and one day, Leonardo Quijón to 10 years and Gabriel Montoya to 5 years, two in prison and three in a rehabilitation centre, for the alleged attempted murders of Ismael Gallardo Aillapán and Sandra Gallardo Cayul and the crime of robbery with murder of Héctor Arnoldo Gallardo Aillapán.

The criminalisation of the Mapuche protest and the form this is taking, aimed at prosecuting and sentencing its leaders, continues to be one of the greatest areas of concern for national and international human rights bodies. In this regard, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, stated following his visit to Chile in 2013:

The Special Rapporteur concludes that the continued and disproportionate use of anti-terrorist legislation is an arbitrary way of prosecuting crimes committed in connection with the Mapuche conflict and counterproductive to a peaceful solution to this situation. The Rapporteur observes that the substantive crimes of which they are accused can be adequately investigated, prosecuted and punished under ordinary criminal law, without recourse to the exceptional measures available under anti-terrorist legislation.¹²

Police violence

Indigenous peoples' demands for their rights continue to be suppressed and criminalised by the state. A total of 26 cases of police violence against people and/or communities of the Mapuche people were documented by the Civic Observatory and other human rights bodies in Araucanía during 2013, attributed both to officers from the ordinary police and the investigative police (PDI) forces. These affected both adults and the elderly/children.

One case that exemplifies the police violence against Mapuche children occurred on 30 April 2013 in the Mapuche communities of Trapilwe and Mawidanche, in the Quepede sector of Araucanía region. In the early hours of the morning, officers from the investigative police conducted a large raid affecting a number of families, using motorised vehicles and helicopters and causing widespread panic among the community members. Many community members were affected by the raid, particularly those under 12 years of age and Verónica Coliman, 24 years of age and six months pregnant.

The illegal and abusive practices of the police have continued as a consequence of the "dual impunity" enjoyed by police officers committing crimes against civilians. First, there is the judicial impunity, as cases continue to be heard by the military courts, which lack the necessary impartiality and suitability to rule on such

cases. Second, there is the administrative impunity that occurs whenever the government bodies to which the police report fail to conduct investigations or impose the sanctions required by law in such cases. ○

Notes and references

- 1 Indigenous Law N° 19,253 of 1993.
- 2 Database from the National Socio-economic Survey (CASEN) 2011. Statistical projection made by the Civic Observatory team.
- 3 The results of the 2012 Population Census, published in 2013, showed a substantial increase in the country's indigenous population, which was estimated at 1.7 million, or 11.11% of the country's total population. Instituto Nacional de Estadísticas, Síntesis de Resultados Censo 2012, available at www.censo.cl. This Census, however, remained ineffective for lack of accuracy, as recognised by the government.
- 4 The Special Rapporteur on the rights of indigenous peoples, James Anaya, indicated in his Chile Mission report in 2009 that "...the Special Rapporteur recommends reforming the existing Lands and Waters Fund procedures to bring them into line with contemporary regulations recognising and restoring indigenous rights to land and resources of traditional or ancestral use, particularly in the light of Chile's recent ratification of Convention No. 169." (Para. 54). Report of Special Rapporteur James Anaya, Mission to Chile, Human Rights Council, United Nations, A/HRC/12/34/Add.6, 14 September 2009.
- 5 The state's ownership of the Island is divided between an Estate (Vaitea), administered by the private commercial company, Sociedad Agrícola y Servicios Isla de Pascua Limitada (SASIPA), and the Rapa Nui National Park, administered by the National Forestry Corporation (CONAF), with no indigenous participation. See *Los derechos del pueblo Rapa Nui en Isla de Pascua: Informe de Misión Internacional*, IWGIA Observatorio Ciudadano, 2012. Available at http://www.iwgia.org/publicaciones/buscar-publicaciones?publication_id=598
- 6 Ruling of 30 March 2012, Supreme Court, Case No. 11.040 – 2011.
- 7 Ruling of 17 February 2012 of the Antofagasta Court of Appeals, Case No. 181-2011, ratified in all its parts by the Supreme Court in Case No. 2211-2012.
- 8 Ruling of the Court of Appeals of 17 February 2012 (Case No. 618- 2011), confirmed by the Supreme Court by means of a ruling of 27 April 2012 (Case No. 2211- 2012).
- 9 Such families belong to the Mapuche Pehuenche, Quepuca Ralco and Ralco Lepoy communities.
- 10 MIDEPLAN (Ministry of Planning), *Encuesta CASEN 2009*.
- 11 See <http://www.elmostrador.cl/pais/2013/12/30/la-deuda-del-estado-y-endesa-con-los-pehuenches-de-ralco/>
- 12 See <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=13598&LangID=S>

José Aylwin and Hernando Silva, are part of the team for indigenous peoples' human rights program of the Observatorio Ciudadano (Citizens' Watch). This article was prepared with input from the team at the same institution.



THE PACIFIC

AUSTRALIA

Indigenous peoples hold a long¹ and complex connection with the Australian landscape, including marine and coastal areas. At colonisation in 1788, there may have been up to 1.5 million people in Australia.² In June 2011, Indigenous peoples were estimated to make up 3.0% of the Australian population, or 670,000 individuals.³ Throughout their history, Aboriginal people have lived in all parts of Australia. Today the majority live in regional centres (43%) or cities (32%), although some still live on traditional lands.

The Australian Bureau of Statistics (ABS) Corrective Services report recently noted that the number of Aboriginal men in prison had risen by 8% and women by 12% in the past year, compared to a national prison population increase of 6%.⁴ Aboriginal and Torres Strait Islander peoples now comprise 30% of the prison population.⁵ Despite recent minor improvements, the health status of Indigenous Australians remains significantly below that of other Australians. Rates of infant mortality remain unacceptably high at 10-15%, and life expectancy for (59 for males and 65 for females) is 17 years less than that of others. Recent suicide figures report 105 deaths per 100,000, for Indigenous males between the ages of 25 to 34 years, as compared to 22 deaths per 100,000 for their non-Aboriginal counterparts.⁶ According to the ABS, there were 996 suicides reported across Australia between 2001 and 2010 among Indigenous peoples.⁷ 1.6% of all Australians die by suicide but, for Aboriginal peoples, this rate is more than 4.2%, or one in every 24 Aboriginals or Torres Strait Islanders.⁸

The 1975 Racial Discrimination Act has proved a key law for Aborigines but was overridden without demur by the Howard government in 2007 when introducing the Northern Territory Emergency Intervention.⁹ States and Territories also have legislative power on rights issues, including Indigenous rights, where they choose to use them and where these do not conflict with national laws. Australia has not ratified ILO Convention 169 but, although it voted against the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, it went on to endorse it in 2009.



Australia elected a Liberal-National party coalition government in September 2013,⁹ replacing the Labor governments since 2007. As predicted here last year (see *The Indigenous World 2013*), the new government is very conservative (on social, legal, cultural, etc. issues) but Prime Minister Tony Abbott appears to be committed to Indigenous peoples, their well-being, and their better political recognition. He also keeps an active network of Indigenous advisers, friends and contacts, and undertakes voluntary work in isolated Indigenous communities for one or two weeks every year.

On 15 March 2013, then opposition leader Tony Abbott gave a speech¹⁰ on Indigenous policy, indicating that Australia would again be among progressive OECD countries in addressing Indigenous disadvantage. The only part of the speech that caught public or media attention was the promise of “giving our foreign policy a Ja-

karta rather than a Geneva focus”; in other words, rejecting United Nations and multilateral consensus in favour of an approach of pragmatic regionalism. In particular, this speech referred to relations with our closest neighbour, Indonesia, and, specifically, the rejection of our obligations under international law for the treatment of refugees in favour of direct regional approaches such as the abhorrent “turning back” of refugee boats found in Australian waters. As luck would have it, the new government has failed spectacularly in its dealings with Jakarta to date. Likewise, thus far little has come of his commitment to address Indigenous disadvantage.

International vs domestic law

The Abbott government and its chief law minister are eager to show their disdain for international rights and conventions, and recognition of these as implemented by the national Human Rights Commission. Some ministers seem to believe that it is improper or even illegal to draw on international law, insisting that only Australian common law tradition and processes are valid. This is sad for a country which, in previous decades, contributed much to the development of international law and rights standards.

Indeed, the new government has appointed a “freedom commissioner” who is supposed to fight the influence of equality and minority rights, as these have allegedly reduced the freedom of speech of the public and commentators. Jewish, Indigenous and other groups are quietly trying to explain to ministers why a retreat into hate and the vilification law is undesirable and unwise.

National Congress of Australia’s First Peoples continues

In December, the newly-elected Abbott government indicated that it would cut funding to the National Congress of Australia’s First Peoples, an independently elected body of Indigenous leaders whose objective is to facilitate a national representative voice for Indigenous peoples. Since the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) by the previous liberal government in 1995, there has been a distinct lack of such representative bodies and organizations for national advocacy and political involvement. For many, the development of the National Congress was seen as a positive step towards greater representa-

tion of Indigenous peoples nationally, and in particular towards the constitutional recognition of Indigenous people.

In its place, the Abbott government has funded and backed its own hand-picked Indigenous Advisory Committee, which meets with the Prime Minister three times a year. The National Congress, however, has indicated that it will continue to operate without the promised funding through increased membership and private partnerships.

Uniting for war

Australian's major method of expressing national unity and honour is through sports, but a close second is war memory. Each year, Anzac Day on April 25, the anniversary of the storming of Gallipoli in 1915 by Australian and New Zealand (ANZAC) and other British Empire troops is seen as the real birthday of Australian nationhood. A host of ceremonies will now be held for the many World War One battlefields and campaigns of 1914-1918 but arguments about the significance of this or that battle can be as fierce as football rivalries. Furthermore, distinguished historian, Henry Reynolds, in *Forgotten War* (UNSW Press, Sydney, 2013), has pointed out that the longest Australian war was the war to seize the continent from Indigenous peoples and that their heroism and sacrifice should be honoured no less than the many other memorials to battles around Canberra and other locations. It is amazing that this book has not yet really exploded into the public debate but one may be sure that it will. Meanwhile, the country's best-known general, previously Chief of Defence Peter Cosgrove, has been appointed *de facto* head of state or Governor-General, the official representative of Queen Elizabeth II.

Rio Tinto shuts down Gove Alumina Refinery, Northern Territory

Rio Tinto announced on 29 November that it would shut down its alumina refinery on the Gove Peninsula in North East Arnhem Land, Northern Territory.¹¹ Rio Tinto blamed the shut-down on a global drop in alumina prices, the high value of the Australian dollar and substantial after-tax losses by the plant.¹²

The decision will have disastrous effects on the fragile economy of the region and around the remote town of Nhulunbuy, which is wholly dependent on the

bauxite and alumina operation for its livelihood. The operation provides important economic benefits to the surrounding Aboriginal communities through a lease agreement arrangement with the Yolngu Traditional Owners of the area. The closure will also lead to the termination of some of the most effective Indigenous employment and training programs in the country, developed between Rio Tinto and the Yolngu peoples of North East Arnhem Land.¹³

The news came as a shock to the small community of Nhulunbuy, as well as the surrounding Indigenous communities, with an unprecedentedly short and brutal six-month timeframe set by Rio Tinto for the shut-down.

The decision was accompanied by a distinct lack of communication and planning for adjustment assistance packages either by Rio Tinto or the Territory and Federal Government. Federal and Northern Territory politicians were notably hesitant to enter the discussion surrounding the shut-down, providing little support, assistance or planning to address community concerns, and leaving the town largely in the dark regarding the future of housing, education, health, transport and all other vital services in the community.

The future of the remote town of Nhulunbuy is now unclear, with around 1,100 jobs to be cut from the operation.

The decision and its fallout are a harsh reminder of the fragile nature of Australia's commodity-based economy, and the need for Indigenous and non-Indigenous communities alike to be mindful of the volatility of the industry, and the need to plan ahead for the development of and investment in future and alternative industries and appropriate land uses in a post-mining and mineral processing Australia.

Radioactive waste spill inside Kakadu National Park, NT.

In December, approximately 1.5 million litres of radioactive slurry burst from a contamination tank at the Ranger uranium mine, located in the Northern Territory. The Ranger uranium mine is located within the World Heritage-listed Kakadu National Park, NT. The spill was described by the Traditional Owners of the affected land as the worst spillage of its kind in Australia's history.¹⁴ The CEO of Gundjeihmi Aboriginal Corporation representing the site reported "...radioactive acid burst out of the tank at such a velocity that it damaged all the infrastructure nearby."¹⁵

The site is located 7 kms upstream from the Aboriginal community of Mudgunberri, and the event has been followed by strong monsoonal wet season rains. The incident received little coverage from the Australian media.

Since 1979, the Ranger mine has reported over 200 separate environmental incidents. For many, these figures raise the question of the effectiveness of self-regulation, by which the same company that operates the mine is responsible for its own environmental monitoring.¹⁶

For the local Mirrar Aboriginal people, these incidents leave many anxious and worried about the long-term effects on their community, and the potential for future events given the poor safety history of the mine.¹⁷

The Swan Book

Aboriginal writer Alexis Wright published a powerful new novel in 2013, *The Swan Book*, which we dare to believe will become an Australian literary classic in coming years. While an “Aboriginal book”, it effortlessly invades the space of mainstream literary Australia and brings in content and archetypal imagery from around the world. Set in the near future, it leaves “Australians” on a ruined continent which their “Intervention” and economy have destroyed both socially and ecologically. The Intervention is the federal government’s 2007 military and police takeover of Aboriginal affairs in the Northern Territory, a precedent now being expanded by governments to other regions, and which is attracting a large academic literature viewing it as a nightmare from which we need to escape – an “authoritarian liberalism”.¹⁸ On one level, *The Swan Book* re-arranges the characters and archetypes of *The Tempest*, and indeed, its heroine, like Shakespeare’s Ariel, is freed from an imprisoning tree in order to bring us the story. ○

Notes and references

- 1 Many Aboriginal people maintain that they were created when distinct Creator Beings formed the land at the beginning of time (often termed “the Dreaming”). It is now widely accepted among archaeologists that the earliest undisputed age for the occupation of Australia by human beings is 40,000 to 50,000 years ago. **O’Connell J.F. and Allen F.J., 1998:** When did humans first arrive in greater Australia and why is it important to know? *Evolutionary Anthropology*, 6:132–146.
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 - 14 <http://www.nit.com.au/news/3435-one-million-litres-of-uranium-waste-spills-into-kakadu.html>
 - 15 <http://www.nit.com.au/news/3435-one-million-litres-of-uranium-waste-spills-into-kakadu.html>
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 - 17 <http://www.nit.com.au/news/3435-one-million-litres-of-uranium-waste-spills-into-kakadu.html>
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Anton Kajlich is a post-graduate environmental researcher, who has worked for Northern Territory and Indigenous community-based organisations on Aboriginal cultural heritage and cross-cultural land and sea management.

Peter Jull is a member of IWGIA's international advisory board.

AOTEAROA (NEW ZEALAND)

Māori, the Indigenous people of Aotearoa, represent 15% of the 4.3 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is 7.3 years less than non-Māori; household income is 79% of the national average; half of Māori leave upper secondary school with no qualifications and over 50% of the prison population is Māori.¹

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

New Zealand endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010. New Zealand has not ratified ILO Convention 169.

International concern

The Committee on the Elimination of Racial Discrimination expressed far-reaching concern at the human rights situation of Māori early in 2013. The Committee's concerns centred on the domestic legal insecurity of the Treaty; the predominantly non-binding nature of the Waitangi Tribunal's decisions; the over-representation of Māori in the criminal justice system; the Marine and Coastal Areas (Takutai Moana) Act 2011's restriction of Māori Treaty rights (see *The Indigenous World* 2012 & 2011); the government's failure to announce a timetable for implementing the Waitangi Tribunal's 2011 decision on the Wai262 traditional knowledge claim (see *The Indigenous World* 2012); structural discrimination against Māori in the areas of employment, health and the adminis-

tration of criminal justice; the state of the Māori language; reports of inadequate consultations with Māori regarding development projects and state asset sales; and the potential for the proposed partial privatisation of state-owned assets to negatively impact on Māori rights to freshwater and geothermal resources.

The Committee's recommendations included that the government's review of New Zealand's constitutional arrangements consider whether the Treaty be entrenched; the Marine and Coastal Area (Takutai Moana) Act 2011 be reviewed to ensure that Māori have full enjoyment of their land and resource rights; any partial privatisation of energy companies fully respect Māori rights to freshwater and geothermal resources under the Treaty; and that the government enhance consultation mechanisms with Māori bearing in mind Indigenous peoples' right to free, prior and informed consent under the UN Declaration on the Rights of Indigenous Peoples.²

Treaty conversation recommended

The report of the government's Constitutional Advisory Panel, which considered (amongst other matters) the place of the Treaty in New Zealand's constitutional arrangements and Māori electoral representation, was publically released in December 2013 (see *The Indigenous World* 2011). The report offers little to forge a path forward for constitutional protection of Māori rights, in part a product of the government's terms of reference for the review. It does, however, recognise that the Treaty is a fundamental part of New Zealand's constitutional arrangements.³ In the report, the Panel recommended that the conversation regarding the Treaty's place in New Zealand's constitution continue. It also recommended that the conversation include both the consideration of options that accommodate the government's Treaty obligations within existing constitutional arrangements and arrangements that place the Treaty at the centre. It recommended retaining the separate Māori electorates at this stage.⁴ The report does support deeper conversation on the issues, which is positive. Yet it falls short of providing a much needed blueprint to guide those conversations.



Water appeal dismissed

In February, New Zealand's Supreme Court issued its decision in *New Zealand Māori Council v Attorney-General* [2013] NZSC 6 and dismissed the New Zealand Māori Council's (NZMC) appeal regarding the proposed partial privatisation of Mighty River Power, a state-owned power company (see *The Indigenous World* 2013). The NZMC was concerned that the partial sale was inconsistent with the principles of the Treaty as it would prevent the government from being able

to ensure adequate recognition of Māori rights to freshwater. The Supreme Court's decision allowed the government to proceed with the sale of shares in Mighty River Power, which went ahead in May. Importantly for Māori, the Supreme Court disagreed with the lower court in finding that decisions regarding the partial sale could be challenged on the basis of inconsistency with the principles of the Treaty of Waitangi. In this case, however, it found that there was no inconsistency with the principles of the Treaty as there was no "material impairment" to the government's ability to recognise Māori rights or provide redress. Further, the Supreme Court agreed that the government had to consult with Māori, although it determined that the consultation that took place was adequate.⁵ Elsewhere the consultation process has been heavily criticised.⁶ The result is an unfortunate one, highlighting once again the insecurity of Maori Treaty rights in New Zealand's domestic law.

Report critical of police

In May, the Independent Police Conduct Authority released a report critical of police actions in the Tūhoe country of Urewera during its 2007 “terror” operation (see *The Indigenous World* 2010). It found that, while police action in relation to the suspected offences was reasonable and justified, aspects of the raids, such as road blocks at two Māori communities (Ruatoki and Taneatua) and the detention of some individuals, were “unlawful, unjustified and unreasonable”. It recommended that the police “re-engage with Tūhoe and take appropriate steps to build bridges with the Ruatoki community”.⁷ The Ruatoki community continue to work towards securing an apology, as well as compensation, from the police for the operation.⁸

National Park Treaty breaches

In November, the Waitangi Tribunal published its three-volume *Te Kāhui Maunga: The National Park District Inquiry Report*. The report concerns claims over the Tongariro National Park and lands surrounding the park by claimants it refers to collectively as “ngā iwi o te kāhui maunga” (the nations of the people of the mountains). The Tribunal found that, for over a century, the government did not enable ngā iwi o te kāhui maunga to exercise their *rangatiratanga* (authority) over the National Park, in breach of “the Treaty principles of reciprocity and good faith and the Crown’s duty of active protection.” The Tribunal concluded “that substantial restitution was due”.⁹ The Tribunal’s findings and recommendations will now form the basis for Treaty settlement negotiations between the government and the affected *iwi* (nations).

Māori electorates not increased

A Māori Electoral Option was held in 2013. In each year in which a New Zealand census is held (usually every five years), Māori are given the option of switching from the general electoral roll to the Māori electoral roll and vice versa; this is known as the Māori Electoral Option. Those Māori registered on the Māori elec-

toral roll can vote for candidates standing in the Māori electorates in the national general elections, which are seats reserved for Māori in New Zealand's House of Representatives. For over a century, the number of Māori electorates was fixed at four but now the number is determined by how many Māori are enrolled on the Māori electoral roll. It was hoped that the 2013 option would secure an eighth Māori electorate. However, despite an increase in the number of Māori on the Māori electoral roll, the jump was not significant enough to enlarge the number of Māori electorates.¹⁰ The Māori Party has criticised the efficacy of the Electoral Commission's campaign regarding the option.¹¹

Racism in the media

Racism towards Māori and Pacific Island peoples in the media came to the forefront during the year, with two newspapers publishing cartoons playing on racist stereotypes aimed at disparaging a programme to provide breakfasts to children in schools. The cartoons were condemned by many Māori.¹² However, New Zealand's newly-appointed Race Relations Commissioner, Dame Susan Devoy, while describing one of the cartoons as "insensitive", "insulting" and "offensive", stated that it was not racist.¹³ The appointment of Dame Susan, a former squash champion, to the post of Race Relations Commissioner was heavily criticised by Māori given her lack of understanding of the Treaty and issues affecting Indigenous peoples.¹⁴

Legislative reviews

In 2013, the government began consultations on proposed changes to two pieces of legislation of importance to Māori. The Māori Community Development Act 1962 governs the structure and operation of the NZMC, amongst other matters. Under the Act, the NZMC has responsibility for discussing the social and economic advancement of Māori, promoting the well-being of Māori and collaborating with government departments in the areas of employment, education, training, housing and health. The NZMC played a pivotal role in securing important gains for Māori in the late 1980s and early 1990s through landmark litigation.¹⁵ In recent decades, however, its role has waned with the rise in prominence of *iwi* organisa-

tions, the 2012 freshwater litigation being a notable exception. The government's discussion paper suggested that the NZMC could be refocused to concentrate "on social and economic issues that impact on community development for all Māori".¹⁶

The government also released a discussion document on the Te Ture Whenua Māori Act 1993 (the Māori Land Act), which is the primary legislation governing the administration of Māori land. The current legislation imposes cumbersome requirements on Māori landowners wishing to use their land. Accordingly, the government sought feedback on five propositions: that the utilisation of Māori land should be able to be determined by a majority of engaged owners; that all Māori land should be capable of utilisation and effective administration; that Māori land should have effective, fit for purpose, governance; that there should be an enabling institutional framework to support owners of Māori land to make decisions and resolve any disputes; and that excessive fragmentation of Māori land should be discouraged.¹⁷ The results of the public consultations on both pieces of legislation are yet to be reported.

Treaty settlement progress

Progress in the settlement of Māori claims regarding historical Treaty breaches continued in 2013, although at a slower pace than 2012. One group signed an Agreement in Principle and another a record of the agreements reached to date.¹⁸ Two groups agreed that their deeds of settlement were ready for presentation to their members for ratification,¹⁹ eight signed deeds of settlement with the Crown,²⁰ a number had their deeds amended and two had the legislation giving effect to their settlements enacted.²¹ The importance of the Treaty settlement process has been underscored by the Waitangi Tribunal, which declined to use its binding powers to require the government to return specified lands to *iwi* on two occasions in 2013. Although in each case the Tribunal found that the applicants had well-founded claims for redress, it preferred the matter to be addressed as part of wider settlement negotiations. ○

Notes and references

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- 12 See eg Joelle Dally "'Racist" cartoon slammed' 30 May 2013 <http://www.stuff.co.nz/marlborough-express/news/8736353/Racist-cartoon-slammed> (last accessed 6 February 2014).
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- 15 See, for eg, *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641.
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Fleur Adcock (of Ngāti Mutunga and English descent) is a Research Associate with the National Centre for Indigenous Studies at the Australian National University. Email: fleur.adcock@anu.edu.au



EAST &
SOUTH EAST ASIA

JAPAN

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

Okinawans, or Ryūkyūans, live in the Ryūkyū Islands, which make up Japan's present-day Okinawa prefecture. They comprise several indigenous language groups with distinct cultural traits. Although there has been some migration of ethnic Japanese to the islands, the population is largely indigenous Ryūkyūans. Japan forcibly annexed the Ryūkyūs in 1879 but later relinquished the islands to the US in exchange for its own independence after World War Two. In 1972, the islands were reincorporated into the Japanese state and Okinawans became Japanese citizens although the US military remained. Today 75% of US forces in Japan are in Okinawa prefecture, which constitutes only 0.6% of Japan's territory. 50,000 US military personnel, their dependents and civilian contractors occupy 34 military installations on Okinawa Island, the largest and most populated of the archipelago. The island is home to 1.1 million of the 1.4 million people living throughout the Ryūkyūs. Socio-economically, Okinawa remains Japan's poorest prefecture, with income levels roughly 70% of the national average and unemployment at double the national average.

The Japanese government has adopted the UNDRIP (although it does not recognize the unconditional right to self-determination). It has ratified CERD, CEDAW and the CRC. It has not ratified ILO Convention 169.



The Ainu

2013 marked the 5th anniversary of the recognition of the Ainu as an indigenous people by the Japanese Diet. While 2013 saw some significant developments

related to the Ainu people, some members of the Ainu community remain critical of the slow pace of progress on important issues.

Government initiatives on public awareness of the Ainu

Given the five-year mark since its official recognition of the Ainu, the Japanese government conducted a survey to assess knowledge and awareness of the Ainu among the general population. The survey asked respondents about their knowledge of the Ainu and their cultural traits, along with their awareness of recent government efforts regarding the promotion of Ainu culture. According to the results released in October, while a large majority (95.3%) of respondents stated that they knew about the Ainu, 33.5% of respondents believed this people remained “unequal due to prejudice and discrimination”.² At the same time, very few respondents claimed to know about the government’s efforts described in the survey. Although the survey provides some insight into awareness of the Ainu among the general population, there has been some criticism of the fact that the survey was limited to traditional culture and ignored indigenous rights. While it is not clear how the results of this survey will shape future policy, it is clear that significant work still remains.

The Japanese government has also launched efforts to promote awareness of the Ainu through various media. In cooperation with various Ainu organizations, local government bodies and universities, the Comprehensive Ainu Policy Office of the central government was involved in establishing the “*Pirka Kanpi* (Beautiful Letter)” Facebook page³ in May to publicize Ainu culture online using social media. The Comprehensive Ainu Policy Office also worked with various local governments, universities, Ainu organizations, public associations and private companies to launch the “*Irakarapte Campaign*” in August.⁴ This three-year campaign uses the Ainu greeting in such media as online videos, television commercials and advertising on store receipts both as an opportunity to teach people about Ainu culture and as a branding effort for Hokkaido tourism. While the endeavor is innovative both in its use of media and its collaboration among various stakeholders, the success of the campaign and its actual effect on the welfare of the Ainu people remain to be seen.

At the meeting of the Council for Ainu Policy Promotion in September, the Japanese government announced its intention to complete the “Symbolic Space

for Ethnic Harmony” in time for the Tokyo Olympics in 2020. First proposed by the Advisory Council for Future Ainu Policy in 2008, the space is to be located in Shiraoi, Hokkaido and will include a national museum, a park serving as a restoration of the traditional Ainu living space, and a location to consolidate and memorialize Ainu ancestral remains that cannot be returned to their rightful families. There is thus some hope that the Tokyo Olympics will provide a strong impetus for Japan to make progress on Ainu issues. At the same time, others express pessimism that such efforts will only be for show and that there will continue to be a lack of any real progress.

Slow progress in return of ancestral remains

Indeed, one of the main issues of contention for many Ainu continues to be the slow progress and resistance on the part of universities to the return of ancestral remains stolen from burial sites under the guise of research, despite repeated efforts by Ainu representatives stating the matter’s urgency and high priority.⁵ In June, the working group under the Council for Ainu Policy Promotion released the results of a survey initiated in 2011 examining the status of Ainu ancestral remains held by universities. The report found that 1,635 Ainu remains were currently being held by 11 universities across Japan. Hokkaido University holds 1,027 remains and is subject to an ongoing lawsuit by Ainu plaintiffs demanding their return.⁶ Tokyo University holds 198 remains and, in October, following the release of the report, rebuffed a request from an Ainu delegation seeking to discuss the issue. Many Ainu activists believe that government overtures regarding the possibility of continued research or the need for DNA testing to identify remains mean that the creation of the aforementioned memorial within the “Symbolic Space” will serve only to perpetuate the desecration of their ancestors. The fact that these “efforts” are met with such suspicion demonstrates their significant divergence from Ainu expectations and demands.

The Okinawans

The presence of US military forces remains the central source of Okinawans’ most pressing problems. 2013 saw the continuation of the now 18-year-long

struggle to force the Pentagon to make good on its promise to close an airbase dangerously located in densely-populated Ginowan City, and to prevent the US and Japanese governments' plan to construct a massive new air and naval complex at Cape Henoko.

The year began with some semblance of justice. In March, two US Navy personnel were sentenced to 10 years in a Japanese prison after admitting to the October 2012 rape of an Okinawan woman. Historically, US service members who commit crimes in Okinawa have avoided or faced lesser punishment because of military efforts to shield them from local prosecution.

The impact of crime and the other everyday effects of US military presence on Okinawans' sense of security points to the broader reasons behind the fierce resistance to the proposed new military complex. If realized, it will be the first major military base built in Okinawa in 50 years.

Background to the Futenma-Henoko Issue

In apparent response to intense public anger at the kidnapping and rape of a 12-year-old Okinawan girl by three US service members in 1995, the US and Japanese governments announced an extensive plan to “consolidate” US military presence in Okinawa. Central to the agreement was the closure of the Marine Corps' Futenma Air Station, located in the middle of crowded Ginowan City. However the US made Futenma's closure conditional on the construction of a new air base, eventually slated for rural Henoko Bay. Construction and operation of the new base would threaten the habitats of several critically endangered terrestrial and marine species as well as the safety and quality of life of local residents (see *The Indigenous World 2011, 2012, 2013*).

The popular non-violent campaign aimed at stopping construction of the new base has so far prevented any genuine progress. In the meantime, the Pentagon insists on keeping Futenma operating.

Recent developments

In March, the Japanese government submitted an application to Okinawa's governor seeking permission to use landfill for the new airbase and naval facility.

Under Japanese law, the governor must approve any landfill projects in prefectural waters.

The Japanese government also warned members of the Nago Fisheries Cooperative Association (whose fishing area includes the waters around Cape Henoko) that the only path to financial compensation for losing access to their fishing rights would be to endorse construction of the new base. In a blow to the opposition, the fishermen's cooperative voted 88-to-2 in favor of the project in March.

In April, the US and Japan announced with great fanfare a timeline for returning approximately 1,000 hectares of military-occupied land. This includes the considerable land occupied by Futenma base but, because its closure presumes the completion of the Henoko military complex, Futenma's closure is estimated as 2022 at the earliest.

Although any return of military-occupied lands is seen as a positive step by Okinawans, other developments over the past year highlight the long-term ecological problems associated with military operations and the degree of cleanup necessary when bases are closed. In June, laborers digging up a soccer pitch that was once within Kadena Air Base uncovered 22 barrels containing traces of chemical herbicides found in Agent Orange, the toxic defoliant used during the Vietnam War. Dioxin in nearby water tested 840 times above standard safety limits. The discovery provides evidence that the US stored Agent Orange in Okinawa, despite the Pentagon's repeated denials of this, most recently in a report released in February. In light of this and several other discoveries of toxic contamination in former base lands in 2013, concerns over the effects of expanding US military operations into Henoko and Oura Bays are compounded due to the fact that, under its basing agreement with the Japanese government, the US is not responsible for the remediation of pollution on or near its bases.

Amidst these reminders of the long-term effects of US military presence, the crash of a military helicopter just 2 km from a residential area on August 5 underscored the immediate dangers posed by the military's daily operations. Indeed, the crash happened during a week of heated protests over the potential for more aircraft accidents because of Futenma's delayed closure. Residents blocked the entrance to Futenma Air Station to oppose the Pentagon's deployment of 12 more of its crash-prone Osprey MV-22 aircraft to Futenma.

2013 ended with mass protests, this time against the administration of Okinawa's governor. Although politically conservative, Governor Hirokazu Nakaima had opposed the new base at Henoko, arguing instead for the swift closure of

Futenma and the relocation of its operations outside of Okinawa altogether. In December, however, after a promise from the central government of a massive economic stimulus package for Okinawa and citing heightened tensions on the international front, Nakaima approved the central government's application to use landfill in Henoko and Oura Bays. In theory, this provides the legal justification for construction to begin. However, the widespread demonstrations in reaction to the governor's reversal suggest that the nearly two decades of sustained resistance to the project are far from over. ○

Notes and references

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- 2 Detailed survey results can be found online at <http://www8.cao.go.jp/survey/h25/h25-ainu/index.html> (in Japanese only).
- 3 <http://www.facebook.com/pirkakanpi>
- 4 <http://www.irankarapte.com>
- 5 See report on Japan from *The Indigenous World 2013* for details.
- 6 Again, further details are in the report from *The Indigenous World 2013*.

W. Lonnie Ding-Everson is the author of the section on the Ainu. He is the founder of AINU PRIDE PRODUCTIONS (<http://www.ainupride.com>) and a former Ainu language instructor for the Foundation for Research and Promotion of Ainu Culture's language program in Tokyo.

Kelly Dietz is the author of the section on the Okinawans. She is assistant professor in the Department of Politics at Ithaca College in New York.

CHINA

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

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

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

In 2013, the national slogan of the "Chinese Dream", as espoused by China's president Xi Jinping, continued to be an important theme for the government's policy directives and program implementation. The chairman of China's Ethnic Affairs Commission, Wang Zhengwei, described this dream slogan as "national

rejuvenation, improvement of people's livelihoods, prosperity, construction of a better society and military strengthening.”¹

The proposal for “national rejuvenation” and other key themes in the slogan was quoted and promoted by the Chinese media and government officials. As such, observers' attention is drawn to the reports on the Chinese government's implementation and “successful results” of its ethnic minority policies.²

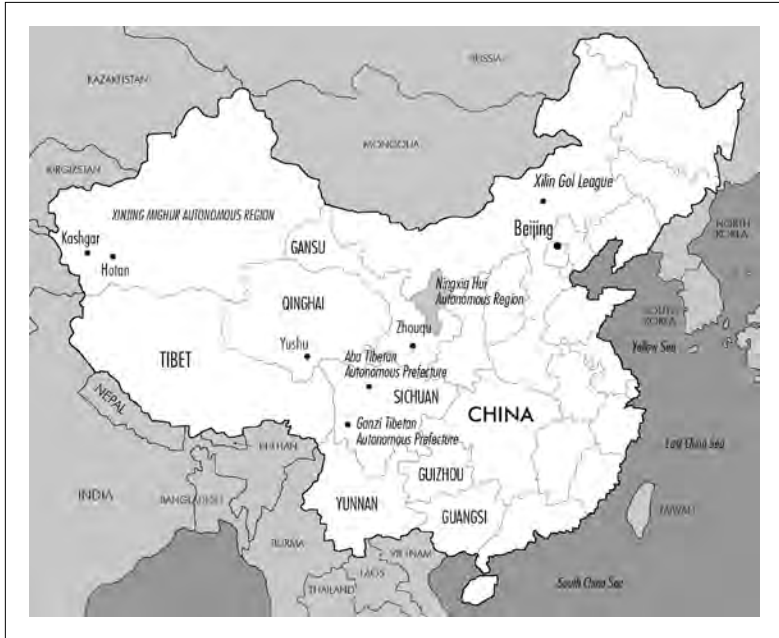
In a press interview in March 2013, Wang Zhengwei elaborated on this theme and said, “For the ‘Chinese Dream’ at its roots is the common dream for China's 56 ethnic groups. It is the dream for peoples in ethnic minority regions to consolidate together with the whole nation, to foster economic development and build up our middle-class society. It is a dream of unity for the 56 ethnic groups working together as brothers within our big family.”³

This media statement by Wang was a significant pronouncement and upheld the “Chinese Dream” as the core concept for China's state policy directives on ethnic affairs last year. It was applied to promote and develop the local economy in ethnic minority regions.

To achieve the goal of the “Chinese Dream” with regard to ethnic minority groups, the national government trumpeted two key programs in 2013. One was the continuation of the “Poverty Alleviation through Economic Development” program, and the other stressed the promotion of “National Unity for Ethnic Minority Peoples”.⁴

The Chinese government touted the fact that it had commissioned poverty alleviation works and economic development in ethnic minority regions, with a mandate to step up the pace to remove poverty from these regions, and bring them closer to middle-class society.

The focus on “Poverty Alleviation” was discussed at China's fourth national work conference on “pairing assistance” projects to support the Xinjiang Uighur Autonomous Region, held in Beijing in September.⁵ Yu Zhengsheng, a top government adviser, said that the development and stability of Xinjiang was still facing challenges, and that the autonomous region still needed aid across the nation. According to Yu, “The central government will take measures that include improving employment and education to boost the development of the Xinjiang region. More job opportunities should be created for people in Xinjiang, especially for those who live in the southern part of the region.”



Yu and other officials outlined a number of policies for Xinjiang, including support for education, especially bilingual and occupational training, improving local people's abilities to start businesses, encouraging private investments and encouraging people from the region to seek jobs in other parts of China.

To promote "National Unity for Ethnic Minority Peoples", the Chinese State Council has promulgated the "Commendation for Ethnic Unity and Progress of Model Units and Individuals".⁶ Five commendation ceremonies have been held since 1988, as the national government regards them as encouraging ethnic unity and positive actions through society. The commendation program has been codified and standardized in order to be able to assess the progress made towards ethnic unity. Overall, 35 "model units" in China were selected for commendations in 2013. Some of these "model units" were based in villages, schools and enterprises in ethnic minority regions, others were prefecture and province-level government agencies. They were lauded with citations for good results in promoting ethnic unity.

Protests by ethnic minorities

In contrast to the touted results of the Chinese government's tandem programs of "Poverty Alleviation through Economic Development" and "National Unity for Ethnic Minority Peoples", observers and the media reported many incidents of protest and public outcry on the part of ethnic minority groups throughout the year. These incidents revealed how ethnic minority and human rights were being sacrificed in the Chinese government's drive to preserve social stability and ethnic unity. Observers of Chinese ethnic affairs pointed to four main areas of conflict and protest on the part of ethnic minority peoples in 2013.

Violent suppression of protests

In the aftermath of the large-scale riots in Urumqi, Xingjiang's capital city on 5 July 2009, the Chinese national government's crackdown and violent suppression was aimed at "preserving the social stability of Xinjiang". However, the riots and protests spread throughout the regions. Between March and December 2013, disturbances broke out with increasing frequency. The turmoil of violent incidents occurred in Kashgar, Hotan and Kurla in south Xinjiang, as well as in Turfan in east Xinjiang. These demonstrated the failure of the government's policy to preserve social stability.

In earlier decades, the government's policy towards ethnic minority peoples was more benign, and violent suppression was less frequent. However, the Chinese government has played up the portrayal of the Muslim Uighur people of Xinjiang as having direct links to "international terrorist groups". Under such implications, the national government has applied violent suppression and crackdown tactics in the region. The authorities are upholding the view that the main danger for Xinjiang comes from its "separatist movement and illegal religious activities". This logic effectively splits the two ethnic groups apart – Xinjiang's original inhabitants and the immigrant Han Chinese, creating antagonism and confrontation between them.

Land grabbing

Many disputes and disturbances of recent years in various regions of China have arisen from land grabbing. Most of the trouble stems from local governments' forced expropriation of land from people who have lived there for generations, for development projects and in the name of public interest. In other cases, ethnic minority people have been swindled by government officials, using deceit and fraudulent practices, into selling their land at low prices. Other cases have involved the illegal expropriation of land by business conglomerates.

In the Inner Mongolia Autonomous Region, a major riot broke out over land disputes in May 2011, and throughout 2013 there were many protests and violent disturbances all over Inner Mongolia. One incident occurred in the region's Ongnuud Khoshuu county of Chifeng City in May 2013, with skirmishes between ethnic Mongolians and Han Chinese due to disputes over the terms of land rental.⁷ Another incident occurred in the prefecture of Xilin Gol League in July last year, where a violent protest was led by dozens of Mongolian pastoralists.⁸ The herders in the area said their traditional pasturelands had been occupied illegally by powerful officials and businessmen.

The land dispute problems in the Inner Mongolia Autonomous Region have revealed the biased and unjust treatment of local ethnic minorities by the government. Some cases have involved mining and exploitation of natural resources, which often does not provide any economic benefits to local residents, frequently resulting in pollution and destruction of the environment. The disputes and protests by the ethnic Mongolians were their only way of seeking justice and fair compensation.

Restrictions on freedom of religion, languages and traditional customs

While enforcing policies of suppression to preserve social stability, the Chinese government also places restrictions on ethnic minority peoples' religious activities, use of mother tongue and practice of traditional customs. For the troubled Xinjiang regions, the authorities continue to view the Muslim Uighurs and other ethnic groups with suspicion and distrust. Measures and laws have been imposed

to limit Muslim religious and traditional practices. For example, according to their customs, Muslim women should wear a veil in public to cover their head and parts of the face. The Chinese government, however, has banned such practices. Muslim men growing beards or fasting during Ramadan has also been prohibited.⁹ Other measures include banning bilingual education in schools, and the implicit rule of “not hiring ethnic minority persons for government employee jobs”.

One main aim of government policies in recent years has been the drive to open up the hinterland regions of China for economic development, and to raise the living standards of the ethnic minority peoples. However, under such government-directed initiatives, most of the economic benefits do not go to the local inhabitants, far less to the ethnic minority groups of the region. Instead, new restrictions have been imposed on them and they have come under security surveillance. As mentioned above, suppression of expressions of discontent has resulted in even more frequent strife and protests.

Tourism development

Over the past decade, China’s tourism industry has seen burgeoning growth in the domestic market. Ethnic minority communities and enterprises are being attracted into the growing tourism business in order to boost revenues for their regions. However, uncontrolled tourism development has led to a depletion of resources and over-development of the land for construction and infrastructure projects. Overall, the current model of China’s tourism industry has had serious negative impacts, among them a form of exploitation that could be termed “neo-colonialism by tourism”.

Along with the incursion of commercialism has come damage to and corruption of the traditions and culture of ethnic minority groups. Most well-known is the case of the Naxi traditions and culture in the Old Town of Lijiang of Yunnan Province. The Old Town of Lijiang was the first in China to be selected as a UNESCO World Heritage site based on the cultural heritage, living traditional practices and town construction of the indigenous inhabitants, the Naxi people. However, unchecked economic development and commercialization of Lijiang’s Old Town has led to severe destructive impacts in recent years. UNESCO has been closely monitoring the situation in Lijiang, as the prevalent commercialization of its Old

Town has led to doubts as to whether it will maintain its status as a World Heritage site.

Similar developments are also taking place in other old towns and ancient city quarters throughout China, as they come under assault from economic development and tourism. In the Tibet region and neighboring provinces inhabited by Tibetan communities, the Chinese government has undertaken a number of construction and public infrastructure projects. Most of the new buildings are no longer in the Tibetan traditional style. In 2013, the attention was on Barkhor Street in the Tibetan capital of Lhasa, which is one of the few remaining urban quarters with its original architectural and cultural elements still well preserved.

It is a popular destination for local people as well as for tourists. However, projects have been initiated to demolish old buildings for new construction and the Chinese government has not respected the wishes of local residents or recognized their rights. As a result, many local Tibetan residents have been forcefully resettled elsewhere.¹⁰

The new development of Barkhor Street is to meet the demands of tourists and operators of tourism businesses. Concerned groups consider this to be a very worrying trend, as such an approach is directly threatening the culture and traditional practices of ethnic minority people.

In their path to achieving the “Chinese Dream”, government officials have found that the quickest and most expedient way is to enhance prosperity, and thus obtain derived benefits. Among these is the supposed effect of preserving social stability, which has been one of the major aims of ethnic policies in recent years. However, these aims and policies are pervaded with Han Chinese chauvinism, which is forcing ethnic minorities to conform to the viewpoints and practices of the majority population, which do not recognize or respect the culture and traditions of ethnic minority peoples. The Chinese government is only focusing on short-term economic gains, while violating and sacrificing the rights of the ethnic minority peoples. The result of this policy is the exact opposite of social stability: it is causing more trouble and unrest in ethnic minority regions. ○

Notes and references

- 1 Interview with Wang Zhengwei as reported by Xinhua News Agency, 19 March 2013
- 2 Report on “Important development and news of the year in ethnic minority regions”, China Minzu Daily Newspaper, 14 January 2014, headline front page

- 3 Interview with Wang Zhengwei op.cit.
- 4 "Poverty Alleviation Projects", China Agriculture News Network, 30 December 2013 (<http://www.ntv.cn/a/20131230/15156.shtml>)
- 5 Xinhua News Agency, 24 September 2013
- 6 China Minzu Daily Newspaper, 5 March 2013, headline front page
- 7 News report by Yang Fan on Radio Free Asia, 6 May 2013 (<http://www.rfa.org/mandarin/yataibaodao/shaoshuminzu/nm-05062013101325.html>)
- 8 News report by He Ping at Radio Free Asia, 22 July 2013 (<http://www.rfa.org/mandarin/yataibaodao/shaoshuminzu/jz-07222013150056.html>)
- 9 News report by Yang Fan on Radio Free Asia, 13 November 2013 (<http://www.rfa.org/mandarin/yataibaodao/shaoshuminzu/nu-11132013145707.html>)
- 10 News report by Dan Zhen on Radio Free Asia, 13 May 2013 (<http://www.rfa.org/mandarin/yataibaodao/shaoshuminzu/dz-05132013163317.html>)

Huang Chi-ping is an associate professor at the Ethnology Department of the National Cheng-chi University in Taiwan, where she is teaching and doing her research on the Yi group of China's ethnic minority peoples. Her field of speciality is *Ethnography and Ethnic Literature*. She is serving as editor of the "Aboriginal Education World" journal. Her article was translated from Chinese by **Jason Pan**, Director of the indigenous rights activist organization, TARA Ping Pu, and a former executive council member of the Asia Indigenous Peoples Pact (AIPP). Jason is an indigenous Pazeh (one of the lowland Ping Pu groups) of Liyutan village, Miaoli County.

TAIWAN

The officially recognized indigenous population of Taiwan¹ numbers 534,561 people (2013), or 2.28% of the total population. Fourteen indigenous peoples are officially recognized. In addition, there are at least nine Ping Pu (“plains or lowland”) indigenous peoples who are denied official recognition.² Most of Taiwan’s indigenous peoples originally lived in the central mountains, on the east coast and in the south. However, nearly half of the indigenous population has migrated to live in urban areas.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and very little political or economic influence. The Council of Indigenous Peoples (CIP) is the state agency responsible for indigenous peoples. A number of national laws protect their rights, including the Constitutional Amendments (2000) on indigenous representation in the Legislative Assembly, protection of language and culture, and political participation; the Indigenous Peoples’ Basic Act (2005), the Education Act for Indigenous Peoples (2004), the Status Act for Indigenous Peoples (2001), the Regulations regarding Recognition of Indigenous Peoples (2002) and the Name Act (2003), which allows indigenous peoples to register their original names in Chinese characters and to annotate them in Romanized script. Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of laws guaranteeing the rights of indigenous peoples, have stymied progress towards self-governance.

Since Taiwan is not a member of the United Nations it has not been able to vote on the UN Declaration on the Rights of Indigenous Peoples, nor to consider ratifying ILO Convention 169.

New start for indigenous television station

The Taiwan Indigenous Television (TITV) station commenced a new chapter in 2013 when it began preparations for its own independent operation. Changes

in government media policy have allowed TITV to break away from the Public Television Service consortium, which is the public media broadcasting institution in Taiwan.³

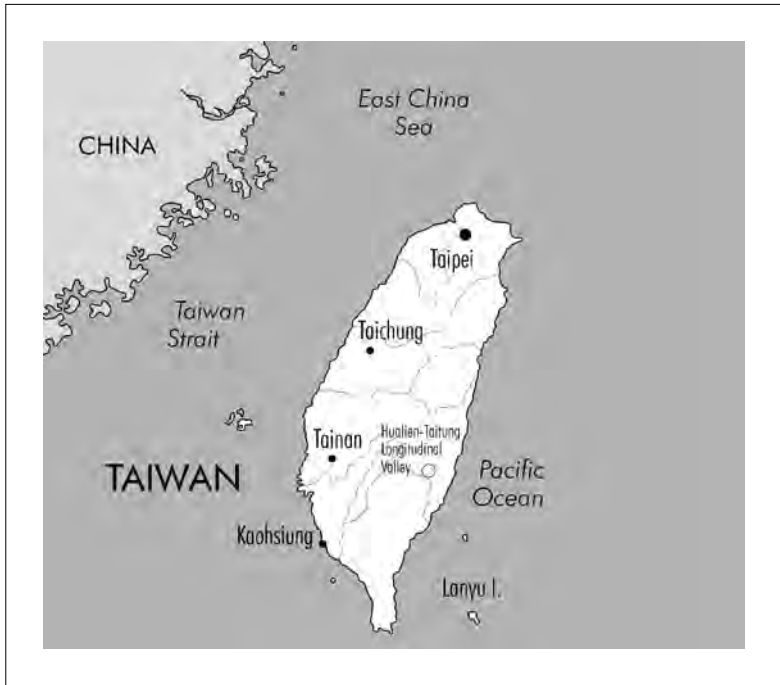
After operating under the Public Television Service for 10 years, TITV will now be managed by the quasi-independent Indigenous Peoples' Culture Foundation. According to the Foundation's officials, the move will enable TITV to return to its indigenous roots. Mayaw Biho, the new TITV general manager, who is from the indigenous Amis group, said he will focus on the three main themes of "Returning Home", "Self Confidence" and "Sharing" for the next three years. He explains that TITV's aim is to preserve the culture and traditions of local indigenous communities, and to promote the healthy development of all indigenous cultures in Taiwan.

Independent operation will improve services to indigenous communities and propel Taiwan's indigenous culture onto the world stage so that it can thus become an important outlet for Taiwan's diverse cultures in relation to the international community, station officials asserted.

Over the past decade, TITV has become a very important channel for communication and interaction between the local communities and their diverse indigenous cultural traditions. For TITV news programming, Mayaw Biho emphasized the need to advance the viewpoints and values of indigenous peoples and, in order also to attract a non-indigenous audience, there will be presentations on the current socio-economic situation of indigenous peoples and indigenous traditional knowledge.

Restoration of electoral rights

The electoral rights and political representation of indigenous peoples in certain special districts that were previously subsumed into urban cities were restored in 2013 through amendments to the Local Government Act made by Taiwan's Legislature during the year's legislative session.⁴ It restored the rights they were deprived of in 2010 when the government elevated Taiwan's five main cities to "five special municipalities" (Taipei, New Taipei, Taichung, Tainan and Kaohsiung) for the highest level of political administration. At the time, a number of indigenous districts were incorporated into these five cities, the boundaries and area of administration of which were greatly expanded at the expense of less well-off rural counties (see *The Indigenous World 2010*). However, as



constituents in these indigenous districts became subsumed into the new city governments, they lost the right to elect their own indigenous representatives.

The approved amendment recognizes indigenous electoral rights and limited forms of “local autonomy” for these indigenous districts. It also recognizes the need to establish district offices and district councils with elected indigenous representatives.

The amendment also gave a legal basis for these districts to receive funds allocated by the central government, which allows them to exercise their limited autonomy by implementing their own policies and programs. Although indigenous electoral rights and government funding channels have now been restored, opposition parties still feel that the Local Government Act, on the whole, acts as a constraint to indigenous peoples’ right to autonomy.

Court decision on traditional hunting and firearms

A decision in a controversial court case last year generated a heated public debate on the legality of firearms ownership, the preservation of traditional lifestyles, and the need to protect wildlife from hunting for sport and profit. The case centered on an indigenous man named Mr. Tsai, from the Paiwan community in southern Taiwan's Pingtung County. He was charged with illegal possession of three homemade rifles.

After judicial proceedings and guilty verdicts in the lower courts, the defendant and his legal team continued their appeals, and the case went all the way to Taiwan's Supreme Court. Near the end of last year, Taiwan's Supreme Court overturned the earlier guilty verdict with a ruling in favor of Tsai, citing indigenous peoples' exemption from the firearm laws.⁵ The Supreme Court exempted indigenous individuals from illegal possession of the two main types of hunting firearms traditionally used in Taiwan: muzzle-loading rifles and breech-loading rifles.

Judges also cited the Indigenous Basic Act, according to which the government should protect indigenous cultures and customary practices, along with the exemption of people of indigenous descent from the firearm laws.⁶

Indigenous activist groups have said that the ruling will have a very important impact as it has clarified contradictions in existing legislation with respect to firearms, wildlife hunting and the rights of indigenous peoples to practice their traditional hunting lifestyle. They have also pointed out the need to establish a suitable mechanism for regulating hunting practices and for revitalizing a traditional hunting culture and ethical codes of conduct.

Animal conservation groups and other critical voices, however, have decried the court decision. They claim that it will lead to indiscriminate hunting of wild animals for sport and profit (for sale to restaurants), and also to more illegal practices detrimental to the natural environment.

East coast tourism resort halted

A legal dispute in Taiwan's east coast county of Taitung has seen environmental groups working in concert with indigenous communities. Together they are fighting the business interests that have plans to develop a scenic shoreline in the

form of a tourist resort. The Miramar project has met with vigorous protests over the last few years (see *The Indigenous World 2013*). A ruling by Taiwan's Supreme Court last year halted the project and this is considered a victory for the preservation of the natural environment.⁷

The case began in 2003 when the Taitung County Government gave initial approval to the BOT (build-operate-and-transfer) proposal from the Miramar Hotel Resort Company, which was looking to develop a six-hectare area of shoreline located in Beinan Township. The county government rented out the land to the Miramar Company.

However, the procedure required an environmental impact assessment, which was not done properly. The district court had already ruled against the company several times for violating the prescribed procedure for conducting environmental impact assessments, and also found irregularities in the issuing of permits for land development and construction. Despite the rulings, Taitung County Government continued to defy the court orders, and pushed ahead with the company's development and construction plans. This caused much furor, and led to mounting opposition from environmental groups and local indigenous communities.⁸

The coalition opposing the project says the site is on one of the few remaining sandy shores in Taiwan's east coast region. The project site is also a traditional territory for the fishing and seafaring activities of the area's indigenous communities. With the favorable ruling and the project halted for now, the coalition is citing this case as a good model of cooperation between environmental groups and indigenous communities.

Ping Pu exhibition and cultural events

For the lowland Ping Pu indigenous peoples, 2013 was marked by a number of significant cultural and educational events. Still being denied their inherent status as indigenous people by the Taiwanese government, the lowland Ping Pu groups continued to organize protests while actively building up and consolidating their communities' cultural, educational and language programs.

In collaboration with researchers and curators, Ping Pu indigenous elders and activists provided a great deal of material and assistance for a special museum exhibition. "Seeing Ping Pu: The History and Culture of the Plains Indigenous

Peoples in Taiwan” was a major exhibition at the National Museum of Taiwan History (NMTH) in Tainan City, which ran from March to August.⁹ Besides items contributed by Ping Pu organizations and domestic institutions, the exhibition also received exhibits from collections in Japan’s National Museum of Ethnology and the Tenri University Sankokan Museum.¹⁰

The exhibition was launched alongside a major academic conference on “Ethnic History, Culture and Identity: Taiwan’s Plains Indigenous Peoples”. In September, the exhibition took to Japan for a three-month run.

The year’s events placed the Papora community, one of central Taiwan’s Ping Pu groups, in the limelight of the national arts and cultural scene. A theatre show on the “Dadu King”, the 17th century Papora Warrior-King, received rave reviews for its staged tour in several cities.¹¹ The show was a joint effort between Papora community groups, students from the Department of Drama Creation and Application of the National University of Tainan, and the National Museum of Taiwan History.

At the end of the year, a historical novel centered on the Papora people was published in Taiwan. The book, “Dadu Town, Come Back”, was written by Chao Hui-lin with the help of Papora cultural historian Chang Li-peng, who conducted interviews with elders and research.¹² For the first time, history is being told from the Ping Pu people’s perspective, describing the sorrowful experience of subjugation and conquest by colonial regimes over the past 400 years. There is interest in turning the book into a film and a theatre production, and there are plans to publish an English translation. ○

Notes and references

- 1 The currently ruling Kuomintang (KMT) party uses the “Republic of China”. (*Note by the editor:* The People’s Republic of China does not recognize the existence and political independence of Taiwan or the “Republic of China”. Throughout this article, Taiwan is therefore solely used to refer to a geographical region, without taking any position regarding the political status of the island).
- 2 The officially recognized groups are: the Amis (also known as Pangcah), Atayal (also called Tayal), Paiwan, Bunun, Puyuma (also called Pinuyumayan), Tsou, Rukai, Saisiyat, Sediq (also called Seediq), Yamei (also called Tao), Thao, Kavalan, Truku and Sakizaya. The nine non-recognized Ping Pu groups are: the Ketagalan, Taokas, Pazeh, Kahabu, Papora, Babuza, Hoanya, Siraya and Makatao.
- 3 *Taiwan Lihpao*, 22 June 22 2013. “TITV independence operation, an opportunity or end of the road?”

- 4 *Liberty Times*, 11 Nov. 2013. "Indigenous electorates of Five Special Administration Cities will hold elections next year"; *Taiwan Times*, 6 Dec. 2013. "Indigenous District constituents will return to vote in next year's 7-in-1 elections".
- 5 *Chinatimes*, 17 Dec. 2013. "Indigenous hunter found not guilty, Court ruling upholds preservation of traditional culture".
- 6 *Taipei Times*, 18 Dec. 2013. "Paiwan man wins rifle battle in court" .<http://www.taipeitimes.com/News/taiwan/archives/2013/12/18/2003579289>
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- 8 *Taipei Times*, 21 April 2013, "Groups march against Taitung Miramar resort". <http://www.taipeitimes.com/News/taiwan/archives/2013/04/21/2003560342>
- 9 *Taipei Times*, 1 April 2013, Feature: "In Plain Sight". <http://www.taipeitimes.com/News/feat/archives/2013/04/01/2003558493>
- 10 *Tainan City Government News Bulletin*, 22 March 2013. "Seeing Ping Pu indigenous peoples' special exhibition showcases Taiwan's cultural diversity".
- 11 *Chinatimes*, 24 May 2013. "Legend of Dadu King tells story of Papora rising up against oppressors"; *Taipei Times*, 6 June 2013. "Unsung hero takes the stage". <http://www.taipeitimes.com/News/feat/archives/2013/06/06/2003564080>
- 12 *Liberty Times*, Dec. 18, 2013. "Writing the book 'Dadu Town, Came Back', Chao gave voice to Ping Pu Indigenous Peoples".

Professor Pasuya Poiconu is from the indigenous Tsou people of central Taiwan. He teaches at the Taiwan National Chung Cheng University and his research focuses on indigenous literature and mythology. He has published a number of books on these subjects. He was previously the director of the Taiwan National Museum of Prehistory and is currently also serving as a committee member of the government agency responsible for civil service examinations. This article was translated from Chinese by Jason Pan, an indigenous Ping Pu Pazeh writer and journalist from Liyutan village of Central Taiwan. Jason is the Director of the indigenous rights activist organization, TARA Ping Pu, and a former executive council member of the Asia Indigenous Peoples Pact (AIPP).

PHILIPPINES

The official results of the 2010 Philippine national census were released in 2012, putting the country's official population at 92.34 million. The census included an ethnicity variable for the first time but no official figure for the indigenous peoples has yet come out. The country's indigenous population thus continues to be estimated at between 10% and 20%. The indigenous groups in the northern mountains of Luzon (Cordillera) are collectively known as *Igorot* while the groups on the southern island of Mindanao are collectively called *Lumad*. There are smaller groups collectively known as *Mangyan* in the central islands as well as even smaller, more scattered, groups in the central islands and Luzon. There are no marked differences in physical appearance between indigenous peoples and non-indigenous peoples in the country except for small bands of dark-skinned peoples collectively known as the Negrito population. However, what distinguishes indigenous peoples in the Philippines from other segments of the population is that they have retained much of their traditional, pre-colonial culture, social institutions and livelihood practices.

Indigenous peoples in the Philippines generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities or political participation. They are the people with the least education and the least meaningful political representation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can mainly be found in their areas, making them continuously vulnerable to development aggression.

Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA), was promulgated in 1997. The law has been lauded for its support for respect for indigenous peoples' cultural integrity, right to their lands and right to self-directed development of these lands. More substantial implementation of the law is still being sought, however, apart from there being fundamental criticism of the law itself. The Philippines voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but the government has not yet ratified ILO Convention 169.¹



The 2013 Indigenous Peoples' Agenda

In the Philippines, the International Day of the World's Indigenous Peoples 2013 was commemorated with the adoption of an updated Indigenous Peoples' Agenda during a national forum of 80 indigenous peoples from all over the coun-

try.² The participants felt that the issues raised in the 2010 Indigenous Peoples' Agenda had not been adequately addressed by the government. Five themes were identified for the updated agenda: 1. Indigenous peoples' lands, territories, resources and development aggression; 2. Human rights, militarization and peace, 3. The National Commission on Indigenous Peoples (NCIP); 4. Free Prior and Informed Consent (FPIC) and conflicting laws; 5. Social services, post-2015 sustainable development goals, climate change adaptation and disaster preparedness and response measures.³

The forum expressed full support for the Alta Outcome Document agreed upon by indigenous representatives from all over the world at the June Alta Conference, in preparation for the World Conference on Indigenous Peoples (WCIP) in 2014.⁴ The forum was organized by a broad group of indigenous peoples' federations and coalitions in the Philippines: the Cordillera Peoples' Alliance (CPA), Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP), Koalisyon ng mga Katutubong Samahan ng Pilipinas (KASAPI), the Philippine Task Force on Indigenous Peoples' Rights (TFIP), the Philippine UNDRIP Network, and Tebtebba.

Land and resources

There were a few more Certificates of Ancestral Domain Titles (CADTs) awarded in 2013 (7) than in the previous year (2), making a total of 165 CADTs issued in the country so far. The National Commission on Indigenous Peoples (NCIP)⁵ attributed the very slow progress in 2012 to a streamlining of its internal review and approval procedures and, with these improvements, more were thus processed in 2013. Overall though, for indigenous peoples' groups that remain firm in their desire to acquire a CADT (as mandated by the IPRA) in recognition of their ancestral domain, the procedure is still very slow and dozens of applications remain at a standstill. Tenurial security for indigenous peoples through the processing of CADTs and Ancestral Domain Sustainable Development and Protection Plans (ADSDPPs) remains a priority for the NCIP.

Many indigenous peoples are therefore continuing to seek other forms of tenurial security for their ancestral domain, either as an alternative or complementary to the CADT. The momentum for recognition of Indigenous Community Conserved Areas (ICCAs) continued in 2013 after the previous year's Manila Declaration (see *The Indigenous World 2013*). This consensus document empha-

sizes the indigenous peoples' rights to land and resources and to a strengthening of traditional institutions, and it outlines standards for indigenous peoples' communities, NGOs and government regarding ICCAs. In February, the Philippine ICCA Consortium was established with a mandate to implement the Manila Declaration; a few months later, its Steering Committee met for the first time. Given the diversity of indigenous groups in the country, evenness of representation is a challenge but ICCA consortium members remain united by a firm desire for recognition and protection of the ICCAs in their respective areas.

Basic social services

Health

After almost two years of working on formulating this policy, the "Guidelines on the Delivery of Basic Health Services for Indigenous Cultural Communities/Indigenous Peoples" (Joint Memorandum Circular No. 2013-01) was finally signed in mid-2013 by the main government agencies involved – the NCIP, the Department of Health (DOH) and the Department of the Interior and Local Governments (DILG). This aims to ensure that basic health services are extended to indigenous peoples in even the most remote areas in a culturally appropriate manner. Throughout the year, a series of consultations were held with various government agencies that may be involved in the Joint Memorandum Circular's implementation, as part of the process of strategic planning for its implementation.⁶

Social protection and indigenous peoples

The Conditional Cash Transfer (CCT) program of the Philippine government is called the Pantawid Pamilya Program (meaning program to help families cope during bad times). It is a human investment program that provides cash grants to poor households with children 0-14 years old or pregnant women. As of December, Pantawid had reached out to 367,356 indigenous peoples' households, which was around 2.5% of the projected indigenous population according to the Department of Social Welfare and Development (DSWD).⁷ The DSWD intends to take more care in relation to such issues as beneficiaries falsely claiming to be indigenous, the lack of information about this program among indigenous peoples, and the high cost of transport for those living in more remote areas to be

able to avail themselves of the cash. The DSWD had vowed to deliberately target vulnerable groups, which includes indigenous peoples, and was supposed to prioritise them in the first cycles of the program.

Typhoon Haiyan

On 8 November, the most powerful typhoon in recorded history struck the central part of the Philippines. The areas that suffered devastating damage on a large scale were not indigenous peoples' areas, and much needed humanitarian aid and recovery assistance has been generated for them. However, it is estimated that more than 11,000 indigenous families have also been greatly affected, especially in the central islands. Unfortunately, there is a very real danger that, given their small numbers in low-density and isolated areas, indigenous peoples will not be given as much attention or adequate assistance to rebuild their destroyed houses, livelihoods and access to services. In some places, the response was slow simply because local government had little information about the far-flung villages of indigenous peoples.⁹

Representation

The official census results

Typhoon Haiyan illustrated how little official information there is at the national and local government level on the Philippines' indigenous peoples. Several government agencies have cited the lack of accurate data regarding the location and number of indigenous peoples in specific areas as one reason for their inability to extend their services to them. The inclusion of the ethnicity variable in the 2010 national census had produced high hopes that an accurate and total count of their population would finally be generated. When the official census results were released in 2012, disappointingly, they did not include such a count. The NCIP, which previewed the data from the ethnicity variable, stated that it was not comfortable with the results because the numbers came out much lower than expected, at a little over 8 million, or only around 9% of the total Philippine population. The NCIP cited weaknesses in the approach to enumeration, such as an inability or refusal to go to the more far-flung areas and a culturally inappropriate way of asking the questions. For instance, an NCIP official shared the

fact that the enumerator who went to her household did not even ask about ethnicity.⁹

Mindanao peace process

After the signing of the Framework Agreement of the Bangsamoro (FAB)¹⁰ between the Moro Islamic Liberation Front (MILF) and the Philippine government in 2012 (see *The Indigenous World 2013*), the preparation of the Comprehensive Agreement was slated for last year, with its signing in 2014. For this purpose, a 15-member Transition Commission was created, with indigenous peoples represented by a Teduray woman, Froilyn Mendoza. Her inclusion has been cited as one manifestation of innovation in the peace process.

The FAB mentions or alludes to indigenous peoples in three places in the Agreement: that they are free to choose a Bangsamoro identity; that their customary laws will be considered in the Bangsamoro's justice system; and that everyone in the Bangsamoro territory has the right to equal opportunities regardless of ethnicity. The decades-long conflict has predominantly been seen as being between Christians and Muslims, and indigenous peoples whose traditional areas are within the Bangsamoro territory have felt that their voices and rights were not being given consideration. During the preparation of the Agreement's annex on wealth sharing, Mendoza viewed with apprehension the fact that indigenous peoples and their close link to the environment was not mentioned at all. She felt that this appeared to be related to a lack of recognition of indigenous peoples' ancestral domains and their inherent rights therein.¹¹

Elections

Elections for local officials were held in May. This included voting for party lists or political parties intended to give vulnerable or marginalised groups the opportunity to be represented in Congress. There were seven qualified indigenous peoples' party lists of the 111 that participated. Only one of the party lists, ANAC-IP (Ang National Coalition of Indigenous Peoples Action Na!-Indigenous Peoples) managed to get enough votes for a seat. The party nominees were all from the Cordillera. Katribu, another indigenous peoples' party list, cited incidents that

would have had the effect of disenfranchising the voters in indigenous peoples' areas, among them "painfully slow" counting, a breakdown in the automated voting machines, and even a declaration of the failure of the elections. Katribu ranked 59th in terms of number of votes garnered; there are 58 seats in Congress for party lists.¹²

Government and indigenous peoples

The UN Special Rapporteur on the rights of indigenous peoples, James Anaya, produced a report dated 13 July 2013 on the Philippine situation. In his concluding remarks, he notes that the government lacks an overarching indigenous peoples' plan, that there is little integration between agencies, and little participation of indigenous peoples in government programs. He thus recommends formulating an updated agenda, considering a bill to create a department for indigenous peoples, and linking all government programs with a focus on indigenous peoples.

The year saw the constitution of the sixth Commission en Banc of the NCIP, which has seven members (commissioners' terms are for two years). Of the seven members of the fifth commission, six were retained and the new commissioner was designated as the new NCIP Chair. For the first time, there are more female than male commissioners. A new Executive Director was also appointed and, toward the year end, the NCIP initiated mechanisms for ensuring more efficient coordination between the NCIP and projects involving indigenous peoples implemented by NGOs as well as other government agencies. The reviews of these actions are mixed but such initiatives have been appreciated.¹³

Pending bills in Congress

At the year end, Teodoro Baguilat Jr., a member of the House of Representatives who is himself indigenous, initiated a consultation with indigenous peoples' representatives on five bills that would involve or affect indigenous peoples and which he intended to file or support in Congress.¹⁴ Happily, these proposed bills are in line with various calls made in the Philippine Indigenous Peoples' Agenda.

- National Land-Use Act – harmonization of the several, often conflicting, laws on land ownership and usage, including those of ancestral domains;
- Philippine Mineral Resources Act – consideration of mining within the context of protecting indigenous peoples' environment, culture and wealth sharing within their ancestral domains;
- Indigenous Peoples' Education Systems Act – institutionalization of learning systems appropriate to indigenous peoples' cultures;
- Indigenous Community Conserved Areas Act – recognition and protection of areas sacred to indigenous peoples within their ancestral domains;
- Anti-Discrimination Act – inclusion of recognition of discrimination based on one's ethnicity.

The coming year

Working for the passage of these bills, participating in the World Conference on Indigenous Peoples, observing how far the NCIP can go in its improvement and strengthening, emphasizing a greater voice in local government and development projects as a whole, monitoring how the Indigenous Peoples' Agenda is being pursued – these are all challenges facing indigenous peoples over the coming year. ○

Notes and references

- 1 Data in this section are taken from: <http://www.census.gov.ph>, accessed 22 April 2013; and Sabino Padilla, Jr., 2000, *Katutubong Mamamayan*. Manila/Copenhagen: International Work Group for Indigenous Affairs (IWGIA). The 2013 population of the Philippines was projected to be 97.7 million in 2013, according to the government's Commission on Population (see <http://www.philstar.com/headlines/2013/01/03/892745/phl-population-expected-hit-97.7-million-year>).
- 2 "National Forum on Indigenous Peoples and the World Conference on Indigenous Peoples (WCIP 2014)", Quezon City, 7-8 August 2013.
- 3 The Indigenous Peoples' Agenda 2013 can be downloaded from: <http://www.tebtebba.org/index.php/content/270-philippine-indigenous-peoples-agenda>.
- 4 Information about the World Conference on Indigenous Peoples and the Alta Outcome Document can be found at: <http://wcip2014.org/resources>
- 5 The National Commission on Indigenous Peoples (NCIP) is a government agency established in accordance with the Indigenous Peoples' Rights Act (IPRA) of 1997. It is the primary government agency in charge of implementing the IPRA, i.e. formulating and implementing policies, plans and programs for the recognition, promotion and protection of the rights and well-being of indigenous

- peoples. Information on the CADT is taken from the NCIP report “Masterlist of issued CADTs as of December 31, 2013”.
- 6 Bureau of Local Health Development, DOH, “Highlights of the Joint Memorandum Circular [No. 2013-01] on IP Basic Health Service Delivery”, presented at the “National Indigenous Peoples Executive Dialogue”, Quezon City, 10 December 2013.
 - 7 DSWD, “The pantawid pamilya program at a glance”, presented at the “National Indigenous Peoples Executive Dialogue” meeting.
 - 8 See Asian Indigenous Peoples’ Pact (AIPP), “Appeal for support for the indigenous peoples affected by Typhoon Yolanda (Haiyan) in the Philippines” 13 November 2013 (<http://www.aippnet.org/index.php/urgent-appeals/1378-appeal-for-support-for-the-indigenous-peoples-affected-by-typhoon-yolanda-haiyan-in-the-philippines>); and Judy Pasimio with Daryl Leyesa, “Typhoon Yolanda response by Bulig Kababayan-an, Antique province, 18-19 December 2013”. 27 December 2013.
 - 9 As shared by Zanaida Bridiga Pawid, then NCIP Chair during the Foundation of the Philippine Environment’s National-Regional Advisory Committees–Partners Meeting, Quezon City, 20-22 May 2013.
 - 10 Bangsamoro, in the context of the FAB, refers to a proposed autonomous political entity.
 - 11 See Mendoza https://www.facebook.com/permalink.php?id=181675918556499&story_fbid=559761847414569, 18 July 2013; Santos M. Unsad, “ARMM Indigenous peoples’ participation in peace processes”, presented at the “National Indigenous Peoples Executive Dialogue”, Quezon City, 10 December 2013; and Kristian Herbolzheimer, <http://www.c-r.org/comment/peace-times-war#sthash.GcACjYD9.dpuf>, January 2014.
 - 12 See <http://katribu.org/content/katribu-and-partylist-law-lesson-electoral-struggle>; <http://www.rappler.com/nation/politics/elections-2013/28437-party-list-group-best-represents-you>; <http://www.anac-ip.org/official.php>
 - 13 The NCIP held a series of consultation meetings in November-December with other government agencies and NGOs which have IP programs and projects.
 - 14 “National Indigenous Peoples’ Legislative Dialogue”, Quezon City, 9 December 2013.

Maria Teresa Guia Padilla and Portia B. Villarante are members of *Anthropology Watch*, a non-governmental organization (NGO) composed of anthropologists and other social scientists working with and for indigenous peoples in the Philippines. It engages in assistance for land titling, culturally appropriate community development planning, capacity building and advocacy on indigenous peoples’ issues.

INDONESIA

Indonesia has a population of approximately 250 million. The government recognizes 1128 ethnic groups in Indonesia. The Ministry of Social Affairs identifies some indigenous communities as *komunitas adat terpencil* (geographically-isolated indigenous communities). However, many more peoples self-identify or are considered by others as indigenous. Recent government Acts and Decrees use the term *masyarakat adat* to refer to indigenous peoples. The national indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN), estimates that the number of indigenous peoples in Indonesia falls between 50 and 70 million people.

The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, including Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and MPR Decree No X/2001 on Agrarian Reform. Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment clearly use the term *Masyarakat Adat* and use the working definition of AMAN. The Constitutional Court in May 2013 affirmed the Constitutional Rights of Indigenous Peoples to their land and territories including their collective rights over customary forest.

While Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), government officials argue that the concept of indigenous peoples is not applicable as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for specific needs by groups identifying themselves as indigenous.

Development of laws and policies

In 2013, a number of positive developments happened in terms of legal recognition of the rights of indigenous peoples. While a lot remains to be done, positive recognition has occurred on almost every governmental level, from the capital down to regencies. Below are highlights from the year:

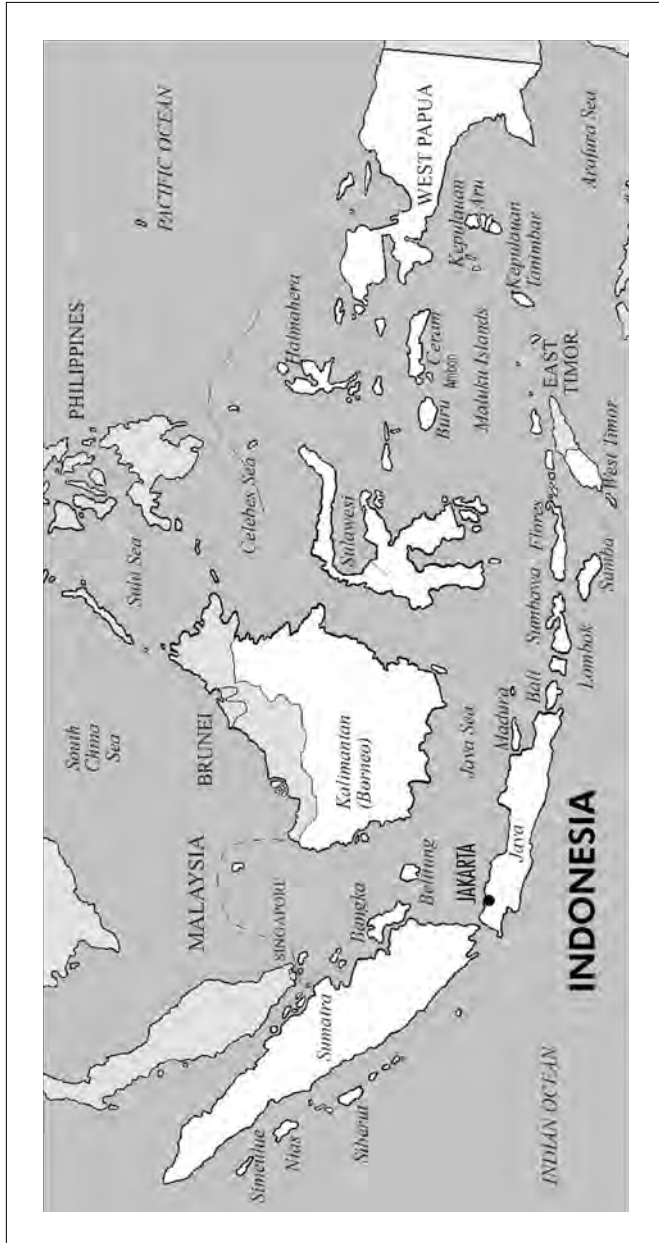
Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples

In February 2013, the legislative body (BALEG), delivered the draft law on the Recognition and Protection of the Rights of Indigenous Peoples to the House of Representatives' Plenary Session. It was then adopted as a House of Representative initiative on 3 April 2013, making it an official bill that the House will discuss with the government. The draft law itself was initially proposed by AMAN in 2011.

Subsequently the Chairman of the House of Representatives sent the draft law, in bill form, to the President who in June assigned the Ministry of Forestry, Ministry of Energy and Mineral Resources, Ministry of Law and Human Rights (also known as the Ministry of Justice), as well the Ministry of Internal Affairs as representatives of the Government to discuss the draft law with the Special Committee previously established by the House. The assignment of both the Ministry of Forestry and the Ministry of Energy and Mineral Resources has only strengthened civil society perceptions that the State sees Indigenous Peoples merely as forest dwellers.

The process of finalizing the draft law has been comparatively slow, and the Special Committee appears stalled at the stage of garnering input from various universities and other stakeholders. Despite this, AMAN, as the lead organization representing indigenous peoples in Indonesia and an original proponent of the bill, has yet to be invited to an audience with the Special Committee. Simultaneously, the four ministries led by the Ministry of Forestry have reacted quickly with amendments and critiques. The government is currently ready with an inventory of prospective issues and awaits the discussion schedule from the Special Committee.

Specific to substance, a number of AMAN's initial suggestions are not accommodated in the final draft law approved by the House of Representatives. The first is on the term and definition used. The current draft uses *Masyarakat Hukum*



Adat (Customary Law Society) to align it with Article 18B Paragraph (2) of The 1945 Constitution of the Republic of Indonesia, which is limited to customary governance and justice systems in specific context to rights over territories and natural resources. AMAN has proposed *Masyarakat Adat* (Indigenous Peoples) as the social reality of indigenous peoples is not solely limited to governance and justice systems, nor to rights over land and natural resources, but also related to religion, culture and other less physically tangible aspects.

The second issue relates to institutional governance and oversight. The current draft law assigns the *Panitia Masyarakat Hukum Adat* (Committee of Traditional-Law Society) as the sole and limited authority to verify, on an ad-hoc basis, the identification of indigenous peoples on the regency, provincial and national levels. This is contrary to the institution proposed by AMAN, which draws from wider authority and is rooted in greater institutional permanence. The proposed *Komisi Masyarakat Adat* (Committee of Indigenous Peoples) would also work on the regency, provincial and national levels and have authority to, *inter alia*, verify the existence of indigenous peoples, settle conflicts between indigenous peoples and third parties, coordinate development programs, synchronize regulations related to indigenous peoples, as well as authorize research on and empowerment of indigenous peoples.

Finally, the current draft law does not contribute to diversifying the existing governance structure. Indigenous peoples and customary law are merely authorized to settle internal conflicts, and are not seen as a prospective tool or means in disputes involving third parties, including the government.

Law on Village Governance

The Law on Village Governance came into force on 18 December 2013. This law provides both opportunities and challenges for indigenous peoples. It has the potential to allow indigenous peoples to decide on the village model they find most appropriate through the modality termed *Desa Adat* (indigenous village). However, the law superimposes a traditional government structure on all modalities of proposed village governance, including that of *Desa Adat* and over-simplifies the reality of indigenous peoples, thus potentially inviting a strong backlash on indigenous rights. The law equates indigenous villages with indigenous peoples.

Rights recognized, protected and advanced by the State should not be limited to those of governance and natural resource ownership and management, as

reflected by the Law on Villages and its proposal for indigenous villages. Instead, legislation must also recognize and protect less tangible elements, including spiritual beliefs, cultures and so on.

Local Regulation of Malinau Regency

As reported in *The Indigenous World 2013*, the Malinau Regency Regulation on the recognition and protection of the rights of indigenous peoples was issued in 2012. In 2013, Malinau Regency's Regional House of Representatives requested AMAN to facilitate the drafting process of two local regulations; one on Indigenous Institutions and one on the Protection of Potential Agricultural Land for Food for Indigenous Peoples in Malinau Regency. AMAN complied and in December 2013, the Regional House of Representatives adopted both drafts as Malinau Regency's Local Regulations.

The Local Regulation on Indigenous Institutions enables institutions of indigenous peoples in the Malinau Regency to strengthen indigenous governance and justice systems, settle disputes, and it provide a sphere for the local government to conduct activities for the empowerment and strengthening of indigenous institutions. Moreover, the regulation supports an Indigenous Council, whose functions and authority include conflict resolution between indigenous institutions, proposing development coherent with indigenous values, and conducting research and providing recommendations to the local government.

The Local Regulation on the Protection of Potential Agricultural Land for Food for Indigenous Peoples provides opportunities for indigenous peoples to freely use, protect, and preserve edible plants in use for generations. The Regulation guarantees food security for indigenous peoples, clarifying the basis for indigenous land use and ownership, and limiting reassignment of agricultural land. It also obliges local government to, *inter alia*, identify indigenous peoples' land utilized to ensure food security, and take necessary steps to secure food sovereignty for indigenous peoples in Malinau Regency.

Constitutional Court decision on the status of customary forest

On 16 May the Constitutional Court accepted the Judicial Review of Act No. 41/1999 on Forestry submitted jointly by AMAN Kasepuhan Cisitu and Keneg-

erian Kuntu indigenous communities in 2012. The Constitutional Court Decision No. 35/PUU-X/2012 drew two significant conclusions. It ruled that indigenous peoples have rights over their customary forest. It further ruled that Article 1 Paragraph (6) of Law No. 41 Year 1999 on Forestry stating “customary forest is State forest located in the areas of traditional-law society” is contrary to the Constitution of the Republic of Indonesia, thus rendering it legally void. Hence, customary forest is forest in the ancestral domain/indigenous peoples’ territory and not State forest. Interpreting and enacting concrete results from the deletion of the word “State” from the paragraph, however, remains a challenge.

Government responses

Circular letter from the Ministry of Forestry

The first response from the government to the Constitutional Court Decision came on 16 May 2013 from the Ministry of Forestry, who issued a circular letter.¹ This circular letter was addressed to Governors, Regents, and related governmental agencies across Indonesia and elaborates on the Constitutional Court’s ruling and legal deliberation. The circular letter failed to outline obligations of indigenous peoples to the government, rendering the implementation of the verdict to rely solely on further enactment of government policy. It further has the potential to direct provincial and regency governments to complicate the implementation of the decision. For instance, it affirms that customary forest will be released from designation as State forest only if indigenous peoples have been recognized by local regulation. In addition, the circular letter shifts contestation over how the ruling on customary forest will be implemented from the national to local level. It is thus plausible to interpret the circular letter as an effort by the Ministry of Forestry to disentangle itself from the very forestry disputes it has caused. More problematically, shifting responsibility to the local level may render the verdict unimplemented, as local governments rarely have the legislative and financial capacities to draft local regulation. Parallel to this, the local level has also increasingly become the focus of natural resources disputes, including forest. For local governments, surrendering State Forest and reverting them back to Customary Forest means losing important revenue streams.

Decree from the Ministry of Forestry

On 19 November 2013, a decree was issued by the Government (Ministry of Forestry). Several mistakes are found in the decree, which is a legal response coming from the Government. First, the Constitutional Court Decision No. 35/PUU-X/2012 has removed customary forest from the jurisdiction of State forest and categorized it as rights forest, although it remains as forest area. This means that the Court decision maintains two types of rights over forest located within forest area, namely State forest and rights forest. By that construction, the decision establishes indigenous peoples as the rightful owner of customary forest as part of rights forest. Yet the Government does not recognize indigenous peoples' as legal subjects in the decree relegating individual and legal entities as third parties whose rights will be identified. By excluding indigenous peoples as legal subjects, the decree will not identify customary forest as rightfully owned by indigenous peoples.

Second, the decree oversteps its authority by setting out provisions for determining the existence of indigenous peoples, which is inconsistent with the 1945 Constitution of the Republic of Indonesia², such as requiring indigenous peoples to provide written (e.g. a letter on the history of land issued by autonomous government and land titles) or other proof (e.g. recognition by local regulation, the presence of public and social facilities and inclusion in village statistics) of their existence. Practically it is difficult for indigenous peoples to meet these requirements.

More fundamentally, these provisions infringe upon the legal principle of conditions for exemptions and a legitimate requirement for rights, both of which should be addressed equally. Three internal technical and functional requirements are instead treated as substantive: respective statistics on forest, population and sub-district/village. These provisions should not determine whether a right is legitimate or illegitimate. The basis for exemption from a right can only be another right, and not because of technical factors. If this logic of the Ministry of Forestry Decree continues and remains uncorrected, future precedence will use technical requirements to omit or deny fundamental rights.

Response from National Commission on Human Rights: National Inquiry

Indonesia's National Commission on Human Rights (Komnas HAM) has argued that numerous human rights violations are caused by the absence of clarity regarding customary forest's legal status in the Law on Forestry. Komnas HAM perceives the Constitutional Court Decision No. 35/PUU-X/2012 as a ruling that

marks a new era of indigenous peoples' recognition in Indonesia. Using this momentum, Komnas HAM proposed a National Inquiry on indigenous peoples' right over customary forest within forest areas, which has gained support from civil society organizations.

Bulukumba's Local Regulation

Following the Constitutional Court Decision No. 35/PUU-X/2012, the Government of Bulukumba Regency, Sulawesi Selatan province revived a long-existing initiative to draft a local regulation regarding indigenous peoples. To demonstrate their commitment, the Government of Bulukumba Regency appointed a person representing Kajang indigenous peoples, a person representing the AMAN Regional Chapter in Sulawesi Selatan province, and a person representing AMAN National Chapter in Jakarta to take part as members of the local regulation's drafting team.

Unfortunately, the initiative came to a deadlock due to different perceptions of indigenous peoples and how to regulate these definitions. One chief difference is the Government of Bulukumba Regency's perspective that the Kajang community is the only indigenous peoples in the regency, and thus the local regulation proposed was one that recognized and protected the Kajang indigenous community exclusively. Representatives of AMAN argued that a process of identification and verification must take place to verify that the only indigenous group in the regency is the Kajang. Hence, the regulation should be one on the rights of indigenous peoples, procedure of identification, verification, the recognition's legal form, dispute settlement, and so on. Furthermore, the local regulation should be one that covers the entire administrative area of Bulukumba Regency. The deadlock remains today.

Indigenous peoples' responses

***Plangisasi* (re-demarcating) of indigenous territories**

After the Constitutional Court Decision No. 35/PUU-X/2012 was delivered, indigenous communities across the Indonesian archipelago began *plangisasi* activities in their respective indigenous territories. *Plangisasi* is a colloquial term for placing a placard or banner up and is an expression of indigenous peoples' spirit to re-demarcate their respective indigenous territories, and to inform others that the marked area is theirs.

Plangiasasi garnered various responses. In Maluku Utara, for instance, placards were removed by PT Nusa Halmahera Mineral, a mining company. In Manggarai Timur Regency, the *plangiasasi* was opposed by the District Forestry Office. The office allegedly threatened people with arrest if they put up placards in indigenous territories claimed as State forest area. In other areas, local governments accepted and even supported *plangiasasi*. This variety of response demonstrates the range of public sentiment and understanding on the Constitutional Court Decision, from perception of the decision as a threat that will decrease authority to those who see the decision as a step forward for resolving lack of clarity in land tenure in Indonesia through clarifying status of indigenous peoples' rights over customary forest.

Rehabilitation of degraded forests

On 19 September 2013, AMAN called for indigenous peoples across the archipelago to begin rehabilitation of degraded customary forest. AMAN estimates that around 55 million hectares of indigenous territories are within forest areas and about 24,5 million hectares is deforested and badly degraded as a result of destructive activities by private companies for the purposes of timber extraction, plantations, mining etc.

Acceleration of mapping of indigenous territories

After the Constitutional Court decision AMAN has sought to accelerate the process of mapping of indigenous territories.³ So far, mapping has been conducted in 84 of the indigenous communities who are members of AMAN, and it is expected that hundreds of communities will follow. Even though there is not any exact number specifying the size of the territory mapped since the process was accelerated in 2013, AMAN estimates that the total size of the mapped area amounts to six million hectares.

Conflicts over indigenous territories

Despite the important gains in terms of legal recognition, indigenous peoples in Indonesia continue to face conflicts relating to territory, land and natural resour-

es. The absence of well-conducted FPIC (free, prior, and informed consent) processes has resulted in repeated invasions and grabbing of indigenous territories in the name of development or nature conservation. Those who oppose these developments face an oppressive reaction from the government, in most cases supported by security forces, either the military or the police. Following are several prominent cases recorded by AMAN in 2013:

Datu Pekasa in West Nusa Tenggara

On 29 July 2012, Mr. Edi Kuswanto, known as Datu Pekasa, was arrested and imprisoned for one year on the accusation that he cut trees down and, hence, violated Law No. 41 Year 1999 on Forestry. A case review could not be pursued because the Constitutional Court decision number 35 regarding Customary Forest (MK 35) is not deemed as a new evidence (*novum*) that can cancel a court decision. Datu Pekasa was released on 23 December 2013.

Companies taking over Aru Island in Maluku province

Aru Island is one of the many small islands in Indonesia. Since 2007 the island has been under threat from PT Menara Group, a consortium comprising of 28 subsidiaries. In 2012, the Regent of Aru Island issued a principle license, location license and recommendation as the business basis for PT Menara Group's sugarcane plantation. This was then followed by recommendations issued by the Governor of Maluku during 2011. Based on the license given to the company, the size of the land licensed for the sugarcane plantation is up to 484,493 hectares, or about three-quarters of the total width of Aru Island, and covers about 90 *negeri* (villages). The remaining parts of the island, including corals and mangrove forest, are not suitable for settlements. To smoothen its operation, PT Menara Group deliberately recruited surveyors from several *negeri* and was guarded by the Navy which prompted intimidation on indigenous peoples. In October 2013 a conflict emerged between Negeri Marfenfen and Negeri Feruni, which was allegedly provoked by PT Menara Group. The presence of conflict can be conveniently used by the company to request protection from the security forces.

Invasion of Suku Anak Dalam in Jambi province

In early December 2013, 265 houses and huts of the indigenous community Suku Anak Dalam (SAD) in Padang Salak, Jambi province were destroyed by PT Asiatic Persada, an oil palm plantation company, with assistance from the police, military and security guards. 500 people were forced to flee to the pavilion of the Governor's Office while another 18 people were arrested. For several days the whereabouts of all of the members of the SAD community were unknown. Some of the victims came to Jakarta to seek justice by reporting the case to the National Human Rights Commission Komnas HAM.

Forced eviction of the Semende from national park in Bengkulu

Between 21-24 December 2013, members of the Semende Banding Agung indigenous community in Bengkulu province were forcibly evicted from their land. They inhabited a forested area that was claimed as a national park. The Minister of Forestry, through the Office of Bukit Barisan Selatan National Park, forcefully evicted 380 families. For three days, the villagers were beaten, verbally abused and threatened with gunshot, their possessions damaged and seized, and houses were burned down. Four people were arrested. As a result of this action 600 people are in danger of starvation and hundreds of children are at risk of losing their education. A pre-trial suit filed by 15 advocates from the Indigenous Peoples of the Archipelago Defenders Association (*Perhimpunan Pembela Masyarakat Adat Nusantara*, PPMAN) was rejected by the Judge. As of now, four people remain jailed in Kaur Resort Police. They are sentenced on the grounds of violating Article 92 Paragraph (1) Letter (a) and Letter (b) of Law No. 18 Year 2013 on Prevention and Eradication of Forest Degradation.

West Papua

West Papua region enjoys the privilege of being granted a Special Autonomy Law (*Undang-Undang Otonomi Khusus*) allowing it to make special policies at district and provincial level. The Law remains unimplemented, however, and has not improved the situation of indigenous Papuans significantly. Land grabbing and evictions from ancestral land, in the name of development projects

such as plantations, remains a prominent issue in West Papua. As reported in *The Indigenous World 2010*, the MIFEE megaproject, controlled by private companies, continues to expand despite protests from indigenous communities and environmentalists.

With regard to the political and security situation, the government's militaristic approach towards indigenous Papuans, with the continued presence of the armed forces, is the main hindrance to peace-making in West Papua. While the Cenderawasih XVII Military Command in West Papua has been coining the phrase "Peace is beautiful", levels of social conflict remain high; according to Indonesian Police Watch, West Papua scores highest for social conflict out of all the regions of Indonesia. A report⁴ claims that, during 2013, at least 24 social conflicts occurred in Papua, resulting in 59 people dead (including three police officers and nine soldiers), 92 wounded (including six police officers and four soldiers), and one police station, 11 houses and three cars burnt down, among other things. ○

Notes and references

- 1 In Indonesia, ministerial level circulars (*surat edaran*) serve as legal guidance, in addition to legislation and presidential as well as ministerial regulations.
- 2 The 1945 Constitution of the Republic of Indonesia establishes five provisions for determining the existence of indigenous peoples. The four provisions in Article 18B Paragraph (2) are: 1) "as long as they remain in existence", 2) "in accordance with the societal development", 3) "in accordance with the principles of the Unitary State of the Republic of Indonesia", and 4) "shall be regulated by law." The remaining one provisioned by Article 28I Paragraph (3) reads, "in accordance with the development of times and civilizations."
- 3 By the end of 2012, 2,402,222.824 hectares of indigenous territories had been mapped using participatory methods. AMAN, the Indonesian Network for Participatory Mapping (*Jaringan Kerja Pemetaan Partisipatif*, JKPP) and the Ancestral Domain Registration Agency (*Badan Registrasi Wilayah Adat*, BRWA) handed these maps to the Geospatial Information Agency (*Badan Informasi Geospasial*, BIG) and the President's Delivery Unit for Development Monitoring and Oversight (*Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan*, UKP4) on 14 November 2012.
- 4 *Indonesia Timur*, 5 January 2014: "Tahun 2014, Papua Daerah Rawan Konflik Urutan Pertama" (<http://indonesiatimur.co/2014/01/05/tahun-2014-papua-daerah-rawan-konflik-urutan-pertama/>)

Abdon Nababan is Toba Batak from North Sumatera. He is the Secretary General of Aliansi Masyarakat Adat Nusantara/AMAN. **Erasmus Cahyadi** belongs to Terre Clan from Flores, and has been working with AMAN since 2004. He currently serves as Director of Legal and Human Rights. **Rukka Sombolinggi** is a Toraya from Sulawesi, and is Deputy to AMAN's Secretary General on Policy Advocacy, Legal and Politics.

MALAYSIA

In all, the indigenous peoples of Malaysia represent around 12% of the 28.6 million population. They are collectively called *Orang Asal*.

The Orang Asli are the indigenous peoples of Peninsular Malaysia. They number 180,000, representing a mere 0.6% of the national population. Anthropologists and administrators have traditionally categorized the 18 Orang Asli subgroups into Negrito (Semang), Senoi and Aboriginal-Malay.

In Sarawak, the indigenous peoples are collectively called Orang Ulu and Dayak. They include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Punan, Bisayah, Kelabit, Berawan and Penan. They constitute around 1,248,600 or 48.3% of Sarawak's population of 2,583,000 million people.¹

In Sabah, the 39 different indigenous ethnic groups are called natives or Anak Negeri and make up about 1,898,800 or 55.1% of Sabah's population of 3,442,300.² The main groups are the Dusun, Murut, Paitan and Bajau.

The Orang Asal do not consider the Malays to be indigenous peoples but, while there is a clear ethnic distinction in Peninsular Malaysia between the Orang Asli and the Malays, this is not the case in Sabah and Sarawak, with some people preferring or being coerced³ into putting their ethnic identity as Malay during the census.

In Sarawak and Sabah, laws introduced by the British during their colonial rule and recognizing the customary land rights and customary law of the indigenous peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies over the rights and interests of the indigenous communities.

Malaysia voted for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but has still not ratified ILO Convention 169.



National Inquiry into the Land Rights of Indigenous Peoples

The Report of the Human Rights Commission of Malaysia (SUHAKAM) on its National Inquiry into the Land Rights of Indigenous Peoples (See *The Indigenous World 2012 and 2013*) was published belatedly in July 2013. It was prevented - at federal cabinet level - from being tabled in parliament as originally planned by SUHAKAM but, in an effort to allay criticism, a government Task Force was established to study the report. *De facto* Minister in charge of Human Rights, Senator Paul Low, said that it was not necessary for the report to be tabled in parliament and that the Task Force would give the government time to study it with the aim, among other things, of assessing the findings and recommendations of the report and implementing the recommendations identified therein.

The Minister also provided assurances that no

amendments to the Aboriginal Act 1934 to allow individual titles to be issued instead of customary land being gazetted into Orang Asli reserves would take place prior to the study by the Task Force. However, the Orang Asli are concerned that the Orang Asli Development Department is already promoting the concept among Orang Asli communities.

The government's feet-dragging attitude with regard to implementing the recommendations of the National Inquiry has led the Orang Asal to push forward for the protection of their rights to land. The Jaringan Orang Asal SeMalaysia (JOAS) or the Indigenous Peoples' Network of Malaysia, in particular, held a large gathering of representatives from the Orang Asal, government and civil society organisations in November that resulted in a resolution aimed at contributing to and moving forward with the implementation.

Worrying trends in court cases

The general trend of questioning the credibility of witnesses and indigenous status in court cases relating to Orang Asal land claims is causing concern. After some success on the part of a number of communities with regard to proving their legitimate claims in court, this avenue for substantiating their rights is becoming extremely difficult for the communities. Among the tactics used by the companies and government legal team is the appointment of experts to overturn positive court decisions.

Important court decisions included the Imahit case (See *The Indigenous World 2013*) where, on 11 October 2013, the Kota Kinabalu Court of Appeal ruled in favour of the government by deciding that native customary rights did not exist over forest reserves. The judges relied heavily on the 1984 State Assembly's amendment of the Sabah Forest Enactment 1958 and the reconstitution of forest reserves that resulted in the creation of the Ulu Tomani Forest Reserve where, among others, the Imahit village is located. The amendment and reconstitution bypassed the strict requirements of the 1958 law with regard to creating forest reserves. The community has resolved to pursue recognition of their land rights in the Federal Court.

Nevertheless, some important cases have emerged, such as the upholding of *pemakai menoa* (an Iban term) or customary territories that include not only cultivated areas but also community forest areas for hunting and foraging, old and

current settlement sites, and burial and sacred sites. One case is in Sarawak, the case against Rosebay Enterprise in Sibü (October 2013), and the other involves communities from Serian in a battle against the Land Custody and Development Authority, Nirwarna Muhibbah Sdn Bhd and the Sarawak government (September 2013). In Peninsular Malaysia, the Temerloh High Court ordered the Pahang Land and Mines Office to return parts of a 2,000-hectare piece of land near Temerloh which it had gazetted as a Malay reserve to the Semelai aborigine tribe, as the Orang Asli's customary rights took precedence over others.⁴ The judge also ordered the state agency to gazette the entire area as Orang Asli customary land within a year as some court decisions are not being adhered to, such as the case of the Orang Seletar in Stulang Laut. In this case, the community won the case in 2012 when the Johor Land and Mines Department withdrew its appeal against the 2010 decision of Johor Baru High Court to award compensation to the community.

Anti-dam campaigns

In Sarawak, the struggle by Penan communities against the Murum Dam (see *The Indigenous World 2013*) came to a sad end when impoundment of the dam began in September 2013 and the police started harassing and arresting indigenous protesters. Communities had to move to the Tegulang resettlement site despite complaints of sub-standard construction and with no alternative livelihoods immediately available. Nevertheless, their blockades did lead to a slight increase in the compensation package and a monthly stipend of RM850.00. The \$1.3 billion Murum Dam will flood 245 square kilometres, resulting in 1,500 Penan and 80 Kenyah natives losing their homes.

The 1,200 MW Baram Dam is next in line for construction. The dam has triggered strong protests and opposition from Ulu Baram communities and concerned citizens. If the dam is built, up to 20,000 indigenous peoples living in 26 villages will be displaced.⁵ In August 2013, the Sarawak government began extinguishing the land rights of some indigenous communities living near the Baram Dam site and has started to build access roads, although the project has not been formally approved yet. About 90 percent of the 388 square kilometre area to be flooded by the Baram Dam will be the lands of indigenous peoples. The Sarawak government-owned company, Sarawak Energy Berhad, is leading the project development. In September 2013, communities erected a blockade and demanded

an immediate halt to all construction work at the Baram Dam and its access road. When the company refused to comply, the people chased out 30 workers who were conducting geological studies at the dam site and convinced another 29 to stop their surveying.

In Sabah, three years after the controversial Social and Environmental Impact Assessment was carried out among communities affected by the proposed Kaiduan Dam, the Penampang District Officer suddenly instructed village leaders from two communities to receive consultants for further studies. This failure to give people proper notice and the government's refusal to meet people formally has angered the communities directly affected by the dam, causing them to chase out the consultants.

In December 2013, the Special Rapporteur on the right to food met with communities from nine affected villages. In his end-of-mission statement, said that the principle of free, prior and informed consent "...requires that any option proposed to the indigenous communities be part of a range of alternative options from which they should be able to make a genuine choice, and that they be fully informed of the long-term consequences of such choice on their livelihoods. It is not enough to consult the communities about the consequences of development choices made on their behalf without their involvement: instead, they must have a right to oppose the project proposed".⁶

Universal Periodic Review (UPR) of Malaysia

Malaysia underwent its second UPR review cycle in October 2013. This time, indigenous peoples and NGOs were better prepared and were able to be in attendance and make submissions at a pre-session organised by UPR Info followed by meetings with permanent missions in Geneva, and at meetings with the Malaysian Foreign Affairs Department and with foreign missions in Kuala Lumpur.

Indigenous representatives continued lobbying in Geneva during the October UPR, which resulted in getting nine countries to raise questions and make recommendations specifically on indigenous peoples to the Malaysian government.⁷ These touched on shortcomings in ensuring land rights; lack of free, prior and informed consent before the appropriation of indigenous land; gaps in the institutional framework, particularly with regard to the police, and challenges faced with regard to irregular migration; and the educational rights of indigenous children.

Recommendations made included the establishment of a National Commission on Indigenous Peoples; allowing visits from the UN Special Rapporteur on the rights of indigenous peoples; reinforcing measures to eradicate poverty and ensuring that laws and their implementation comply with the UNDRIP; taking measures, with the full and effective participation of indigenous peoples, to address the issues highlighted in the National Inquiry into the Land Rights of Indigenous Peoples; and implementing plans and strategies that enhance the economic and social welfare of indigenous peoples.

Malaysia's response, which was widely published via JOAS's Facebook and Twitter accounts, received large numbers of comments and rebuttals from indigenous peoples and the public at large. While this process helped to bring indigenous issues to the fore, it was not possible to correct the misinformation that was presented by the Sarawak government representative in relation to the Murum Dam⁹ and by the Orang Asli Development Department (JAKOA) in relation to land policy for the Orang Asli, which favours individual land ownership based on availability of land.

RSPO complaints mechanism

Taking advantage of the complaints mechanism of the Roundtable on Sustainable Palm Oil (RSPO), communities from Tongod, Sabah and Long Teran Kanan, Sarawak submitted complaints to companies which are RSPO members i.e. Genting Plantations⁹ and IOI¹⁰ respectively. These RSPO members have committed themselves voluntarily to fulfilling the RSPO Principles and Criteria (P&C), which among other things include respect for land rights and free, prior and informed consent. In December 2013, a process commenced to review and provide input or interpret the P&C at the national level. Members involved in the process have asked for specific guidance on indigenous peoples' land claims.

Responses from the UN Special Rapporteur on the rights of indigenous peoples

In March 2013, JOAS hosted a dialogue between the UN Special Rapporteur on the rights of indigenous peoples, Professor James Anaya, and indigenous repre-

sentatives from Asia. The Special Rapporteur's report to the Human Rights Council touched on the issue of the communal titles (*see Indigenous World 2013*) which have, in effect, facilitated oil palm plantations rather than promoting development models chosen by indigenous peoples themselves. The report also highlighted the major social and cultural impacts of plantations; migration of foreign workers onto indigenous territories; intimidation and widespread abuse by police, military and private security in plantation projects; and how consultations are conducted as an exercise in intimidation or as efforts to convince peoples to accept projects rather than opportunities to make informed decisions. These were specific issues raised by the indigenous peoples of Sabah.¹¹

Malaysia's general election 2013

The 13th general election saw the heightened participation of indigenous peoples, with three candidates specifically raising the struggle of indigenous peoples, two of whom were from the Orang Asli community. JOAS also came out with a document outlining indigenous peoples' demands in the general election, which was presented to various political parties and candidates. These claims have now become the basis for lobbying for fulfilment on the part of the ruling party. ○

Notes and references

- 1 Department of Statistics "Population and Vital Statistics" for Sabah & Sarawak (excluding the Malays) in http://www.statistics.gov.my/portal/index.php?option=com_content&view=article&id=2206%3Afree-download-monthly-statistical-bulletin-malaysia-october-2013&catid=129%3Aonline-publications&lang=en
- 2 Ibid
- 3 <http://www.themalaymailonline.com/malaysia/article/sabah-mufti-ready-to-apologise-for-malay-nisation-call>
- 4 <http://www.themalaysianinsider.com/malaysia/article/orang-asli-win-back-part-of-malay-reserve-land>
- 5 <http://www.internationalrivers.org/campaigns/baram-dam>
- 6 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14113&LangID=E>
- 7 http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_17_l.8_malaysia.pdf
- 8 Ibid, para 135. "...Current development agenda, involving the building of hydro-electricity facilities, necessitates the use of NCR land. Where rights to NCR land are affected, State Government and its utility company, Sarawak Energy Berhad (SEB): (i) adopt best international practices in engagement and consultation with indigenous peoples, which conform with acceptable norms

and standards, including principles embodied in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); and (ii) provide affected indigenous communities, a comprehensive compensation package, which assures them an immediate and substantial improvement in living standards, better access to basic human rights to education, health care, and better economic opportunities whilst preserving their cultural identities and traditions”.

9 http://www.rspo.org/en/status_of_complaint&cpid=36

10 http://www.rspo.org/en/status_of_complaint&cpid=4

11 Para 18 & 19, <http://unsr.jamesanaya.org/special-reports/consultation-on-the-situation-of-indigenous-peoples-in-asia>

JOAS (Jaringan Orang Asal SeMalaysia) is the indigenous peoples' network of Malaysia. It is the umbrella network for 85 community-based non-governmental organisations and 5 NGOs that focus on indigenous peoples' issues.

THAILAND

The indigenous peoples of Thailand live mainly in three geographical regions of the country: indigenous fisher communities (the Chaoley) and small populations of hunter-gatherers (the Mani) in the south of Thailand; small groups on the Korat plateau of the north-east, and in eastern Thailand, especially along the border with Laos and Cambodia; and the many different highland peoples in the north and north-west of the country (the Chao-Khao). With the drawing of national boundaries in South-east Asia during the colonial era and in the wake of decolonization, many indigenous peoples living in remote highlands and forests were divided. There is thus not a single indigenous people that resides only in Thailand.

Nine ethnic groups are officially recognized as so-called “hill tribes”: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.¹ However, there is no comprehensive official census data on the population of indigenous peoples. The most often quoted figure is that of the Department of Welfare & Social Development. According to this source, there are 3,429 “hill tribe” villages with a total population of 923,257 people.² Obviously, the indigenous peoples of the south and north-east are not included.

A widespread misconception regarding indigenous peoples, particularly those who live in highland areas is that they are drug producers and pose a threat to national security and the environment. This has historically shaped government policies towards indigenous peoples in the north and west of Thailand. Despite some positive developments in recent years, it continues to underlie the attitudes and actions of government officials. These include the non-recognition of indigenous peoples, and policies and programmes that are violating indigenous peoples’ rights, such as natural resource management and environmental conservation policies.

Thailand has ratified or is a signatory to the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the

Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).



Status of the implementation of the UNDRIP and work plan for the indigenous peoples' movement

In 2013, Thailand's indigenous peoples celebrated Indigenous Peoples' Day for the sixth time. Various activities took place, such as an exchange of indigenous art and music, the sale of indigenous goods (agricultural products, foods, herbal medicines, etc.), exhibitions and discussions. The main aims of the celebration were to share information, follow up on policies and issues relating to indigenous peoples and strengthen solidarity among them. The focus, however, was on an assessment of the progress in implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Thailand.

Participants in Indigenous Peoples' Day agreed that, since the adoption of the UNDRIP by the UN General Assembly in 2007, the Thai government had paid very little attention to promoting indigenous peoples' rights. It was found that one of the main reasons was that the state has consistently denied the existence of indigenous peoples in Thailand. To overcome such a hurdle, it was recommended that existing indigenous peoples' networks be strengthened and an organisation created that would be able to coordinate with the government and international organisations, i.e. an indigenous peoples' council.

It was agreed that in order to achieve the establishment of the Council of Indigenous Peoples of Thailand (CIPT), there was a need for a joint strategic work plan. The basic components proposed and agreed on by the participants of the Indigenous Peoples' Day celebrations included: (1) strengthening local indigenous organisations; (2) developing an information system that can link with both internal and external organisations and networks; (3) seeking partnerships and alliances with like-minded organisations; (4) identifying and supporting existing indigenous peoples' council models at the local level; and (5) advocating for policy change.

Government initiative for a strategic development plan for ethnic groups and indigenous peoples

In 2011, the Ethnic Affairs Institute (EAI), under the Department of Social and Welfare Development, Ministry of Social Development and Human Security, took the initiative to develop a specific strategic development plan for ethnic groups

and indigenous peoples. A working group was established and tasked to draft this plan. Its members comprise representatives from government agencies, academia, ethnic groups and indigenous peoples' leaders.³ A draft plan was completed in April 2013 and, in June, the EAI conducted a public consultation workshop on the draft strategic plan in Nonthaburi Province, with around 1,000 participants from various ethnic groups across the country. The workshop went well, with the full and effective participation of all who attended. Comments were made and amendments proposed as to how the strategic plan could better address the needs of indigenous peoples, such as strengthening their organisations and networks, protecting and promoting indigenous peoples' rights and identity, improving their quality of life and food security, etc. The strategic plan is currently being finalised by the EAI and will be tabled for consideration and approval by the new cabinet.

Unclear solutions for evicted Karen community

Cases of human rights violations that indigenous peoples have faced over the past years have still not been resolved. These include the eviction of Karen communities from Kaengkhachan National Park (see *The Indigenous World 2013*).

The eviction of Karen communities from Kaengkhachan National Park in 2010 and 2011 has clearly proved that the government's relocation policy, under the Department of National Park, Wildlife and Plants Conservation (DNP), is a total failure. Almost three years on, the affected families have still not received fair compensation or adequate support. They are still living in very poor conditions with no land for farming. Many of them have therefore decided to go back to their original homeland. In early February 2014, the Karen Network for Culture and Environment, together with supportive allies, established a community rice fund to assist these affected families. Rice donations from individuals and communities were collected and transported to the resettlement site. This is, however, only a short-term solution for addressing the current emergency.

Implementation of cabinet resolutions

In 2010, the cabinet passed two resolutions to restore the traditional livelihoods of the Chaoley⁴ and Karen people respectively (see *The Indigenous World 2011*).

One of the proposed solutions under these cabinet resolutions, and which is critical for the indigenous peoples concerned, is the recognition and designation of special social and cultural zones for indigenous peoples. This represents a holistic approach to tackling the long-standing problems that indigenous peoples are facing as it will cover all issues, e.g. land, livelihoods and spiritual values. This is considered a new concept by the government and it seems it may take some time for the agencies concerned to digest it and concretely implement it.

A few places have thus far been chosen to pilot this concept among the Karen, such as Mawwakee school in Maewang district, Chiang Mai Province, Hin Laad Nai village in Chiang Rai, Lay Tong Ku village in Tak Province and Rai Wo sub-district in Sangklaburi district, Kanchanaburi Province.

However, actual implementation of work plans and activities on the ground has progressed little in this regard due to a lack of funding and political will on the part of the government agencies concerned.

The long-standing and pressing problems that the Chaoley face therefore and above all remain unresolved. These include:

1. Loss of land: 28 out of 41 Chaoley communities are still struggling to reclaim their traditional lands, which were taken by the state and private companies.
2. Loss of traditional livelihoods: many areas where Chaoley used to fish to feed their families were taken away and designated for tourism promotion. In addition, the declaration of marine national parks that overlap with their traditional fishing areas has caused conflict between Chaoley and national park officers. This can be seen from the court cases between 2010-2012, which have not yet been resolved.
3. Loss of culture and identity: many cemeteries and ceremonial sites of the Chaoley were invaded and expropriated to build tourist resorts and hotels. More than 15 such sites are under threat.
4. No citizenship rights: around 600 members of Chaoley communities have not yet received Thai citizenship. This has deprived them of access to basic healthcare and other government services, and made them vulnerable to exploitation by outsiders. ○

Notes

- 1 Ten groups are sometimes mentioned, i.e. the Palaung are also included in some official documents. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.
- 2 The figure given is sometimes 1,203,149 people, which includes immigrant Chinese in the north.
- 3 In Thailand, the term indigenous peoples has not yet been officially recognized. Some groups (mainly those who live in lowland areas) prefer to use the term ethnic group, while highland people and Chaoley prefer to use the term indigenous peoples since it better represents their identity as distinct peoples.
- 4 Chaoley is a generic name representing three indigenous groups, namely Moken, Moklan and U-rak-la-woy.

Kittisak Rattanakrajangsri is a Mien from the north of Thailand. He has long experience (since 1989) of working with indigenous communities and organizations. He is currently General Secretary of the Indigenous Peoples' Foundation for Education and Environment (IPF) based in Chiang Mai, Thailand.

CAMBODIA

Cambodia is home to 24 different indigenous peoples, who speak either Mon-Khmer or Austronesian languages. As of late 2013, the name “indigenous peoples” had not yet fully registered in Cambodia in either the legal system or the media. More commonly, these people are referred to as “ethnic minorities” or “indigenous ethnic minorities”.¹ They live mainly in the six north-eastern upland provinces of Ratanakiri, Monduliri, Stung Treng, Kratie, Preah Vihear and Kampong Thom but indigenous communities are also located in nine other provinces around the country. With an estimated population of 200,000 to 400,000 overall, indigenous peoples are generally estimated to account for 1 to 2% of the national population although they are not clearly disaggregated in national census data.

The 1993 National Constitution guarantees all citizens the same rights “regardless of race, colour, sex, language, and religious belief” or other differences. National legislation specifically recognizing indigenous peoples and their rights is contained in subsequent laws and policies dating from 2001, 2002, 2009 and 2011.²

Although GDP growth in Cambodia is relatively high, the majority of the national population lives in poverty (ca. US\$ 700 per year). Indigenous peoples live in more intense poverty than the mainstream population because of the added discrimination against them from the dominant ethnic group, the Khmers. In the 2013 national elections, all of the indigenous villages voted for the ruling CPP party, despite the fact that the CPP has repeatedly failed to uphold indigenous land rights. Although civil society action and organizations gained greater national prominence in Cambodia during 2013, the indigenous peoples’ movement has yet to find linkage with other sectors, such as the garment workers’ movement. Indigenous organizations, while growing in 2013, still remain largely invisible on the national level.

The Cambodian government has ratified many of the main international human rights conventions, including the International Convention

on the Elimination of Racial Discrimination (CERD). In 2007, the Cambodian government supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) but has still not ratified ILO Convention 169.



Indigenous peoples' organizations form a national alliance

From 2011 to 2013, indigenous peoples' organizations (IPOs) in Cambodia, including the Indigenous Rights Active Members (IRAM), the Organization to

Promote Kuy Culture (OPKC), the Highlanders Association (HA) and the Cambodia Indigenous Youth Association (CIYA), continued developing networks and mobilizing their own learning process in order to reflect on past and present challenges in the pursuit of self-determined development, securing communal land titles and improving coherence between IPOs and the indigenous communities they represent, including within the constituencies of the IPOs themselves. One significant outcome of the process is that the IPOs agreed in 2013 to create a national-level organization, the Cambodia Indigenous Peoples' Alliance (CIPA). The aim of CIPA is to raise the profile of indigenous peoples in Cambodia on a larger scale than that of its individual constituents.

The challenges indigenous peoples in Cambodia face are formidable, particularly with regard to land, territories and natural resources. It is hoped that the creation of CIPA will enhance the capacities of indigenous peoples to meet these challenges and overcome them.

State failure to title indigenous communal land

Despite a significant amount of legislation adopted by the state since 2001 to recognize and protect indigenous communities' land rights, these rights in reality continued to be largely denied and, in 2012 and 2013, indigenous lands continued to be expropriated far more than they were protected. Land insecurity has grown into a national problem in Cambodia due to pervasive land grabbing throughout the country; however, it disproportionately and negatively affects indigenous communities because: 1) indigenous communities rely on land and forests not only for economic purposes but also for spiritual practices – and thus their cultural identities; and 2) because much of the land grabbing is taking place in their traditional territories in the north-eastern provinces where the majority of indigenous peoples in Cambodia live.³ The same law that first recognized indigenous peoples' communal land rights (the 2001 Land Law) also recognizes the state's right to grant lands for economic development purposes. While the implementation of indigenous communal land rights has barely happened, more than 20% of the national territory has been leased out by the state to corporations and businesspeople as economic or mining concessions.⁴

The indigenous communal land titling (CLT) project has been active since 2010 but, as of the end of 2013, only eight communities had actually received a

title, out of an estimated 400. One of the main factors accounting for the slow progress in communal land titling is the apparent lack of political will on the part of the state to implement the law. Instead, it has been the International Labour Organization (ILO) and several INGOs that have taken the lead in implementing CLT. Without strong state support, it seems unlikely that the project will achieve its goal in time. While the CLT project crawls along, land grabbing continues at a much faster rate. In May 2012, the government proclaimed a moratorium on land concessions but there are numerous reports that bear witness to the practice continuing throughout 2013.⁵ Another problem with indigenous CLT in Cambodia is that its very design is in conflict with a number of the rights contained in the UNDRIP, particularly the right to collective self-determination with regard to identity and to lands, territories and resources, a conflict which was pointed out by the UN Special Rapporteur on the rights of indigenous peoples in official correspondence with the Cambodian government in 2010, and to which the government has not yet adequately responded.⁶

Starting in June 2012 and continuing through 2013, an additional political and legal obstacle to indigenous CLT was created by the state, ironically in the form of a new program publicly presented as a means to end land disputes in Cambodia. By then, the land grabbing problems in Cambodia had drawn international criticism, particularly after the assassination in May of Chut Vutty, an environmental activist who worked extensively with Kuy communities and the Prey Lang Forest Network. Known as "Directive 01BB", this new program involved sending Khmer university students out into the countryside to map land plots and assign corresponding titles, thereby settling outstanding disputes. At its inception, Directive 01BB was to map out indigenous CLT as well as individual land titles for non-indigenous people. However, less than a month after it began, the Land Management Minister suspended the CLT component of the program for bureaucratic reasons⁷ and, subsequently, when the students arrived in the indigenous communities, their efforts were focused on assigning individual titles only, which effectively negated any aspirations for CLT. Instead of settling land disputes, the program has exacerbated them, significantly complicating CLT in those communities that had already begun the registration process, and foreclosing on the possibility of CLT for those indigenous communities that had not.⁸ By breaking up indigenous communal lands into individual plots, the total alienation of those lands becomes much more likely.⁹

UN Special Rapporteur investigates land problems in Cambodia

The UN Special Rapporteur on the situation of human rights in Cambodia carried out a country visit and assessment of Cambodia's land insecurity problem in 2012. While the rapporteur's report¹⁰ offers a national-scale analysis of what is very much a national problem, a significant part of it focused on indigenous peoples' land rights issues. The report confirms that indigenous communities are particularly vulnerable to destruction through land expropriations for concessions. It points out that because of the rapidity with which concessions have been recently granted, indigenous communities pursuing the much slower process of CLT registration often end up with no land left to register – because it has already been given away as concessions, or else the forests have been cleared. Concessionaires, many of them agro-industrial companies, harvest the timber and introduce new technologies and non-local languages, all without the free, prior and informed consent of local indigenous communities. This results in further alienation, displacement and conflict.

Indigenous delegations from Cambodia to the UNPFII

In 2012 and 2013, Cambodian delegations of indigenous peoples to the United Nations Permanent Forum on Indigenous Issues (UNPFII), including members from CIYA, OPKC and HA, delivered interventions concerning the problems of communal land titling in Cambodia, deforestation through legal and illegal logging, the social and ecological problems posed by mega-developments such as the Lower Sesan 2 dam and the China North-South Iron and Railway Project, and the ongoing militarization of indigenous lands. While they have had no direct results, the interventions did contribute to raising the profile of Cambodian indigenous issues within the UN and with international development banks, and the information was also submitted to the UN Special Rapporteur on the rights of indigenous peoples.

Deforestation as a result of land grabbing

The forests and their biodiversity constitute more than primary resources for indigenous peoples in Cambodia. They are also spiritual places where powerful

spirits live, and where the dead are buried. They are crucial for indigenous cultural resilience. Deforestation greatly accelerated in Cambodia between 2009 and 2013 as a result of the rapid and non-transparent state practice of granting commercial land concessions. Most of the remaining primary forest in Cambodia is located in the traditional territories of indigenous peoples, and thus the known deforestation rate provides one proxy for comprehending indigenous peoples' land losses. In 1973, about 42% (ca. 7,560,000 ha.) of the country was covered with primary forest, much of it in the north-eastern provinces. As of late 2013, less than 11% (less than 1,980,000 ha.) of the country remained as primary forest.¹¹

Hydro-electric development

In 2013, the Lower Sesan 2 dam project (over 400 megawatts) continued to move towards implementation, despite the lack of any official study on the likely social or environmental impacts the construction of the dam will have on the area, which includes tens of thousands of largely indigenous people in the province of Stung Treng, and a rich aquatic biodiversity. According to all credible reports available, none of the affected communities have been consulted regarding the dam, much less asked for their Free, Prior and Informed Consent. Several impact assessments conducted by NGOs for the Lower Sesan 2 dam predict disastrous impacts, both socially and environmentally, but these assessments continue to be ignored by the state. These assessments also confirm that the local indigenous opposition to the dam is 100%.¹²

Mining and industrial development

In 2013, the China North-South Railway project was officially announced as a joint Chinese-Cambodian project that would be the largest development project in Cambodia's history. It would center on developing a massive iron mining and steel production facility in the heart of traditional Kuy territory and the Prey Lang forest, and also a new railway line to transport the steel to a new port in Koh Kong. In this and virtually all other large-scale development projects affecting indigenous peoples in Cambodia, there is no established procedure for obtaining their Free, Prior and Informed Consent.¹³

Ongoing militarization and repression of free speech

The greatest obstacle facing the indigenous rights movement in Cambodia in 2013 was the repressive state measures that are taken against indigenous communities and organizations, particularly against those who protest at land grabs and other injustices. As corporations and businessmen seize indigenous lands through the concession process, they usually bring armed forces to assist them. Protest is often met with arrest or violence, or threats of violence. Multiple armed forces are mobilized against activist communities and individuals – sometimes private security guards, sometimes members of the Royal Cambodian Armed Forces, and sometimes the local police. Discrimination against indigenous peoples by the dominant Khmer is widespread and taken for granted. Any large gatherings must first be approved in advance by the local commune councils, which are almost always made up of non-indigenous members of the ruling party, the Cambodia People's Party (CPP).¹⁴

2013 national elections

The challenges facing the indigenous rights movement in Cambodia are exacerbated by the machinations of the post-conflict Cambodian state, which is internationally recognized as a highly corrupt and nepotistic state dominated by a single party headed by a prime minister who has held power for the last 28 years. In July 2013, the country held national elections that were marred by numerous irregularities, leading the contending Cambodia National Rescue Party (CNRP) (and many observers) to denounce the election as a fraud, and call for new elections. Despite these calls, the dominant party, the CPP, once again took power, and Prime Minister Hun Sen proclaimed he would remain in power for the next 15 years. Since then, a growing number of protests have taken place in Phnom Penh, led by the CNRP, and the government is largely caught in a deadlock. From an indigenous perspective, however, neither the CPP nor the CNRP has demonstrated any genuine political will with regard to protecting indigenous rights, leaving the indigenous rights movement estranged from mainstream civil society power contestations. ○

Notes and references

- 1 The official Khmer proxy term for indigenous peoples – *chuncheat daoem pheak tech* – literally translates as “original ethnic minority people”.
- 2 Cf. the 2001 Cambodian National Land Law: NS/RKM/0801/14; the 2002 National Forestry Law: NS/RKM/0802/016. 2009 legislation affecting indigenous peoples includes a “National Policy on the Development of Indigenous People,” prepared by the Ministry of Rural Development, a “Sub-Decree on Procedures of Registration of Land of Indigenous Communities” (No.83 ANK/BK), both approved by the Council of Ministers on 24 April 2009; and a “Circular of the Ministry of Rural Development on the Procedures and Methods of Implementing National Policy on the Development and Identification of an Indigenous Community,” approved on 22 July 2009. Another circular was approved on 31 May 2011, from the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction, an “Inter-ministerial Circular on Interim Protective Measures Protecting Lands of Indigenous Peoples that Have Been Requested for Collective Ownership Titling, While Awaiting Titling Process According to Procedure to be Completed.”
- 3 Maps of known economic land concessions and mining concessions in Cambodia, available via the Open Development Cambodia website (<http://www.opendevdevelopmentcambodia.net/maps/>, accessed 30 Dec 2013)
- 4 The contrasts between land titling and land concession processes are analyzed in Keating, N. B. (2013). “Kuy Alterities: The Struggle to Conceptualize and Claim Indigenous Land Rights in Neo-liberal Cambodia.” *Asia Pacific Viewpoint* 54(3):309-322; and Keating, N. B. (2012) “From Spirit Forest to Rubber Plantation: The Accelerating Disaster of Development in Cambodia.” *ASIANet-work Exchange* 19(2):68-80.
- 5 Cf. Human Rights Watch (2013). “Cambodia: Land Titling Campaign Open to Abuse”. <http://www.hrw.org/news/2013/06/12/cambodia-land-titling-campaign-open-abuse>. Accessed 1 Feb 2014; Nimol, K. (2014). “New Cambodian Land Disputes Despite Moratorium on Key Concessions.” *Radio Free Asia*. <http://www.rfa.org/english/news/cambodia/disputes-01302014194318.html>. Accessed 1 Feb 2014. Channyda, C. and Seangly, P. (2014). “Monk, NGO Staff Detained.” *Phnom Penh Post*, 3 January 2014. <http://www.phnompenhpost.com/national/monkngo-staff-detained>. Accessed 1 Feb 2014.
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- 7 Woods, B. and Naren, K. (2013). “National Land Program Dropped Communal Titles”. *Cambodia Daily*, 7 February. <http://www.cambodiadaily.com/archive/national-land-program-dropped-communal-titles-9480/>. Accessed 12 January 2014.
- 8 The negative impact of Directive 01BB is analyzed in Milne, S. (2013). “Under the leopard’s skin: Land commodification and the dilemmas of Indigenous communal title in upland Cambodia.” *Asia Pacific Viewpoint* 54(3):323-339; and Rabe, A. (2013). *Directive 01BB in Ratanakiri Province, Cambodia: Issues and impacts of private land titling in indigenous communities*. Asia Indigenous Peoples Pact, in collaboration with the Ratanakiri Communal Land Titling Working Group.
- 9 The result is similar to the outcomes of the General Allotment Act on indigenous territories in the USA during the late 19th/early 20th centuries. Individual properties are more vulnerable to alienation and sale than are collectively owned properties.

- 10 Subedi, S. P. (2012). *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia Addendum: A Human Rights Analysis of Economic and Other Land Concessions in Cambodia*. UN Human Rights Council, 21st Session, Agenda Item 10: Technical Assistance and Capacity-Building. A/HRC/21/63/Add.1.
- 11 Open Development Cambodia. <http://www.opendevdevelopmentcambodia.net/briefings/forest-cover/>. Accessed 13 January 2014.
- 12 Cf. Baird, I. G. (2009). *Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Development in Northeastern Cambodia*. The Rivers Coalition in Cambodia; 3S Rivers Protection Network (<http://www.3spn.org/>); International Rivers (<http://www.internationalrivers.org/resources/3s-rivers-under-threat-7686>).
- 13 Cf. *Briefing Paper: the China North-South Railway Project*. Equitable Cambodia.net
- 14 More detailed information about the militarization of indigenous territories was submitted to the UN Special Rapporteur on the rights of indigenous peoples by the Cambodian indigenous peoples' UNPFII delegation in 2012.

Neal B. Keating is Assistant Professor at the Department of Anthropology, College at Brockport, State University of New York. **Pheap Sochea** is President of the Cambodia Indigenous Youth Association.

VIETNAM

As a multi-ethnic country, Vietnam has 54 recognized ethnic groups. The Kinh represents the majority, comprising 87%, and the remaining 53 are ethnic minority groups, with an estimated 13 million accounting for around 14% of the country's total population of 90 million. Each ethnic group has its own distinct culture and traditions, contributing to Vietnam's rich cultural diversity.

The ethnic minorities live scattered throughout the country, but concentrated mostly in the Northern Mountains and Central Highlands in the South. The Vietnamese government does not use the term "indigenous peoples" for any groups but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam's indigenous peoples. The term 'ethnic minorities' is thus often used interchangeably with 'indigenous peoples' in Vietnam. The Thai, Tay, Nung, Hmong and Dao are fairly large groups, each with between 500,000 and 1.2 million people. There are some small groups with a few hundred. Around 650,000 people belonging to several ethnic minority groups live on the plateau of the Central Highlands (Tay Nguyen) in the south.

All ethnic minorities have Vietnamese citizenship, and Vietnam's constitution recognizes that all people have equal rights. The Cultural Heritage Law of 2001 was passed to provide recognition of and guarantees for the cultural heritage and traditional practices of all ethnic groups. Recently, Vietnam has made impressive achievements in poverty reduction and has become a middle-income country. However, poverty is still high among ethnic minorities. While the national poverty rate fell from 14.2% in 2010 to 9.6% in 2012, in the north-western mountains, mostly inhabited by ethnic minorities, it was still 28.55%.

The Government of Vietnam has not ratified ILO Convention 169 but voted in favour of the UNDRIP although it does not recognize ethnic minorities as indigenous peoples.

Vietnam ratifies revised Constitution 2013 and Land Law

The revised 2013 Constitution was launched on 8 December 2013. This is the first time civil and human rights have been affirmed in the Constitution. Disappointing for advocates of human rights and general political and economic reform, however, was the fact that a number of provisions - some of them rather controversial - remained unchanged, such as: the Communist Party of Vietnam remains the only party, leading the State and society; all land is public property managed by the State; State entrepreneurs play a key role in the national economy. Most relevant to indigenous peoples is Article 5, which continues to affirm that Vietnam is a united nation of all ethnic groups living in Vietnam's territory; all ethnic groups are equal and ethnic discrimination and division are prohibited. While Viet is still declared the national language, all ethnic groups have the right to use their own language and script, to preserve their ethnic identity, and to promote their "positive" customs, practices, traditions and cultures, which implies that some of the traditional practices and customs are not considered "positive" and thus not worth preserving. The State is mandated to implement comprehensive development policies and to support ethnic minorities to "promote their internal strengths" for development to bring them on a par with the whole nation. Articles 42, 58 and 61 ensure ethnic minorities' right to determine their ethnicity, use their mother tongue and choose their language of communication, and prioritise the development of education, healthcare and vocational training in mountainous areas and in ethnic minority areas. However, the new constitution does not recognize the right of ethnic minorities to an education in their own language. Article 25 states that: "Citizens have freedom of speech, press, access to information, meetings, the establishment of associations and protest" but the reality is different and freedom of expression, association and peaceful assembly are still violated.

The new Land Law 2013 was adopted on November 26th by the 11th National Assembly. The most crucial article on land ownership still remains unchanged: land is public property and the State is in charge of land management. Communities are recognized as one category of land users and the new constitution states that all proper land users shall be given land-use certificates. Item 4, incorporating Articles 38 to 45, refers to land recovery. The constitution still maintains provisions that give the State the right to recover land for purposes of national defence



and security, for national benefit and economic development. The inclusion of “economic development” has been a big disappointment for rights advocates since it has been the main cause of compulsory land recovery, long unsolved conflicts and violent confrontations between private companies and landholders. Land recovery by the State has, in recent years, been the cause of more than 70% of social conflicts in Vietnam.

New policies for ethnic minorities

In 2013, 14 policies¹ were issued on ethnic minorities. Education policies have focused on exemption or reduction of education fees; vocational training and ethnic-language education. Economic policies are aimed at sustainable poverty reduction and re-allocation of forest and land to ethnic minorities. Cultural policies are aimed at the preservation and promotion of ethnic minority cultures, including support for ethnic minority elders to help the authorities implement these policies at grassroots level. The policy on legal aid ensures that ethnic minorities are given legal assistance in their own language in case they do not speak the national language and ask for support.

Announcement of National UPR report

In December 2013, the Ministry of Foreign Affairs presented the National Universal Periodic Review (UPR) report, prepared for submission to the Human Rights Council in February 2014, in fulfilment of its obligation under the UPR process, to the public. The report mainly focuses on achievements in human rights but also refers to political, cultural, educational and healthcare improvements as well as legal aid for ethnic minorities. However, since the last periodic review in 2009, human rights violations have, in fact, increased. The new constitution refers to the protection of human rights but it is not likely that much will change in practice.

UN-REDD and Free, Prior and Informed Consent

In 2013, Vietnam continued to implement the 2nd phase of the UN-REDD program in six provinces: Ca Mau, Lam Dong, Binh Thuan, Ha Tinh, Bac Can and Lao Cai. There are fears among ethnic minorities that REDD+ will impose restrictions on their land and forest use and traditional customary laws and practices. However, with its social and environmental safeguard measures, it is also felt that the UN-REDD program provides opportunities for promoting recognition of the basic rights of ethnic minorities. The first draft of the Guidelines on applying Free, Prior and Informed Consent (FPIC) in REDD+ and version 2.0 of the Safeguard Roadmap for Vietnam's National REDD+ Action Programme were completed and circulated for comments in December 2013.

Recognition of languages and cultural heritage

April 19 has become the official annual Traditional Cultural Day of all ethnic groups in Vietnam. A number of festivals have been revived and advertised to promote tourism in mountainous areas. The official recognition of languages, scripts and intangible cultural heritage of some ethnic minorities in 2012 was a major breakthrough, and included, among other things, the “cap sac” ceremony and script of the Dao ethnic group. 2013 was the year of “revived Dao script” because the more than 1000-year-old script is now finally officially and freely taught

among Dao communities in Hoa Binh, Thanh Hoa, Yen Bai and Bac Giang provinces with strong support from the Centre for Sustainable Development in Mountainous Areas.

2013 was also a remarkable year for the Thai people. After 50 years, they have finally been allowed to teach the Thai script in schools. After Dien Bien, Son La is the second province that authorized the inclusion of the Thai script in the provincial primary school curriculum. In October 2013, the traditional Thai festival “Xoe” in Nghia Lo town set a national record for the number of participants involved in this traditional collective dance. It was part of the attempt to submit the “Xoe” dance for recognition as national intangible cultural heritage.

Land allocation and opportunities for legal and policy reforms

Studies conducted in Son La and Lam Dong provinces² and other mountainous areas show that land consolidation is one of the reasons that has led to the gradual loss of land tenure among ethnic minorities. Companies growing rubber, coffee, tea, vegetables and flowers have misappropriated thousands of hectares of fertile land from the local people. In Lam Dong, as in other parts of Vietnam, forest land is not allocated to local people but given as a priority to private companies. Moreover, State-run agro-forestry farms have managed large areas of land ineffectively, without creating any positive changes in the life of the forest-dependent communities living in these areas. In the Northern provinces, forests have been continuously cleared for rubber plantations. Representatives of the Vietnam Rubber Corporation stated that although planting rubber in the Northwest region is risky, with low productivity, they still have to do it because of their “social responsibility”!

Recent research on and evaluations³ of the implementation of land allocation policies⁴ concluded that the legal framework does not recognize the traditional territory and land management systems of ethnic minorities or their livelihood practices, and that they have suffered from the negative impact of hydropower and mining projects and ineffective land use on the part of State farms. The researchers recommended that the government should re-allocate forests currently managed by State forest enterprises to ethnic minority communities and households, legalize customary ownership of land and forests and support the development of community forest management. The development of guidelines on the implementation of the revised Land Law and the upcoming revision of the Law on

Forest Protection and Development will provide opportunities for the much-needed legal and policy reforms.

At the Vietnam Development Partnership Forum 2013, Vietnamese NGOs stated that media, policy and public discourses still contain misunderstandings of, and prejudices and discrimination against, ethnic minority cultures and do not consider them agents of development. This impedes people's participation and voice and diminishes the effectiveness of the government's development programs which, in the long run, may lead to their overdependence on external assistance. Training programs are thus needed to encourage local government officers to understand and respect the diversity of cultures and ways of life of ethnic minorities. In the long term, the government will need to draft a law on ethnic minorities that is consistent with the UNDRIP, which Vietnam has adopted, and Article 5 of the recently approved revised Constitution. ○

Notes and references

- 1 Among these are: Decree No.74/2013/ND-CP on education fee exemption or reduction; Decision No.66/2013/QD-TTg on supporting ethnic minority students; Circular No.36/2012/TT-BGDĐT on teaching, examination and certification of ethnic minority languages; Document No.9527/VPCP-KGVX on vocational training for ethnic minority students; Decision No.12/2013/QD-TTg on policies supporting high-school students; Decision No.56/2013/QD-TTg on policies for prestigious ethnic minority persons; Decision No.3508/QD-BVHTTDL on conservation and development of ethnic minority cultures. Joint Circular No.01/2012/TTLT-BTP-UBDT on legal aid for ethnic minorities.
- 2 Reports presented at the Policy Forum on the Situation of and Solution for Land Management in Ethnic Minority and Mountainous Areas, held by the State Committee for Ethnic Minorities and UNDP, January 2013.
- 3 OXFAM, 1/2013. Pro-Poor land consolidation: Issue related to Ethnic minorities; UNDP and Committee for Ethnic minority's Project "Empowerment capacity for making and implementing policy for EM", Report of research on situation of and recommendations for land-use policy in mountainous and EM areas, 12/2012
- 4 Decisions concerning land allocation to ethnic minorities: No.33/2013/QD-TTg on support for communities after resettlement and No. 132/2002/QD-TTg; No 134/2004- QD-TTg; No 1592/QD-TTg; No 74/QD-TTg.

Mrs. Luong Thi Truong is director of the Vietnamese NGO Centre for Sustainable Development in Mountainous Areas (CSDM). She belongs to the Thai ethnic minority in Vietnam.

LAOS

Over the last decade, Laos has been in a rapid state of economic and social change driven, in part, by national development policies linked to regional and international integration and the goal of leaving their Least Developed Country status behind. Much of the economic change involves the commodification of water (hydropower and irrigation) and land and forests (agriculture, wood products and carbon pools), which are the natural assets of indigenous communities. Increasing numbers of indigenous people are being separated from their means of production and pushed into discriminatory, exploitative and transboundary labour markets.¹ Decision-making power over these resources is mainly controlled by a small politically-dominant elite group from the Tai-Kadia language family (ethnic Lao) and their client-patron networks. The ethnic Lao comprise around one-third of the total population. Approximately another third of the population consists of other Tai-Kaidia language speakers. As for the remaining population, 30% speak one of the 30+ Mon Khmer languages as their first language, 5% speak the Sino-Tibetan language and 10% speak Hmong or Lu Mien.

The Government of Laos classifies indigenous people as “ethnic groups”² and does not recognize indigenous status, regardless of their support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Only one nationality, Lao, is recognized. Most donor agencies and development INGOs follow the government position on classification and do not apply a rights-based approach. Open discussion about indigenous peoples with the government can be a sensitive issue, especially as it is seen as pertaining to special (human) rights. Officially, there are 49 ethnic groups recognized, with 160 ethnic sub-groups, all of which the Lao Constitution states have equal status and rights. Self-identification as indigenous varies among the non-Lao portion of the population.

Extreme poverty is most common in the mountainous regions, where the majority of the country’s indigenous peoples live.³ The greatest marginalization and poverty is found among the women of indigenous groups

living in rural areas.⁴ The poorest groups in the lowlands are often those who have been resettled from the mountain regions. Social isolation and marginalization from mainstream Lao culture occurs due to their different languages, customs and religious beliefs. Indigenous communities have limited access to education and information that would enable them to improve their living standards, especially as this relates to their rights as Lao citizens.

National development

The government of the Lao People's Democratic Republic (Lao PDR or Laos) is deeply influenced by the concept of development and many of its policies (e.g. National Socio-Economic Development Plans 1 – 7) and goals are framed through international bodies (UN Millennium Development Goals, World Bank and Asian Development Bank poverty indicators), overseas development agencies and integration into ASEAN (Association of Southeast Asian Nations). Gross Domestic Product (GDP) is the main indicator of development, and attracting direct foreign investment is crucial to maintaining growth in GDP. These factors are having a profound effect on indigenous peoples and are transforming their livelihoods.

The main drivers of the economy continue to be the construction and operation of hydropower dams on the Mekong River and its tributaries and mineral and precious metal mining. These industries are having a negative impact on indigenous peoples across the country, involving the loss of land and forests and associated livelihoods, village relocation, air and water pollution, migration and changes to traditional ways of life. Recognizing their overdependence on mining and the large number of mining concessions that were inactive, in June 2012 the government issued a three-year moratorium on mining, rubber and eucalyptus concessions.⁵ All non-operational mining concessions were reviewed in 2013 and a small number had their concessions cancelled. A loss of land has been a key impact of these economic land concessions, and thousands of indigenous people no longer have access to their traditional agricultural and forest lands and have thus been forced to move into the wage labour economy. However, the employment opportunities claimed by investors have not materialized, with most jobs going to foreign workers.⁶



The Government of Laos does not collect or endorse social and economic data that segregates ethnic groups. However, there is now a clear and noticeable distinction between wealth accumulation in urban areas and among the ethnic Lao people, and that of the upland areas populated by indigenous people. Aid agencies working in these areas have observed persistently high poverty levels. There is limited access to education or to education adapted to indigenous cultures and, even though it is well known among aid agencies that physical stunting in children in non-Lao communities is higher than in Lao communities, the detailed “Lao Social Indicator Survey” makes no reference to or correlation with ethnicity and nutrition.⁷ Indigenous communities are also largely cut off from higher-level political office, which decreases their ability to access the power and

resources needed to make larger scale changes. Given this situation and, as the country develops, indigenous people are at risk of becoming entrenched in economic, social and political poverty.

The Government of Lao PDR has a long history of relocating villages, a process that is often not voluntary but rather coerced or forced. This method of social and national construction has been ongoing for many years, in some cases with support from international aid agencies, even though there are critical concerns about the negative impacts of relocation. The National Leading Committee for Rural Development and Poverty Eradication (NLCRDPE) is responsible for coordinating relocations and recently reported that: “Some 70 locations out of a planned 167 locations in provinces across the country where poor families are being settled have been developed and equipped with necessary facilities, with many of the people previously engaged in shifting slash and burn cultivation” and that: “The numbers of families engaging in shifting slash and burn cultivation have been declining thanks to the Stabilization of Settlement and Livelihoods scheme”.⁸

Overseas Development Assistance

Donor agencies have poverty reduction mandates and support similar government approaches focusing on upland areas and indigenous peoples. The impact of this work on indigenous livelihoods is therefore widespread. These efforts are aligned with various government policies and international goals such as the UN Millennium Development Goals. In order to give focus to the development efforts, specific strategies (such as the Forest Strategy to the Year 2020) and policies aimed at the uplands have been created. With donor support, the Ministry of Agriculture and Forestry has created the “Upland Development Strategy to the Year 2020”, which includes food security and commercial agriculture as its two pillars. Support for the expansion of commercial agriculture is being promoted as key to connecting remote indigenous communities to a growing network of agricultural buyers, both national and international (mainly China, Vietnam and Thailand). This pillar is directly linked to the government policy of stabilizing pioneer shifting cultivation and informally bringing the uplands under greater state control through market expansion and greater regional economic integration.

Natural resource legislation

As indigenous peoples have no specific rights, stronger legal tenure over natural resources is one way of securing resources and livelihoods. There was very active legislative drafting related to natural resources and access to and control over land and forests in 2013. The first ever National Land Policy was drafted, with significant input from international civil society organisations. Key recommendations affecting indigenous peoples included: the right of villages to refuse land concessions based on internal decisions (i.e. consent); the full recognition of communal land and communal titling; the establishment of specific and transparent grievance mechanisms; and formal recognition of customary land tenure rights. The final recommendation is of particular importance as the vast majority of land occupied by indigenous peoples is under communal ownership and is untitled. The National Land Policy is meant to provide direction for a revision of both the Land and Forestry Laws.

The Forestry Law has been under revision through a donor-supported consultation process allowing local and international civil society input. This recommended the designation of Community Forests alongside the three other existing main forest categories (Production, Protection and Conservation). The draft law distinguishes between rotational agriculture and shifting cultivation, with the former being acceptable if based on an approved land-use plan. Shifting cultivation is defined as the clearing of new, previously uncut forest areas and is deemed illegal. If the law is passed, it will legitimize the most common agricultural system of indigenous peoples in Laos.

In 2013, a Village Forestry and Non-timber Forest Products Unit was established within the Department of Forestry. The Land Law is also under revision and should incorporate the themes addressed in the National Land Policy. The policy has been intensely debated in the National Assembly, with the Politburo leading the National Steering Committee. These pieces of legislation will not give specific rights to indigenous peoples but will address the weak natural resource tenure rights of all rural communities, many of which are indigenous. To meet the changes in the forestry sector (REDD+, FLEGT, etc.), the Forestry Strategy to the Year 2020 was also opened for revision in 2013, after a 2012 review.

New guidelines created by the Lao Front for National Construction⁹ and supported by the World Bank were completed in 2013. Entitled "Guidelines on Con-

sultation with Ethnic Groups Affected by Public and Private Development Projects”, they are meant to: a) ensure that consultation with ethnic groups follows an effective practice in order to comply with the Environmental Protection Law, the Decree on Environmental Impact Assessments (EIAs), the Decree on Compensation and Resettlement of People Affected by Development Projects and other relevant regulations; b) ensure the right of people affected by development projects to be fairly compensated by those projects; c) prevent or mitigate the potential environmental and social impacts generated by development projects and ensure that the project is properly designed for sustainability. The guidelines are, however, not legally binding, have not been widely distributed and do not include the right to give or withhold consent. Furthermore, EIAs have not been conducted for many investment projects and those that have do not take into account the concerns of the affected indigenous peoples. Previous models of consultation with indigenous peoples include the 2011 – 2012 Free, Prior and Informed Consent (FPIC) model that was piloted in Xayabury Province under a GIZ bilateral REDD+ project (see *The Indigenous World 2013*). Unfortunately, the FPIC process was not completed in the project area and, to date, has not been followed up anywhere in Laos. If the National Land Policy discussed above includes the right to refuse land concessions (i.e. consent) then it will informally strengthen the FPIC process.

Indigenous resistance

The agricultural and forest lands of indigenous peoples have continued to be converted through economic land concessions into other land uses. Prior to this, land-related conflicts were minor and localized; however, non-transparent and top-down land acquisitions facilitated by the government have resulted in an increased number and intensity of conflicts. A variety of species have been planted by foreign and local investors, with the government facilitating the process: rubber plantations are widespread and especially damaging to indigenous livelihoods. As there are no clear or fair District and Provincial level grievance mechanisms, and local authorities benefit from the concessions, complaints made directly to the National Assembly have risen sharply and resulted in a backlog of unresolved grievances.¹⁰ Two high-profile cases involving indigenous communities and for-

eign investors have been monitored closely by the government and civil society groups.

One group affected by a Vietnamese – Lao joint venture rubber concession (Cong Ty Cao Su Huu Nghi/Lao-Viet Friendship Rubber Company) organised itself independently and travelled numerous times to the national capital to present petitions and seek a resolution.¹¹ The leaders of the group were arrested in their home province, with several being detained for three weeks, during which time they suffered physical abuse. Following their release, they were subjected to death threats and intimidation and forced to flee for their safety. During 2013, they continued to pursue the case at the central level and this is helping to expose the injustice and corruption not only in this case but in many others. Representatives of the National Assembly have met with the leaders and are taking a resolution and monitoring role in this regard. The provincial military was mobilized in case the resistance spread to other indigenous communities.

A second group of indigenous people were affected by the international agricultural conglomerate Olam International and coffee-related land concessions.¹² This group successfully negotiated the return of some of their land and compensation for crops destroyed. In both cases, the international media coverage was not welcomed by the Lao authorities but played a role in keeping the cases from being ignored. The legitimacy of the resistance was in part related to their indigenous identity and their ancestors' involvement in resistance and as liberators during the colonial (French and American) eras. Not all land conflicts have reached this level of resistance but, across Laos, low levels of resistance include: cutting and destroying tree plantations, active local petitioning, blocking access to planned plantation sites, unwillingness to cooperate with companies and the government, and occasional acts of direct violence. ○

Notes and references

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- 2 In the past, the term "ethnic minority" was officially used but this was halted as the government believed it created a minority identity that did not align with the state's efforts to create a national identity. It could also be interpreted that, being minorities, these groups qualified for specific attention (i.e. rights), something which the state does not support.

- 3 Epprecht M., Minot N., Dewina R., Messerli P., Heinemann A., 2008. The Geography of Poverty and Inequality in the Lao PDR. Swiss National Center of Competence in Research (NCCR) North-South, University of Bern, and International Food Policy Research Institute (IFPRI), Bern: Geographica Bernensia. P. 38
- 4 Elizabeth M. King and Dominique van de Walle, Indigenous People. Lao PDR Country Brief Number 2. "Catching up slowly: ethnic and gender inequalities in Lao PDR". November 2010.
- 5 Vientiane Times, 8 May 2012. "Govt to consider suspending large mining, land concessions".
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- 8 Vientiane Times, 3 February 2014, "Settlement and livelihoods crucial to fighting poverty, donors told".
- 9 The Lao Front for National Construction is a mass organisation with representation at all levels of government (central to village). It is responsible for enhancing unity and harmony among all Lao ethnic people/citizens, officially registered religions, social strata and organisations. It is responsible for reaching out to the non-party population and is seen, by the government, as the closest thing to a local NGO in Laos.
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- 11 <http://www.rfa.org/english/news/laos/land-concessions-06282012173323.html?searchterm:utf8:ustring=laos+sekong>
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Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.

BURMA

Burma's diversity encompasses over 100 different ethnic groups. The Burmans make up an estimated 68 percent of Burma's 50 million people. The country is divided into seven, mainly Burman-dominated divisions and seven ethnic states. The Burmese government refers to those groups generally considered indigenous peoples as "ethnic nationalities". This includes the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. However, there are many more ethnic groups that are considered or see themselves as indigenous peoples, such as the Akha, Lisu, Lahu, Mru and many others.

Burma has been ruled by a succession of Burman-dominated military regimes since the popularly-elected government was toppled in 1962. The regimes have justified their rule, characterized by the oppression of ethnic nationalities, by claiming that the military is the only institution that can prevent Burma from disintegrating along ethnic lines. After decades of armed conflict, the military regime negotiated a series of ceasefire agreements in the early and mid-1990s. While these resulted in the establishment of regions with some degree of administrative autonomy, the agreements also allowed the military regime to progressively expand its presence and benefit from the unchecked exploitation of natural resources in ethnic areas.

In November 2010, the military-backed Union Solidarity and Development Party (USDP) won Burma's first general election in 20 years by a landslide. The UN said the electoral process failed to meet international standards. Three months later, the USDP-dominated Parliament installed former General Thein Sein – the military regime's former Prime Minister and the architect of the widely-criticized 2008 Constitution – as Burma's President. Thein Sein and his nominally civilian administration took positive steps towards reform. Thein Sein released hundreds of political prisoners, eased certain media restrictions, took steps to liberalize the economy and engaged in ceasefire talks with ethnic armed groups. However, many critical issues remained unaddressed, such as ongoing serious human rights violations in ethnic nationality areas, military offensives in Kachin and Northern Shan states, a lack of significant legislative and institutional reforms, and persecution of Muslim Rohingya in Arakan State.

Burma voted in favour of the UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, but has not ratified ILO Convention 169.

Another year of armed conflict in Kachin State

Armed conflict between the Tatmadaw (Burma's army) and the Kachin Independence Army (KIA), which began in June 2011, continued in Kachin and Northern Shan states throughout 2013. In January, the Tatmadaw continued its sustained offensive on KIA forces in Lajayang and Laiza in Momauk Township, Kachin State. The offensive, which began in late December 2012 (See *The Indigenous World 2013*), marked a dramatic escalation in the conflict, with the Tatmadaw launching numerous air strikes against KIA positions, backed by the use of artillery, mortars and cluster bombs.¹ In response to growing international concern, the government repeatedly defended the military's actions as being undertaken in "self-defense".²

During the year, fighting between the Tatmadaw and the KIA was reported in nine townships in Kachin State and at least six townships in Northern Shan State. Tatmadaw troops also frequently clashed with the Ta'ang National Liberation Army (TNLA), an ally of the KIA, in Northern Shan State. There were numerous reports of human rights violations committed by the Tatmadaw during military operations against the KIA, including the killing of at least 11 civilians, arbitrary arrests, rape, torture, forced labor and the use of human shields.³

As a result of the fighting, an estimated 100,000 people remained displaced in Kachin and Northern Shan states. The government continued to restrict access to humanitarian aid for internally displaced persons (IDPs) in KIA-held areas. In 2013, the government granted UN humanitarian agencies access to IDPs in KIA-controlled areas on only three occasions. These deliveries of short-term aid reached only an estimated 25% of the 53,000 registered IDPs in KIA-held areas.

Despite four rounds of formal talks between government officials and Kachin Independence Organization (KIO) representatives in 2013, no ceasefire was reached. On 30 May, the two sides signed an agreement in which they pledged to work towards a cessation of hostilities. However, fighting continued unabated the following month.⁴ A similar agreement inked between the government and the



KIO on 10 October also failed to halt the fighting. From 15-30 October, Tatmadaw troops attacked KIA positions in Mansi Township, Southern Kachin State, and in Mabein, Kyaukme, and Kutkai townships, Northern Shan State. Ongoing Tatmad-

aw attacks and troop deployments continued to erode trust between the two sides and called into question the sincerity of the government's peace overtures.

Peace agreements remain tenuous

Peace agreements signed between Burma's government and various ethnic armed groups remained fragile in 2013 and failed to curb Tatmadaw attacks and militarization in ethnic nationality areas. During the year, the Tatmadaw clashed with five ethnic armed groups — the Shan State Army-South (SSA-S), the Shan State Army-North (SSA-N), the New Mon State Party (NMSPP), the Democratic Karen Benevolent Army (DKBA) Brigade 5, and the Karen National Liberation Army (KNLA) — despite existing peace agreements signed between each group and the government. Amid ongoing fighting, official rhetoric regarding the peace process seemed divorced from the reality on the ground. In March, during a press conference with Austrian President Heinz Fischer in Vienna, President Thein Sein claimed that there was “no more fighting all over the country”.⁵ The following day, the Tatmadaw launched air strikes on KIA positions near Pangwa in Chipwi Township, Kachin State.⁶

In September, despite the fact that the government had not yet concluded ceasefire deals with the KIO or the TNLA, President's Office Minister Aung Min announced plans for a nationwide ceasefire signing ceremony in October.⁷ The government appeared intent on concluding a nationwide agreement before the end of the year in a bid to underline its reformist credentials and encourage more foreign investment. The proposal was swiftly rejected by the United Nationalities Federal Council (UNFC), a coalition of 11 ethnic armed groups, on the grounds that the government had not met the group's key demands, including an end to military offensives and the beginning of meaningful political dialogue with all ethnic armed groups.

The government continued to push for a nationwide ceasefire to be signed *before* beginning political dialogue. However, the majority of ethnic armed groups remained reluctant to commit to a nationwide agreement while substantive issues such as ongoing militarization, conflict and progress towards genuine federalism remained unaddressed. In November, a government delegation led by President's Office Minister Aung Min met with representatives from 17 ethnic armed groups in Myitkyina, Kachin State, where the two sides exchanged nationwide

ceasefire draft proposals. However, talks stalled over the government's push for ethnic armed groups to disarm and its rejection of the ethnic armed groups' demand for a federal army in Burma.⁸

State-led persecution of Muslim Rohingya continues

The situation for Muslim Rohingya in Arakan State remained grim in 2013, after deadly violence between Buddhist Rakhine and Rohingya communities in 2012 (see *The Indigenous World 2013*). An estimated 140,000 people, the overwhelming majority of whom were Rohingya, remained displaced within Arakan State. Rohingya IDPs continued to face restrictions on their freedom of movement and lacked access to employment, health and education. Aid workers repeatedly condemned the dire conditions evident in Rohingya IDP camps. In April, the United Nations High Commissioner for Refugees (UNHCR) urged Burmese authorities to immediately address shelter, water, and sanitation needs in IDP camps to avert a potential "humanitarian catastrophe".⁹

Government security forces continued to commit abuses against Rohingya, including extrajudicial killings, rape, torture and arbitrary arrest. From June to August, security forces shot and killed a total of seven Rohingya IDPs in three separate incidents. In August, the UN Special Rapporteur on the situation of human rights in Burma, Tomás Ojea Quintana, issued a statement highlighting multiple issues of concern regarding the situation for Rohingya in Arakan State, including the excessive use of force by security forces against Rohingya IDPs and the arbitrary detention and sentencing in "flawed trials" of many of the hundreds of Rohingya arrested in connection with the unrest in 2012.¹⁰

In April, the commission formed by President Thein Sein to investigate the violence in Arakan State in 2012 released its report. The report largely conformed to the government's anti-Rohingya agenda and failed to hold anyone accountable for human rights abuses committed during the unrest. The report rejected Rohingya identity and referred to them only as "Bengali" – implying that they were illegal immigrants from Bangladesh. It said that "rapid population growth" among Muslims in Arakan State had undermined peaceful coexistence. As a result, the report recommended implementing birth control programs for Muslims, advised that the "temporary separation" of the two communities should continue and called on the government to double its security presence in the region.¹¹

Burma's government continued to issue statements and support policies which fueled discrimination against Rohingya communities. In May, in a move which echoed one of the report's recommendations, authorities in Arakan State resurrected a longstanding ban on Rohingya having more than two children. High-level government officials also reiterated their refusal to acknowledge Rohingya identity and their rights to citizenship. In July, President Thein Sein denied the existence of Rohingya as one of Burma's ethnic groups and maintained that there was no plan to amend Burma's 1982 Citizenship Law, under which the majority of Rohingya are not considered citizens.

Development projects fuel tensions in ethnic nationality areas

The negative social and environmental impact of large-scale development projects in ethnic nationality areas continued to be a concern in 2013. In March, around 2,000 Karen IDPs gathered on the banks of the Salween River in Papun Township, Karen State, to demand that the government halts plans to construct six dams on the river. The deployment of Tatmadaw troops to project sites as part of the government's efforts to protect existing business interests and secure access to natural resources increased the risk of fresh conflict with ethnic armed groups. In April, fighting broke out between the Tatmadaw-backed Border Guard Force (BGF) and DKBA Brigade 5 forces after the BGF ordered the DKBA to leave the area near the Hat Gyi hydropower dam project site in Karen State. Activists called for the suspension of dam projects on the Salween River until conflict in ethnic nationality areas was resolved.¹² Other major infrastructure projects were linked with the fueling of ongoing conflict. In May, Tatmadaw troops in Shan State's Namkham Township launched an attack on a SSA-S base located one kilometer from the Kyaukpyu-Kunming oil and gas dual pipeline.¹³ The previous month, several hundred Maday Island residents had demonstrated in Kyaukpyu Township, Arakan State, against the dual pipeline and demanded the project's developer, China National Petroleum Corporation, provide adequate compensation for land confiscation, higher salaries for local workers, and better electricity supply and roads in the area.

Legislative reforms still pending

Burma's Parliament convened in Naypyidaw for three sessions in 2013 but failed to enact legislation addressing important issues for ethnic nationalities. Repressive laws such as the Unlawful Association Act, which authorities continued to use during the year to arrest and prosecute ethnic nationalities for their alleged ties to specific ethnic armed groups, remained on the books. In addition, in March, the National Assembly rejected, by a vote of 88 to 76, a proposal to establish a Ministry of Ethnic Affairs, introduced by USDP MP Kyaw Din aka Htay Yei.¹⁴ President's Office Minister Soe Maung dismissed the proposal as unnecessary and maintained that the government was already fulfilling the needs of ethnic groups.¹⁵

In 2013, the case for constitutional reform in Burma gained momentum. In July, Burma's National Parliament approved the formation of a 109-member committee to review the 2008 constitution. The committee reflected the political make-up of Parliament and included 52 USDP MPs and 25 military-appointed MPs, but only 18 MPs from ethnic political parties.¹⁶ Amendments to the constitution that ensured respect for and protection of the rights of ethnic nationalities and a more decentralized system of governance to allow ethnic states the authority to govern their own affairs were seen as crucial to achieving genuine national reconciliation. The committee was due to submit its findings in January 2014. ○

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David Hopkins is currently a research officer with the Bangkok-based ALTSEAN-Burma.



SOUTH ASIA

BANGLADESH

The majority of Bangladesh's 143.3 million people are Bengalis but approximately 3 million are indigenous peoples belonging to at least 54 different ethnic groups. These peoples are concentrated in the north, and in the Chittagong Hill Tracts (CHT) in the south-east of the country. In the CHT, the indigenous peoples are commonly known as *Jummas* for their common practice of swidden cultivation (crop rotation agriculture) locally known as *jum*.

The government of Bangladesh does not recognize indigenous peoples as "indigenous". The Small Ethnic Groups Cultural Institution Act 2010 uses the term "khudro nrigoshthi" (small ethnic groups) to refer to the indigenous peoples. However, in the definitions section, when explaining the meaning of the term "khudro nrigoshthi", it uses the term "adibashi", the Bengali equivalent of indigenous or aboriginal. A 2011 amendment to the constitution refers to the indigenous peoples of Bangladesh as "tribes", "minor races" and "ethnic sects and communities". Bangladesh has ratified ILO Convention 107 on Indigenous and Tribal Populations but not ILO Convention 169 and it also abstained when the UN Declaration on the Rights of Indigenous Peoples was voted on in the General Assembly in 2007.

Indigenous peoples remain among the most persecuted of all minorities, facing discrimination not only on the basis of their religion and ethnicity but also because of their indigenous identity and their socio-economic status. In the CHT, the indigenous peoples took up arms in defence of their rights in 1976. In December 1997, the civil war ended with a "Peace" Accord between the Government of Bangladesh and the Parbattya Chattagram Jana Samhati Samiti (PCJSS, United People's Party of CHT), which led the resistance movement. The Accord recognizes the CHT as a "tribal inhabited" region, its traditional governance system and the role of its chiefs, and provides building blocks for indigenous self-determination. The CHT Accord, however, remains largely unimplemented, which has resulted in continued widespread human rights violations, violent conflicts and military control.



Failure to recognize indigenous peoples' rights continues

In September 2013, the government pre-empted a legislative proposal entitled "Adivasi Rights Bill 2013" that had been submitted by the parliamentary caucus of indigenous peoples, aimed at ensuring the recognition of indigenous peoples as indigenous peoples (*Adivasi*) and protecting their rights. According to newspaper reports, a foreign ministry working paper stated that: "Foreign Secretary Sha-

hidul Islam chaired an inter-ministry meeting that decided to 'guarantee' that such bill was not tabled in parliament and to communicate the matter to the speaker who was authorised to decide tabling of any bill in the House. The movers will make it [the recognition of the ethnic minorities as adivasis] a political issue if the bill is tabled as a private member's bill." ¹

As part of its internal policy, and in order to end the debate on indigenous identity and recognition of indigenous peoples, the government (particularly the Ministry of Culture) formed a committee to identify the ethnic groups in Bangladesh. The Ministry then asked the Deputy Commissioners' (DC) offices to send the names of the ethnic groups living in their administrative areas. The DCs sent around 228 names of ethnic groups, excluding the 27 indigenous communities that are listed under the Small Ethnic Group Cultural Institution Act 2010. After examining the list carefully and visiting some places to identify the ethnic groups, the committee finally proposed a list, and this is still under consideration by the Ministry of Culture. Indigenous organizations and activists believe that this initiative of the Ministry of Culture is ill-motivated and an attempt to deny indigenous peoples' real recognition.

In August 2013, the government took the initiative to draft an education law on the basis of the national education policy 2010. The Ministry of Education called for comments and feedback on this proposed new law. According to the CHT Regional Council Act, the government is bound to consult with the CHT Regional Council when drafting laws or planning decisions that affect the interests of indigenous peoples in the CHT. As in other cases, however, this was not done. In addition to this, there seem to be no special measures in the draft law addressing the problems facing indigenous peoples.

CHT Accord implementation: what next?

On 27 May 2013, the Cabinet approved, in principle, amendments to the CHT Land Dispute Resolution Commission Act 2001, which aims to resolve the long-standing land disputes in the CHT. The amendments included all 13 points proposed by the CHT Regional Council and the Ministry of Chittagong Hill Tracts Affairs, which were approved by the CHT Accord Implementation Committee and adopted by an inter-ministerial committee in 2012. Despite the Foreign Minister's assurances during the second cycle of the Universal Periodic Review (UPR) in

Geneva in April 2013 that the amendments to the Land Commission Act were in the final stages and would soon be passed, the Amendment Bill was not passed in the last session of Parliament in November 2013 as expected. Apart from the developments relating to the Land Commission Act, no measures were taken to implement the CHT Accord in 2013, despite the government's repeated commitments made in different forums and meetings over the last five years.

The human rights situation

According to information from the Kapaeeng Foundation, various kinds of human rights violations against indigenous peoples intensified in 2013. At least 11 indigenous people (three from the CHT and eight from the plains) were killed and another 42 (31 from the CHT and 11 from the plains) were arrested and detained either arbitrarily or on fabricated charges. At least 10 communal attacks (six in the CHT - including Chittagong Export Processing Zone - and four in the plains) were carried out by Bengali settlers and Bengali land grabbers, while the houses and properties of at least 346 families (275 from the CHT and 71 from the plains) were destroyed and looted. Around 2,000 people from 400 families in the CHT fled to "no man's land" adjacent to the neighbouring Indian state due to communal attacks by Bengali settlers. While influential Bengalis committed many of these violations, state actors such as members of the security forces and law enforcement agencies were either supportive of or indifferent to what was going on.²

The National Human Rights Commission (NHRC) has been vocal on the issue of indigenous peoples. Whenever, the NHRC receives a complaint from indigenous individuals or organizations, it immediately asks the relevant government bodies and authorities to take measures against these gross human rights violations. For example, on the basis of the Kapaeeng Foundation's complaint regarding the eviction of 21 Chak families in Bandarban district on 13 May 2013, the NHRC requested that the Ministry of Chittagong Hill Tracts Affairs (MoCHTA) conduct an inquiry into the eviction of these villagers from their ancestral villages and to submit the report to the NHRC. Accordingly, the MoCHTA appointed Mr. Alamgir Hosain, Deputy Secretary, to investigate the incident. Mr. Alamgir Hosain duly submitted his report to the NHRC³ but, so far, no action has been taken to ensure justice for the Chak villagers.

Land grabbing intensifies

Land grabbing intensified significantly in 2013 as compared with 2012. In 2013, around 3,792 acres of lands in the CHT were either grabbed or went under process for occupation and acquisition, while 103 *bighas*⁴ of land in the plains were occupied. Of the total land grabbed in CHT, 3,717 acres of lands were grabbed mainly by outside private parties and influential persons and 75 acres by the government. Twenty-six families were evicted from their homesteads and 1,062 families were under threat of eviction. A total of 66 families were attacked in the plains in connection with the occupation of their lands. In addition, with the help of forest officials, land grabbers felled 500 betel leaf trees in Sylhet, trees which are the main source of livelihood of the indigenous Khasi people.⁵

One widely reported case of land dispossession was the eviction of 21 Chak families (see above) in Bandarban district. Another is the threat of eviction that is facing dozens of indigenous families in Dighinala upazila in Khagrachari district, where the local district administration in September took the initiative to set up the Border Guard Bangladesh (BGB) sector headquarters by taking possession of an area of approx. 30 acres of land that falls within three indigenous villages. The Dighinala Army Zone allegedly claimed that, of the 29.81 acres of land, only 2.20 acres were registered in the name of the indigenous villagers while the rest (27.61 acres) was *khas* (state-owned) land. According to the indigenous villagers, the land is part of their ancestral lands.⁶

Situation of indigenous women

According to the Kapaeeng Foundation, in 2013, a total 67 indigenous women and children (53 from the CHT and 14 from the plains) were subjected to violence such as rape/gang rape, attempted rape, rape and murder, killing/shooting dead, physically assault/molested, kidnapped, sexually harassed or trafficked. Sexual harassment and trafficking were added as new forms of violation in 2013. In the CHT, five indigenous Tripura girls were rescued from a *madrassa* in Dhaka after being taken from the CHT in order to convert them to Islam by force. The police also rescued three indigenous girls from the Faridpur-Rajbari

crossing on Dhaka-Khulna highway while they were being trafficked to India on the pretext of well-paid jobs there.

Although impunity is generally widespread for the perpetrators of violence against indigenous women, the Women and Children Repression Prevention Tribunal in Chittagong did convict the perpetrators in a rape case in September 2013.⁷ This ruling may make indigenous women more confident that there are consequences for rape irrespective of one's ethnic background.

UPR and issues related to indigenous peoples

During the second cycle of the Universal Periodic Reviews (UPR) in April 2013, the government made a commitment to promote, protect and respect human rights and to implement the CHT Accord and ILO Convention 107. The same pledges were, however, made during the first UPR cycle with few concrete results. The recommendation to ratify ILO Convention 169 was not accepted by the government, which responded that Bangladesh's consideration in this regard would need to be contextualized within the parameters of the Constitutional provision.⁸

A number of recommendations on cross-cutting thematic issues relevant to indigenous peoples were also adopted, such as the enactment of laws for the protection of the most vulnerable groups, effective investigation and sanctioning of all cases of violence against religious minorities and prevention of violence against women by proper law enforcement and by ensuring the prosecution and punishment of offenders through proper investigations and judicial processes.⁹

The 10th national parliamentary elections

Amid violent turmoil, the 10th national parliamentary elections were held on 5 January 2014. Prior to the vote, indigenous people and other civic organizations called on the political parties to ensure that indigenous peoples' issues, concerns and development, including the identity issue, would be addressed in their electoral manifesto. Only the Awami League and the Workers Party responded to this demand. However, unlike in the 2008 general elections, the

Awami League used the terms “small ethnic group” and “tribal” instead of “indigenous peoples” in its 2014 electoral manifesto. This manifesto promises that the as yet unimplemented pledges and clauses of the CHT Accord will be implemented. The development of the Hill districts will be sped up, the geo-natural features of the three hill districts will be protected and the forest areas, animal resources and beauty of the mountain peak will be preserved. It further promises an end to discriminatory conduct towards religious and ethnic minorities and to violations of human rights, along with the protection of property, including landed property, homesteads and forest property.¹⁰

Four indigenous persons were elected as members of parliament in the election, all men and, among them, three are from the Awami League (the ruling party) and one independent candidate supported by the Parbattya Chattagram Jana Samhati Samiti (PCJSS), a regional political party of the CHT.

As in every national election, violence against indigenous peoples took place in different districts, particularly in the plains. Human rights groups blamed the police, the administration and the ruling party for failing to prevent the violence. ○

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Binota Moy Dhamai is a Jumma from the Tripura people of the Chittagong Hill Tracts and is an activist in the movement for the rights and recognition of indigenous peoples in Bangladesh. He is an active member of the Bangladesh Indigenous Peoples' Forum, Bangladesh and Executive Council Member of the Asia Indigenous Peoples' Pact (AIPP) (bdtripura@gmail.com).

Sanjeeb Drong is a Garo from northern Bangladesh. He is a columnist and freelance journalist and currently editor of the indigenous magazine *Solidarity*. He has published more than 400 articles and four books on indigenous issues (sanjeeb-drong@gmail.com).

NEPAL

According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 35.81% of the total population of 26,494,504, although indigenous peoples' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups (including 63 indigenous peoples), 59 castes (including 15 Dalit castes), and three religious groups (including Muslim groups).

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal, indigenous peoples have been marginalized by the dominant groups in terms of land, territories, resources, language, culture, customary laws and political and economic opportunities.

The 2007 Interim Constitution of Nepal promotes cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. Nepal's indigenous peoples are waiting to see how these intentions will be made concrete in the new constitution, which is still in the process of being promulgated. Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 and UNDRIP is still wanting, however, and it has yet to be seen how the new constitution will bring national laws into line with the provisions of ILO 169 and the UNDRIP.

The Supreme Court's directive order on representation of indigenous peoples

In 2009, 20 organizations, including the Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and the National Indigenous Women's Federation (NIWF), filed a writ petition in the Supreme Court of Nepal demanding amendments to the electoral laws in order to enable the direct repre-



sentation of indigenous peoples in the Constituent Assembly (CA). The Court repeatedly deferred its decision but, realising its relevance to the second CA election, later scheduled for 19 November 2013, on 21 April 2013 the Court issued a directive order to amend the Constituent Assembly Member Election Law, 2064, Constituent Assembly Member Election Regulation, 2064, and Constituent Assembly Regulation, 2065 in accordance with the state's obligation to ratify/adopt the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on Elimination of all Forms of Racial Discrimination, ILO Convention 169, the UNDRIP and other international laws that guarantee direct representation of indigenous peoples in the constitution-making process, in accordance with their own customary practices. The Court informed the government body concerned, namely the Ministry of Law and Justice, that it should implement the decision.

The Special Rapporteur on the rights of indigenous peoples also raised the issue of indigenous peoples' participation in the constitution-making process in 2013 by reiterating his earlier recommendations to provide special mechanisms to ensure the effective participation of indigenous peoples, through their own representative institutions, in the process of developing the new constitution.¹

In September, the Nepal Federation of Indigenous Nationalities (NEFIN) and other indigenous peoples' organizations submitted a memorandum to the National Election Commission demanding the laws be amended before the November CA elections, in accordance with the directive order of the Supreme Court.

The government that was formed to hold the elections, however, ignored the directive order and organized the CA elections without amending the laws. Indigenous peoples' organizations, academics and activists have made it clear that they are not required to agree with or own the new constitution produced by the CA, as they have no direct representation in this, in accordance with their customary practices and as per the state's obligation, as endorsed by the Supreme Court through its directive order.

The discriminatory effect of solely relying on a political party system exclusively controlled by elites to ensure indigenous peoples' participation in the constitution-making process is compounded by the refusal to register political parties that claim to represent indigenous peoples alone, on the basis of a provision in Nepal's Interim Constitution that prohibits a political institution that could jeopardize social harmony on the basis of race, ethnicity, religion or sect.²

Two-thirds majority of “anti-single identity” political parties in the second Constituent Assembly

Election for the CA took place peacefully on 19 November, despite a 10-day nationwide transport strike prior to election day, called by an alliance of 17 political parties led by the Communist Party of Nepal (Maoist), popularly known as the Baidhya Group. The group was protesting at the CA election process that had been adopted by the main political parties and was demanding that a round-table conference of all political parties and social movements be held in order to build a consensus around fundamental issues, including the inclusive restructuring of the state and decision-making without external interference. Eleven political parties won seats in the First-Past-The-Post (FPTP) election for 240 CA members, and a further 27 political parties won seats in the proportional elections for 335 CA members. The Nepali Congress (NC) became the largest political party, with 196 CA members, including 105 from FPTP and 94 from proportional representation, followed by the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML) with 175 CA members, the Unified Communist Party of Nepal-Maoist (UCPN-Maoist) with 80 CA members, and the Rastriya Prajatantra Party Nepal (RPP-Nepal) with 24 CA members. None of the political parties formed by indigenous peoples were successful in the FPTP election; however, five political parties with

an explicit indigenous agenda won 12 of the 335 CA members in the proportional elections.³

Of the 240 FPTP seats, a total of 68 indigenous individuals (five women and 63 men), representing 11 of Nepal's 59 indigenous peoples, namely the Newar, Limbu, Magar, Tharu, Tamang, Gurung, Rai, Sunuwar, Chantyal, Sherpa and Thakali, were elected from five political parties, including the three main political parties, i.e. the Nepali Congress, CPN-UML and UCPN-Maoist. Of the 335 seats from the proportional elections, 115 indigenous individuals (57 women and 58 men), representing a further nine indigenous peoples, namely the Bhujel, Marphali Thakali, Rajbanshi, Tingaunle Thakali, Darai, Baramu, Pahari, Hylmo and Yakkha, were elected. Some CA members with caste family names, such as Bhandari, Khuna, Dhami, Tudu, Modi, Dev and Nisadh, were wrongly included in the proportional election as indigenous peoples.

Apart from the 240 CA members elected through the FPTP and the 335 CA members elected through proportional representation, 26 CA members have to be nominated by the Cabinet. As there is pressure on the government to nominate influential political leaders from the main political parties and marginalized groups such as women and the disabled, it is highly unlikely that indigenous peoples will be prioritized in the nominations. And even if all 26 nominations were drawn from different indigenous peoples, there would still be some left out in the CA.

As mentioned in *The Indigenous World 2013*, the Nepalese indigenous peoples are fighting for federalism based on single identities, implying collective rights. In the first CA (27 May 2008-27 May 2012), at least 417 of 601 CA members were in support of "single identity" based federalism but, in this second CA, two-thirds of the 601 CA members are against it, i.e. they are for "multiple identities" based federalism. "Single identity" indicates ethnic and regional federal units and "multiple identities" indicates geographical federal units.

Although national and international election observers said that the CA elections passed in a free and fair manner, the CPN (Maoist) and other small political parties made serious allegations of systemic, structural and policy-based rigging on the grounds that the army transported the ballot boxes without any escorts from the representatives of the political parties, that fragments of ballot papers were found dumped in the forest, that the seals on the ballot boxes were tampered with, that the Election Commission issued instructions during the counting of the ballots to accept ballot papers even if the ballot box seals had been tam-

pered with, and that the number of ballots were more than the actual number of voters who cast their vote. The Unified Communist Party of Nepal initially called for an independent commission to probe these allegations but the four main political parties later agreed that the matter should be investigated by a parliamentary committee.

Rising demands for the effective implementation of Free, Prior and Informed Consent (FPIC)

Indigenous peoples are becoming increasingly frustrated as the Nepalese government and donors, multilateral, bilateral and international NGOs, are failing to effectively implement the UNDRIP and ILO Convention 169, in general, and FPIC processes, in particular, when implementing programs, projects and activities on the ancestral lands of indigenous peoples. Conflicts between local indigenous peoples and non-indigenous peoples, on the one hand, and the government and donors, on the other, are on the rise.

For example, in Sindhuli district, the Nepal Electricity Authority has begun work on the Khimti-Dhalkebar 220 KV high-voltage power line with financial support from the World Bank. The transmission line affects both indigenous peoples, especially the Tamangs, and non-indigenous peoples living on indigenous peoples' ancestral lands. On 18 February 2013, the communities affected sent a letter of concern about the project to the World Bank President. This was followed by a meeting between the World Bank management and community leaders on 13 March and an official request for a World Bank Inspection Panel review on July 10.⁴ A Management response published on 11 September "identified some weaknesses concerning disclosure and consultations, which are currently being addressed" and presented an action plan developed by the Nepal Electricity Authority and the World Bank.⁵ Subsequently, the World Bank Inspection Panel made a visit to the area and recommended that an investigation be carried out after 30 April 2014.⁶

In the ancient town Kirtipur in Kathmandu, the municipal authority has implemented a road expansion project with the indirect financial support of the Asian Development Bank (ADB) and without going through the process of FPIC, which the locals have been strongly protesting about. Similar conflicts have intensified in Dhorpatan Hunting Reservation Area where expansion of a buffer zone is tak-

ing place without the FPIC of the indigenous Magars. Tension is also building in Barun National Park, located on the ancestral lands of the Sherpa, due to the army's mobilization in the park. Furthermore, the Armed Police Force and National Sports Council have been constructing a sports stadium on the sacred burial grounds of indigenous peoples. A negotiation process is ongoing between the parties. ○

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Krishna B. Bhattachan belongs to the Thakali indigenous peoples. He is one of the founder faculty members and former Head of Department of Sociology and Anthropology at Tribhuvn University in Nepal and has published several books and articles on indigenous issues.

INDIA

In India, 461 ethnic groups are recognized as *Scheduled Tribes*, and these are considered to be India's indigenous peoples. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognized. Estimates of the total number of tribal groups are as high as 635. The largest concentrations of indigenous peoples are found in the seven states of north-east India, and the so-called "central tribal belt" stretching from Rajasthan to West Bengal.

India has a long history of indigenous peoples' movements aimed at asserting their rights.

Over the years, violent conflicts have broken out in indigenous areas all over the country but, above all, in the Northeast and in the central tribal belt. Some of these conflicts have lasted for decades and continue to be the cause of extreme hardship and serious human rights violations for the affected communities.

India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, which recognize indigenous peoples' rights to land and self-governance. The laws aimed at protecting indigenous peoples have numerous shortcomings and their implementation is far from satisfactory. The Indian government voted in favour of the UNDRIP in the UN General Assembly. However, it does not consider the concept of "indigenous peoples", and thus the UNDRIP, applicable to India.¹

Legal rights and policy developments

In one of the most important developments of the year, the Government of India notified the Right to Fair Compensation and Transparency in Land Acquisition,



Rehabilitation & Resettlement Act, 2013 (LARR Act) on 27 September 2013.² The LARR Act³ lays down various provisions and directions to be followed while acquiring land in the country and provides for rehabilitation and resettlement. It replaces the draconian Land Acquisition Act of 1894. The LARR Act has special provisions for the Scheduled Tribes (STs) and the Scheduled Castes.

Article 41 states that: “As far as possible, no acquisition of land shall be made in the Scheduled Areas” and “Where such acquisition does take place it shall be done only as a demonstrable last resort” (paragraphs 1 and 2) Furthermore, it provides that in case of acquisition or alienation land in the Scheduled Areas, the prior consent of the concerned local governments (Gram Sabha or the Panchayats or the autonomous District Councils) shall be obtained in all cases.

In a project involving land acquisition that includes the involuntary displacement of Scheduled Castes or Scheduled Tribes, a development plan shall be prepared including, among other things, the details of the procedure for selling land, and a programme for developing alternatives for fuel, fodder and non-timber forest products on non-forest lands.

The Act defines the procedures for paying compensation and provides that the affected families shall be resettled “preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity” (paragraph 7).

Furthermore, Article 41 includes a provision by which any alienation of lands belonging to members of the Scheduled Tribes and Scheduled Castes conducted in disregard of existing laws and regulations “shall be treated as null and void” (Article 9). It deals with fishing rights in hydro-electric project areas and additional compensation payments in case of resettlement outside the district.

Article 42 ensures the continuation of reservation benefits for members of Scheduled Tribes and the Scheduled Castes in the resettlement area and provides that families belonging to Scheduled Tribes who are residing in areas covered by the Fifth Schedule or the Sixth Schedule to the Constitution and are then relocated outside those areas will continue to enjoy the “statutory safeguards, entitlements and benefits” in the resettlement areas regardless of whether the resettlement area is a Fifth or Sixth Schedule area or not. Finally, this article provides that any rights obtained by a community under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 “shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights.” (Article 3). The LARR Act comes into force on 1 January 2014.

On 14 August 2013, in furtherance of its commitment and with a view to creating conditions that are conducive to the development of the tribal communities, the Government of India constituted a High Level Committee (HLC) to prepare a position paper on the current socio-economic, health and educational status of Scheduled Tribes (STs) and to suggest a way forward.⁴

Immediately following the establishment of the HLC, the Ministry of Health and Family Welfare reportedly established another Expert Committee to draft a “national framework and roadmap to improve the appropriateness, access, and quality of health services among the tribal population”. The Expert Committee

was asked to submit its report within six months,⁵ exactly the same timeframe as given to the HLC.

Human rights violations against indigenous peoples

Atrocities against indigenous peoples are increasing. According to the latest report of the National Crime Records Bureau of the Ministry of Home Affairs, a total of 5,922 cases of atrocities were reported in the country during 2012 as compared to 5,756 cases in 2011, an increase of 2.88 percent. Of the total 5,922 cases, 1,311 were registered under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989, while 729 cases were rapes and 156 were murders, among others. The NCRB statistics are not yet available for 2013. These are only the cases of atrocities committed by non-tribals that are reported and do not include cases of human rights violations by the security forces.

Human rights violations by the security forces

In 2013, the security forces continued to be responsible for fake encounter killings, torture, arbitrary arrests and other human rights violations against indigenous peoples. A few of these cases are reported here to provide an idea of the scope of human rights violations committed by the security forces. In February 2013, five tribals, including a minor, were illegally detained at the Tamulpur police station in Baksa district of Assam without being taken before the Court or Juvenile Justice Board. The police picked them up for questioning after an engineer was abducted by cadres of a banned insurgent outfit.⁶

In March 2013, two tribal sisters were raped by a police officer identified as Norul Islam, Officer-in-Charge (OC) of Ampati police station in South Garo Hills district of Meghalaya. Both victims were stopped by a police patrol party when they were on their way to the local village market. Thereafter, the victims were taken to the police station where they were subjected to interrogation and raped at gun point. In May 2013, the accused again forcefully entered the house of the two victims and raped them at gun point. The accused had threatened the victims and their family with dire consequences if they made the matter public. The father of the victims finally lodged a complaint with the police on 1 June 2013⁷ following

which a case was registered at Ampati police station. However, at the end of 2013 the accused absconded.⁸

On 1 April 2013, an Adivasi man died following alleged torture by the Army at No.1 Jamuguri village under Tamulpur police station in Baksa district of Assam. The deceased was picked up at around 11.30 pm by a group of army personnel who entered his house on the pretext of searching for arms. He died on the morning of the next day. Family members allege that the deceased died due to torture in army custody.⁹

On the intervening night of 17-18 May 2013, eight tribals, including three minors, were killed when the combined team of Central Reserve Police Force, Chhattisgarh Armed Force and Police at Edakmetta village under Gangalur police station in Bijapur district of Chhattisgarh fired on a village group during an anti-Maoist operation. The deceased, along with the villagers, had gathered to celebrate Beej Pandum, a festival heralding the beginning of the farming season. The security forces claimed the anti-Maoist operation was conducted following receipt of an intelligence report of a large number of Maoists holding a meeting in the village and claimed that the deceased could have been killed in crossfire between the security forces and Maoists.¹⁰

On 8 December 2013, a tribal was killed by a joint team of army and police at Kumarsali village under Bijni Police Station in Chirang district of Assam. The deceased was a Class 12 student. Family members alleged that in the early morning of 8 December 2013, the deceased had gone to the paddy field to fetch the plough, where he was shot dead by the joint team on suspicion of being a member of a banned insurgent group.¹¹

On the intervening night of 10-11 December 2013, two tribal boys aged 12 and 15 years of age were killed in an alleged fake encounter by a joint team of the army and the police at Raidwngbari village under Runikhata Police Station in Chirang district of Assam. A 13-year-old boy sustained serious injuries in the incident. The joint team reportedly raided the house of a suspect and the minors were killed when they opened fire during the raid. The joint team claimed that the deceased were members of a banned armed opposition group and that they were killed in an encounter. However, villagers alleged that the boys were innocent and shot dead at point blank range.¹²

Human rights violations by armed opposition groups

Armed opposition groups, in particular the Maoists, continued to be responsible for gross violations of international humanitarian law, including killings, during 2013. The Maoists continued to kill innocent tribals on charges of being “police informers”, or simply for not obeying their diktats. Some of the alleged killings by the Maoists in 2013 took place at Umarpal village in Rajnandgaon district, Chhattisgarh on 27 January;¹³ at Laheri village in Gadchiroli district, Maharashtra on 27 March;¹⁴ at Kurmanur village in Malkangiri district, Odisha, on 2 April;¹⁵ at Kianga village in Malkangiri district, Odisha on 24 April;¹⁶ at Murkinar village in Bijapur district, Chhattisgarh in 21 May;¹⁷ at Materu village in Malkangiri district, Odisha on 24 October;¹⁸ and at Bailigumma village in Malkangiri district, Odisha on 19 November;¹⁹ among others.

Sex crimes and abuse against women and girls by Maoists continued to be reported in 2013. In October 2013, some Maoists - including women - who surrendered to the police in Odisha, alleged that top Maoist leaders were sexually exploiting the girls. One of the Maoist women who surrendered alleged that the Maoists kidnap innocent village girls and, after enlisting them into Dalams (armed squads), exploit them physically.²⁰

Alienation of tribal land

The laws prohibiting the sale or transfer of tribal lands to non-tribals and restoring alienated tribal lands remained ineffective over the year as the lands of tribals continued to be alienated. There is no information as to how many alienated lands have been restored. The Ministry of Rural Development has not published the status of tribal land alienation under the heading “Prevention of Alienation and Restoration of Alienated Tribal Lands” in its Annual Reports since 2007-2008.²¹ There is obviously a lack of seriousness being shown to the issue of restoring alienated land. For example, in October 2013, the Chief Secretary of Kerala stated that only 530 hectares of alienated land would be restored to the tribal people of Attappady Hills in Kerala under the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975 as amended in 1996, while as many as 10,796.16 acres of land had been alienated according to a government survey.²²

The conditions of the internally displaced tribal peoples

Development-induced displacement

The government admits that displacement of Scheduled Tribe people takes place in connection with various development projects. However, there is no official figure available of displacement caused by development projects. The states are indifferent towards the plight of the tribals and they are denied proper rehabilitation and compensation. For example, tribals who were displaced by the Indira Sagar irrigation project in Andhra Pradesh still had not been rehabilitated as of May 2013.²³

Conflict-induced displacement

Tribals suffer disproportionately from involuntary displacement as a result of armed conflicts. At the end of 2013, around 27,000 Bru tribals from Mizoram continued to live displaced in six relief camps in Tripura (see previous issues of *The Indigenous World*), and around 20,405 tribals were living in three districts of Bijapur, Sukma and Dantewada of Chhattisgarh.²⁴

The conditions of the IDPs in the relief camps remained deplorable. The camps in Chhattisgarh were without basic amenities. In November 2013, the Asian Centre for Human Rights, a human rights organization, was informed during a field visit that the government was supplying food and other amenities only to Jagargunda relief camp in Sukma district. The residents of the remaining camps were having to manage for themselves.²⁵ In relief camps in Tripura, Bru IDP children were not issued birth certificates. This denial of birth certificates was raised by a team of the National Commission for Protection of Child Rights that visited one of the camps, namely Naisingpara relief camp, on 25 and 26 October 2013.²⁶

Repression under forest laws

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter the FRA) has been touted as progressive legislation aimed at undoing the “historical injustice” committed against the forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been

living in the forests for centuries. However, the FRA rules have simply ended up perpetuating the historical injustices.

According to information available from the Ministry of Tribal Affairs, a total of 3,539,793 claims had been received across the country by 30 September 2013. Of these, a total of 3,078,483 (86.96% of the total received) have been disposed of, out of which 1,406,971 titles (1,386,116 individual and 20,855 community titles) or 39.74% were distributed and 1,671,512 claims (1,661,325 individual and 10,187 community titles) or 54.29% were rejected.²⁷ Eleven states, namely Uttarakhand, Bihar, Karnataka, Himachal Pradesh, Uttar Pradesh, West Bengal, Maharashtra, Madhya Pradesh, Chhattisgarh, Jharkhand and Assam, had rejection rates of over 50 percent.²⁸

The benefits of the FRA have been denied to many tribals. For example, tribals belonging to the Chakma community in Cachar and Nagaon districts of Assam are denied their rights. They are treated as encroachers and live under threat of eviction. On 11 April 2013, the houses of several Chakma tribals were burnt and destroyed by a team from the Forestry Department during an eviction in Nagaon district of Assam.²⁹

Slow implementation of reservation in employment

The Scheduled Tribes (STs) continue to be inadequately represented in the posts and services of central and state-level government. In fact, the STs are the most deprived. As of 8 May 2013, there was a backlog of vacancies for STs with central government of 12,195 posts, followed by Other Backward Classes with 8,332 posts and the Scheduled Castes with 6,961 posts.³⁰

On 23 May 2013, the Union Cabinet, presided over by Prime Minister Dr Manmohan Singh, approved a Special Recruitment Drive to fill the backlog in reserved vacancies, including that for the STs, by 2013.³¹ Earlier, on 4 January 2013, the Ministry of Personnel, Public Grievances and Pensions issued instructions to appoint Liaison Officers in each Ministry and Department to enforce the policy and orders on reservation in central government posts and services.³² This was an acknowledgement of the consistent failure of the government to properly implement the reservation policy.

There is no reservation policy in the private sector for weaker sections of the community, including Scheduled Tribes. Instead of reservation, the private sector

has made a commitment to the concept of affirmative action through the implementation of various social justice schemes for these sections of the population. However, the action taken to implement this affirmative action programme on the part of the private sector has remained far from satisfactory. In April 2013, Prime Minister Manmohan Singh made a statement indicating that “affirmative action must not remain simply a paper exercise, but a living reality”.³³

Development fund for tribals diverted

The Government of India has been implementing various schemes for the Scheduled Tribes, including the Tribal Sub-Plan (TSP), since the Fifth Five-Year Plan (1974-1979). These programmes have, however, failed to achieve their objectives. Huge amounts of TSP funds have either been diverted and misused or remained unspent. Because of this diversion of TSP funds, tribals have been deprived of the socio-economic development envisaged in the plan. Central ministries and departments have been diverting funds meant for targeted TSP into universal schemes or programmes that have little to do with the welfare of tribals.³⁴

In December 2013, the Legislative Assembly of Karnataka passed the “Karnataka Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning, Allocation and Utilisation of Financial Resources) Bill 2013 with the aim of preventing the diversion of funds and of spending the funds allocated on schemes that directly benefit the Scheduled Caste and Scheduled Tribe population.”³⁵ ○

Notes and references

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Tejang Chakma is a researcher at the Asia Indigenous and Tribal Peoples Network (AITPN) based in Delhi, India.

NAGALIM

Approximately 4 million in population and comprising more than 45 different tribes, the Nagas are a transnational indigenous people inhabiting parts of north-east India (in the federal states of Assam, Arunachal Pradesh, Nagaland and Manipur) and north-west Burma (parts of Kachin state and Sagaing division). The Nagas were divided between the two countries with the colonial transfer of power from Great Britain to India in 1947. Nagalim is the name coined to refer to the Naga homeland transcending the present state boundaries, and is an expression of their assertion of their political identity and aspirations as a nation.

The Naga people's struggle for the right to self-determination dates back to the colonial transfer of power from Great Britain to India. Armed conflict between the Indian state and the Nagas' armed opposition forces began in the early 1950s and it is one of the longest armed struggles in Asia. A violent history has marred the Naga areas since the beginning of the 20th century, and undemocratic laws and regulations have governed the Nagas for more than half a century. In 1997, the Indian government and the largest of the armed groups, the National Socialist Council of Nagaland Isaac-Muivah faction (NSCN-IM), agreed on a ceasefire and, since then, have held regular peace talks. However, a final peace agreement has not yet been reached.

Largely as a result of India's divide-and-rule tactics, the armed movement was split into several factions fighting each other. In 2010, the reconciliation process among the Nagas of the past years resulted, however, in the formation of a Joint Working Group of the three main armed factions, the NSCN-IM, the Government of the People's Republic of Nagaland/National Socialist Council of Nagaland (GPRN/NSCN) and the Naga National Council (NNC).

2013 was marked by continuing efforts on the part of both Naga civil society groups and the Government of Nagaland state to find a permanent settlement to the Indo-Naga political problem, trying to capitalize on the ongoing peace talks

between the Government of India and the NSCN-IM. Several events overtook these efforts, however, and they did not go so well for the Nagas, apart from the silver lining that appeared with regard to the tripartite talks for an alternative political arrangement for the Nagas in Manipur.

The peace talks in Nagaland

The peace talks have been ongoing for 16 years and more than 80 rounds of talks have been held between the NSCN-IM and the Government of India. At the end of 2012, the negotiating parties claimed to be ready to find a solution by early 2013 but this failed. In a similar fashion, in the last round of talks in mid-December 2013, the two parties claimed to have made good progress. However, the public are sceptical and want to see concrete results from the talks. Moreover, the public outcry in Nagaland state against the taxation imposed by the Naga armed groups in October and the protests in December against the NSCN-IM were a major setback for this organisation.

On 31 October 2013, the Action Committee Against Unabated Taxation (ACAUT), formed of various NGOs in Nagaland state, held a rally that was attended by thousands. The rally was aimed at all armed groups and their illegal taxation. The NSCN-IM tried to intervene and warned that such an initiative would only malign the national cause. However, the ACAUT remained firm and stated, "We have reiterated that multiple and unabated taxation has harmed the interest of Nagas and the common man."¹

Further, with the molestation of two women missionaries near Aghuto village by NSCN-IM cadres, hundreds of men from the Sumi tribe, armed with weapons, forced the NSCN-IM to evacuate their camp at Mukalimi in Zunheboto district, Nagaland. The NSCN-IM initially tried to appease the protestors by saying that it would take serious action against the cadres accused but the public insisted that they be handed over to the police. The incident took a violent turn and it was reported that two protestors lost their lives, in addition to several of the NSCN-IM's properties being burnt down.

This was a major setback for the NSCN-IM in terms of its image and level of trust among the public. The central government tried to take advantage of the situation and the Joint Secretary (Northeast), Shambhu Singh, Ministry of Home Affairs told *The Telegraph*,² "Killing of civilians amounts to an abrogation of the



ceasefire” and that the central government would in fact itself repudiate the ceasefire.³ This called into question the reports on progress made in the talks that had been held barely weeks before the unfortunate incident. Furthermore, for unstated reasons, R.S. Pandey, the central government’s negotiator in the peace talks, resigned in December and joined the conservative Bharatiya Janata Party. The central government has made no fresh appointment following his resignation.

Reconciliation

During 2013, the Forum for Naga Reconciliation (FNR) continued to make efforts to bring the Naga political groups together and it has made good progress in

terms of signing agreements among the political organisations. However, there is too little to measure in terms of the political organisations' actual work together or support of each other. The political groups continue to distance themselves from each other and focus on their differences, showing no signs of any willingness to reconcile and unite the people. With no efforts to demonstrate their commitment in concrete terms, the efforts of the FNR are being rendered largely ineffectual. The challenge for the FNR is to find a breakthrough in terms of truly reconciling the Naga political organisations but this is proving to be more difficult than imagined.

The demand for an alternative arrangement for the Nagas in Manipur

Since 2010, the demand for an interim alternative arrangement for the Nagas of Manipur state, led by the United Naga Council (UNC), the apex body of the Nagas in Manipur or Southern Nagalim, has been the main political demand of the Nagas in Manipur.

The Nagas inhabit four districts of Manipur, covering 70% of the state's territory; around 20% is inhabited by various groups belonging to the Zomi indigenous people and 10% by the dominant Meitei, covering the valley of Manipur. The demand for this interim arrangement came about against a backdrop of severe economic, social and cultural discrimination of the indigenous tribal groups living in Manipur on the part of the dominant Meitei. The Meitei have also opposed the unification of all the Naga territories in India, one of the key demands of the NSCN-IM. In 2010, The UNC made a series of allegations, calling the state government a "communal government", resolving to sever all ties with Manipur and demanding an interim political arrangement from the central government. Since then, there have been six rounds of talks between the UNC, the Government of Manipur and the central government. No progress has been made, as Meitei political and civil society groups strongly oppose this demand and are painting it as a move towards the gradual integration of the Naga areas of Manipur into a unified Naga homeland. They have warned both the central and state governments of serious consequences if they give in to the Nagas' demands. The issue is compounded by the fact that, while the central government has promised to look into the demand, the state government has vehemently maintained the position of the Meitei political and civil society groups. The UNC also alleges that the Gov-

ernment of Manipur has been usurping the land of the indigenous groups by gradually placing border villages under neighbouring districts dominated the Meitei community. The UNC has been consistent in its demand and, along with Naga civil society organisations, has been reaching out to other indigenous peoples in the state, i.e. the Zomis and Kukis, to develop a common understanding of their political demands. They have made some progress and the understanding among the groups is steadily converging although there are still deep ruptures within each of the groups. Central government is also sending out positive signals and appears to be putting pressure on the state government to resolve the issue politically. Positive signals came in the form of indicating the possibility of establishing a high-level committee in early 2014 to trace out an alternative arrangement for the Nagas living in the state of Manipur. It is not clear at this stage but all indications suggest that the solution will include other indigenous groups of Manipur as well. ○

Notes and references

- 1 <http://www.demotix.com/news/3095391/thousands-rally-against-illigal-taxation-naga-militant-groups#media-3095212>
- 2 A national newspaper.
- 3 http://www.telegraphindia.com/1131231/jsp/northeast/story_17735929.jsp#UxLnF4XbfLM

Gam A. Shimray is a member of the Naga Peoples Movement for Human Rights and currently holds the position of Director of the Indigenous Knowledge and Peoples Network (IKAP) based in Chiang Mai, Thailand.



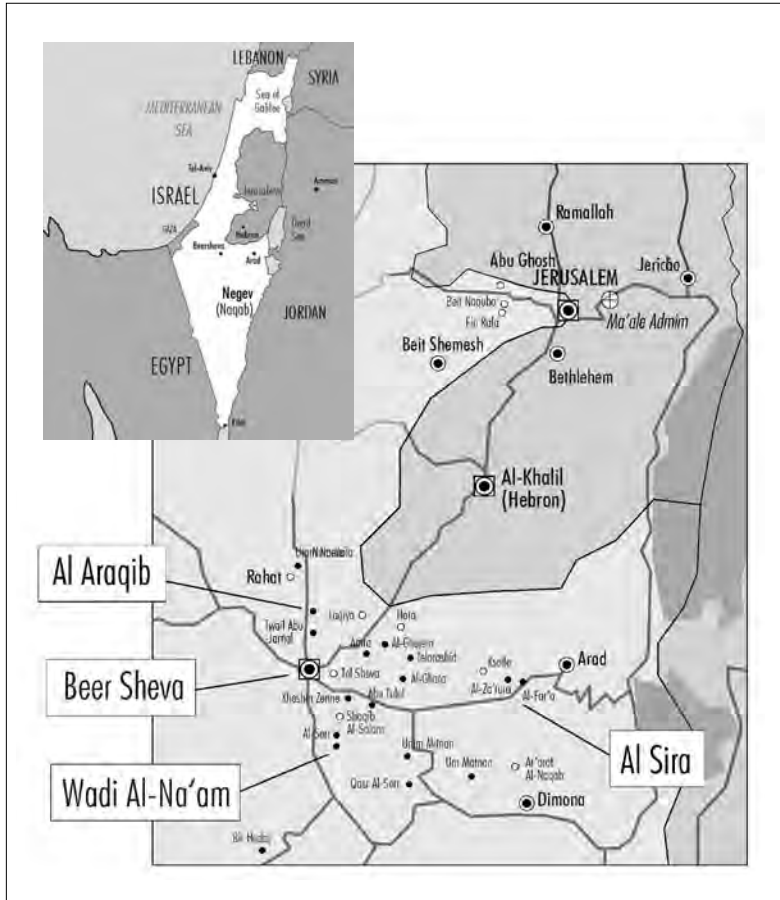
ISRAEL

Israel's Arab Bedouin are indigenous to the Negev-Naqab desert and, centuries ago, they were semi-nomadic. They combined herding with agriculture in villages linked by kinship systems, which largely determined land ownership. Prior to 1948, around 90,000 Bedouin lived in the Negev. After 1948, most were expelled to Jordan and Sinai. Only around 11,000 survived in Israel. In the early 1950s, the Israeli government concentrated this population within a restricted geographical area that represented about ten percent of the Bedouin's former territory, with the promise of a return to their original lands within six months. This promise has yet to be fulfilled. According to the Central Bureau of Statistics, 53,111 Bedouin live in 35 "unrecognized villages", which lack basic services and infrastructure. A further 148,729 Bedouin live in seven townships and ten villages that have been recognized over the last decade. However, these townships and villages hinder the traditional Bedouin way of life and provide few employment opportunities. Israel has not ratified ILO Convention No. 169 and has violated many of its provisions. Additionally, Israel did not participate in the vote on the UN Declaration on the Rights of Indigenous Peoples and has failed to meet this Declaration's provisions.

The situation of the Bedouin living in the Negev-Naqab desert in 2013 was characterized by their mobilization against the Bedouin Resettlement Bill and by the unrelenting house demolitions and crop destructions, a policy by which Israel is trying to coerce the Bedouin to move into designated townships and villages.

Mobilizing against the Bedouin Resettlement Bill

The Israeli government has, for several years, been trying to solve the "Bedouin Problem once and for all" through what has been called "a comprehensive and



balanced plan”—the Praver Plan. Since its very inception, Negev Beduin and their Jewish Israeli supporters have mobilized against this plan, which entails the expropriation and relocation of some 40,000 Beduin in Israel’s southern Negev desert and the establishment of ten Jewish villages in their place. Human rights organizations and local Beduin committees have repeatedly noted that the plan has been drafted without consultation of or input from the Beduin themselves, in violation of international standards, and giving no consideration to traditional land ownership claims or the community’s agricultural lifestyle.

In 2012, the Bedouin issue was passed on to Minister without Portfolio Benny Begin, and, in January 2013, Begin presented a “Bedouin Resettlement Bill”, claiming that his bill was substantially different and far better than the “Law for Regulation of Bedouin Settlement in the Negev” (“The Praver Plan Law”) proposed in 2012¹ and that it was the result of his “extensive dialogue with the Bedouin”. After its approval by the Israeli cabinet in January, the bill passed its first reading in the Knesset in June. Forty-three members supported it, while 40 were opposed.

Among the Bedouin, the bill was met with protests. They rejected Begin’s claims, arguing that the changes were purely cosmetic and that the Bedouin with whom Begin had dialogued were not representative of the Bedouin community as a whole. A number of large demonstrations were held throughout the year, starting in June when 4,000 people gathered in Beer Sheva to protest against the bill before its first reading in the Knesset. On 15 July, a general strike was organized and demonstrations took place around the country. Dozens of protesters were detained all over the country and, in many cases, the police used violence. As the Knesset Internal Affairs Committee continued its discussion of the Bedouin Resettlement Bill in preparation for its second and third rounds of voting, the protest intensified in Israel and worldwide, culminating on 30 November - which was declared a day of rage against the plan - with demonstrations taking place all around the world. In Israel, demonstrations were held in Hura, Jerusalem, Haifa and Taibe.²

The Resettlement Bill is shelved! But what will come in its stead?

It was not only the Bedouin who were opposed to the bill, however. Right-wing Members of Parliament were also opposed to it—albeit for opposite reasons: namely because the bill provided that some land would be given to the Bedouin! On 12 December, Benny Begin, now former Minister, therefore pleased opponents of the reform on both Left and Right when he called a special press conference and declared that, although he felt the bill to be fair and far-reaching, it did not stand the test of reality and he had recommended to Prime Minister Netanyahu that it be withdrawn. Following this dramatic announcement, there has been some uncertainty regarding the Praver Plan’s future. The tabling of the law was received by the Bedouin and their supporters with mixed feelings. On the one

hand, it gives more time to organize against the plan by lobbying and protesting. One hope is “that the lesson will be learnt and that the Government will open a real dialogue with the Negev Bedouin and consider the alternative plans that show that recognition of all the Bedouin villages is a realistic planning possibility”.³ On the other hand, it is feared that government policy may become tougher, with more house demolitions and more police brutality. Indeed, every single month of 2013 saw demolitions of houses, tents and structures, with a total of 94 cases recorded throughout the year. Demolitions have taken place in recognized as well as unrecognized villages and in Bedouin planned towns.⁴ Some villages have been demolished several times. One example is the unrecognized village of Al Arakib, which was demolished 14 times last year, bringing the number of times it has been demolished (and reconstructed by its residents) over the years to 58! Another is the unrecognized village of Atir in the northern Negev, where a new forest is being planned. Atir experienced four demolitions in 2013, beginning in May when a large police force and the Israel Land Administration (ILA) carried out the first demolitions in the village and uprooted several trees. Crop destructions took place in February, when hundreds of acres of fields were bulldozed by the Israeli authorities in six different locations. The Israeli government has set up a special police unit, Yoad, to handle the eviction of Bedouin from their villages and to back up the demolitions. According to Dr. Thabet Abu Ras, the local director of the Legal Centre for Arab Minority Rights in Israel, the unit’s officers “wield much more power than regular police officers. They can be judges, inspectors and police officers all at the same time. We’ve seen them on the ground, and they are brutal. They frighten the residents when they accompany the bulldozers. This happens every day.”⁵ ○

Notes and references

- 1 This law was delayed and then shelved due to early elections.
- 2 For more details, see NFC (Negev Forum for Civil Equality) newsletters on their website, <http://www.dukium.org/eng/>
- 3 See NFC website.
- 4 See NFC, “Record of House Demolitions and Crop Destruction 2013”, which is based “on reports received from residents, so it does not include all the demolitions occurred in 2013. In addition, the list does not include houses that were demolished by their owners, a growing phenomenon in the Negev” because owners are otherwise compelled to pay for the demolition themselves. At http://www.dukium.org/eng/?page_id=2502

- 5 See Ynet Magazine 25.10.2013 at <http://www.ynetnews.com/articles/0,7340,L-4445428,00.html>

***Diana Vinding** is an anthropologist and former IWGIA employee. She has followed the situation of the Bedouin for many years.*

***Adam Keller**, spokesperson for Gush Shalom (the Israeli Peace Block) kindly commented on and contributed to this article.*

PALESTINE

Following Israel's declaration of independence in 1948, clans from the Jahalin Bedouin together with clans from four other tribes from the Negev Desert (al-Kaabneh, al-Azazmeh, al-Ramadin, and al-Rshaida) took refuge in the West Bank, then under Jordanian rule. These refugee tribes, who number approximately 17,000 people, are semi-nomadic agro-pastoralists living in the rural areas around Hebron, Bethlehem, Jerusalem, Jericho and the Jordan Valley, today part of the so-called "Area C" of the Occupied Palestinian Territory (OPT). "Area C", the administration of which was provisionally - and temporarily - granted to Israel in 1995 by the Oslo Accords, represents 60% of the West Bank.¹ It is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, closed military zones, nature reserves or settler-only by-pass roads, all under Israeli military control.

Although conditions for Bedouin living under Israeli military occupation in "Area C" showed no overall change or improvement during 2013, this *status quo* actually reflected a continuing downward spiral.

The indigenous Bedouin of Israel and the OPT are desert dwellers whose lifestyle and pastoral livelihood depend on large open spaces for grazing. While, in many countries, indigenous lands are being grabbed for economic development, in Area C of the Occupied Territory (and in the Naqab or Negev Desert inside Israel), the thrust is mainly political, and the Bedouin's rights under international human rights law (IHRL) and international humanitarian law (IHR) are being totally denied, with land being eaten up rapidly by politically motivated settlement expansion and discriminatory colonization led by religious Zionist settlers who equate Zionism with land "redemption" or land grabbing.²

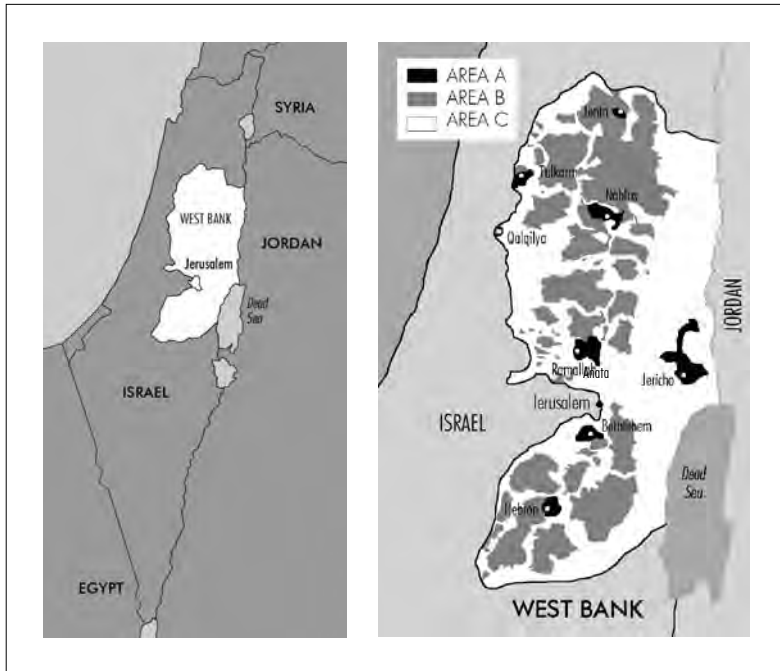
The Israeli ethno-security establishment, under Ariel Sharon's leadership in particular, strategically controls Area C water sources, road systems, contiguous land, the region bordering Jordan – the fertile breadbasket - and access to Jerusalem from the north, south and east of the OPT.

These policies are deliberately detaching all Palestinian urban centers from their natural support systems while dispossessing Bedouin in the OPT. The nomadic pastoralist refugees living in Area C cannot build anything permanent (even donor-funded temporary structures regularly receive demolition orders, with the Israeli Defense Forces (IDF) demolishing even rudimentary outdoor toilets), are not hooked up to electricity even if they live under high voltage power lines, receive demolition orders for donor-funded solar energy systems, have unreliable access to roads, water, hospitals, markets, education or work, and are forbidden to return to their lands inside Israel despite UN General Assembly Resolution 194 from 1948. No longer able to practice their traditional lifestyle, they are now faced with a total breakdown of their culture. The wisdom gleaned over thousands of years as to how to live gracefully and sustainably in desert is disappearing. In days of climate change, this loss has urgent resonance.

Despite having traditional but unrecognized indigenous land rights, even sometimes official land deeds inside Israel, to huge tracts of desert, Bedouin pastoralists are being forced into urbanization against their will. Common land for grazing has been developed in the OPT (as inside Israel) for Israeli settlers' or military use only. The Israeli military is increasingly preventing international NGOs from delivering humanitarian aid to Area C residents, causing some - including the Red Cross - to cease attempting to deliver aid in the form of tents to those whose homes are regularly demolished by the IDF in Area C.

In Area C, 2013 saw an upsurge in demolitions, including whole villages, leading to forced displacements which have been characterized as a serious breach of the Geneva Conventions, a probable war crime or possibly a crime against humanity.³ Throughout the year, villagers regularly had to decamp and stay away from their homes for days and nights while the military undertook exercises on their lands or in their villages.

In August, 2013, just after the July launch of new peace talks initiated by American Secretary of State John Kerry, 39 Bedouin were displaced from Tel Adassa (Beit Hanina) near East Jerusalem; in September, the community of Az-Zayyem (41 people) was displaced, as was the entire village of Khirbet Makhoul in the northern Jordan Valley (48 people). In the latter case, the Israeli authorities revisited the demolition site a few days later to demolish two emergency structures which the community and activists had erected. They further prevented relief aid from being delivered on consecutive occasions. Some days later, the IDF



again demolished relief aid tents at 2:00 a.m. and confiscated an aid truck escorted by international diplomats, international aid workers and TV crews.

Yet, at the European Parliament in December 2013, an IDF soldier stated, “There have been no demolitions recently.” This is in total denial of the rubble on the ground at the above villages, and the regular wave of deliberately randomized individual home demolitions. Another Israeli military commander told European diplomats that current IDF policy is aimed at placing these Bedouin refugees in high-rise apartment blocks (“because they are taking up too much land”), a policy that clearly does not take into consideration the culture of the Bedouin.

These waves of demolitions of OPT Bedouin communities reveal the ongoing intentions of the Israeli authorities to forcibly transfer the Bedouin against their will, without free, prior and informed consent or negotiation, in order to “judaize” the Greater Jerusalem region from Jerusalem to Jericho and thus *de facto* annex the Jordan Valley.⁴

It is this sort of mentality that forcibly transferred some 700 people in 1997-98 to a local garbage dump, a site which remains one of the current targets for the

planned transfer of more Bedouin and other Palestinian herders in Area C.⁵ The IDF proposes moving the 18 Jahalin Bedouin communities, numbering some 3,000 people either there or to a purpose-built city in the Nuweimeh area, near Jericho in the Jordan Valley, where the average summer temperature is 40°C. Add to those refugees the 27,000 Bedouin and other Palestinian herders due for transfer in other parts of Area C and one can deduce that up to 30,000 indigenous pastoralists are destined by Israel either for the garbage dump, a barren mountain top (Nuweimeh), or high-rise apartment blocks in Israeli-designed slum townships. Elsewhere, inside Israel in the Negev, up to 70,000 Bedouin face displacement under the Praver Plan from their own lands.

The worrying human rights situation in the Occupied Palestinian Territory was acknowledged by UN Humanitarian Coordinator and Deputy Special Coordinator for the Middle East Peace Process at UNSCO, James Rawley, on 11 December 2013, when he publicly expressed his concern:

Since the beginning of the year, over 630 Palestinian-owned structures have been demolished in Area C and East Jerusalem, forcibly displacing 1,035 Palestinians, including 526 children. 70 per cent of Area C demolitions and nearly 80 per cent of the related displacement has occurred in Jordan Valley communities.⁶

Despite this concern on the part of the UN, another 160 people were displaced in January 2014 due to demolitions in Bedouin communities located in “firing zones” along the Jordan Valley.

The situation of Bedouin women

Another major source of concern for the Bedouin is the status of women under occupation. Bedouin women, as members of a traditionally patriarchal society, are largely excluded from the public domain, including from membership of traditional decision-making bodies. Yet it is the women who are most severely affected by occupation policies. Since almost no range land is accessible, people are now selling off most of their livestock to buy expensive dry feed in order to keep a small number of animals for household dairy and meat products. Even for those families who produce excess meat and milk products for sale, the Israeli military re-

gime (comprising checkpoints, Wall, permit system, segregated roads, etc.) imposed in 2000 denies Bedouin women access to their nearest market city (Jerusalem). Without the income previously derived from such trade, Bedouin women are unable to contribute to the traditional family economy, and this often leaves them unable to provide for their daughters' education, as previously.

Unable to leave home to graze their flocks or sell milk products, women have to stay inside family shacks for long hours in increasing poverty and social isolation. It is no surprise that domestic violence is a growing problem. ○

Notes and references

- 1 The Oslo II Accords (1995) established the Palestinian Authority (PA) and divided the West Bank into three administrative areas (known as "A", "B" and "C"). Areas "A" and "B" are under PA control, with more autonomy, but are nevertheless burdened by Israeli military interference.
- 2 Israel Harel, writing in Haaretz on 29 January 2014: "Activist Zionism, [which] always strives to move forward." He founded the Institute for Religious Zionism, and the [settler] Council of Jewish Communities in Judea, Samaria and Gaza, which he headed until 1995.
- 3 [http://www.diakonia.se/Documents/IHL/IHL%20in%20oPt/Briefs/Diakonia_Forced_Transfer_of_Bedouin_Communities_Legal_Brief%20\(2\).pdf](http://www.diakonia.se/Documents/IHL/IHL%20in%20oPt/Briefs/Diakonia_Forced_Transfer_of_Bedouin_Communities_Legal_Brief%20(2).pdf)
- 4 A new OCHA map "Israeli demolitions of Palestinian property in the Jordan Valley in 2013." The map shows the location of the Israeli authorities' destruction of Palestinian property, the volume of such destruction and those sites where there were demolitions of donor-funded assistance. It also includes total figures for the number of structures demolished in 2012 and 2013 and the number of persons displaced as a result. See map <http://www.ochaopt.org/documents/Jordan%20Valley%20demolitions.pdf>
- 5 The forced displacements of 1997-98 are the subject of the film "High Hopes" produced by the writer of this article and directed by award winning director, Guy Davidi, with soundtrack donated by Pink Floyd.
- 6 <http://reliefweb.int/report/occupied-palestinian-territory/united-nations-humanitarian-coordinator-expresses-concern>

Angela Godfrey-Goldstein is an Israeli citizen who has worked for the past 12 years with a special focus on advocacy against the Israeli Occupation. She is the founder of and works as Advocacy Officer for the Palestinian Bedouin "Jahalin Association". From 2002 – 2011 she was with the Israeli Committee against House Demolitions (ICAH). She has lived among the Bedouin in Sinai, Egypt and has, for many years, helped Bedouin women handicraft producers market their products.



NORTH AFRICA

MOROCCO

The Amazigh (Berber) peoples are the indigenous peoples of North Africa. The most recent census in Morocco (2006) estimated the number of Amazigh speakers to be 28% of the population. However, the Amazigh associations strongly challenge this and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population may well number around 20 million in Morocco, and around 30 million throughout North Africa and the Sahel as a whole.

The Amazigh people have founded an organisation called the "Amazigh Cultural Movement" (ACM) to advocate for their rights. There are now more than 800 Amazigh associations established throughout the whole of Morocco. It is a civil society movement based on universal values of human rights.

The administrative and legal system of Morocco has been highly Arabised, and the Amazigh culture and way of life is under constant pressure to assimilate. Morocco has for many years been a unitary state with a centralised authority, a single religion, a single language and systematic marginalisation of all aspects of the Amazigh identity. The new Constitution of 2011 now officially recognises the Amazigh identity and language. This could be a very positive and encouraging step forward for the Amazigh people of Morocco but unfortunately the official implementation is still awaiting enactment of the organic law that will establish rules as to how Tamazight is to be officially implemented, along with methods for integrating it into teaching and into life generally as an official language. Work to harmonise the legal arsenal with the new Constitution has not, in fact, yet commenced and no steps have been taken to implement the Constitution.

Morocco has not ratified ILO Convention 169 and was absent from the vote in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.



Amazigh civil and political rights

In order to protest at the lack of political will to implement the 2011 Constitution and at the general deterioration in Amazigh rights, the Amazigh movement organised peaceful demonstrations throughout the year. The Tawada¹ coordination organised three large marches on 3 February 2013 in Rabat, at Agadir in the Souss and at El Hoceima in the Rif Mountains calling for Amazigh linguistic, cultural and identity rights in Morocco. The demonstrations were authorised in Rabat but banned in Agadir and El Hoceima. These demonstrations were demanding recognition of the Amazigh New Year² as a holiday, the release of Amazigh politi-

cal prisoners, the rehabilitation of Amazigh symbols of resistance such as Mohamed Ben Abdelkrim El-Khatabi, a halt to the expropriation of lands and, above all, the return of Amazigh lands stolen by the State.

The Amazigh movement robustly denounced statements that were made during the year disparaging Amazigh dignity. The Amazigh Confederation of Southern Morocco and the Tamaynut organisation both issued press statements denouncing the racist and anti-Amazigh statements made by an MP from the governing party during a conference, in which he described the Amazigh as a “different race” using negative stereotypes. These statements called on the government to guarantee the dignity of all citizens without exception. Activists from the Amazigh movement also organised a sit-in in front of the PDJ Islamist party in power on 30 December 2013 as a sign of protest.

An elderly woman from the Ait Baha tribe of the Souss region, in south Morocco, who travelled to the Almaarif Town Hall in Casablanca on 31 May 2013 to request the legalisation of her personal papers was thrown out by an administrative officer because she did not speak Arabic. The Amazigh neighbourhood association demanded that the official be prosecuted but no action has thus far been taken by the authorities.³

The Amazigh flag, the symbol of Amazigh identity and often carried by activists and young Amazigh, is not tolerated by the authorities. During a cultural evening in Meknès (a town 130 km from Rabat) on 31 May 2013, the security forces stopped several young Amazigh who were carrying flags. They were released after questioning but the police confiscated the flags.

The Amazigh land problem

The land issue took a turn for the worse in 2013 with the Waters and Forests Board’s decision to demarcate all State land by the end of 2014.

The indigenous population affected by this alienation of their land mobilised strongly throughout 2013. This was largely under the auspices of the Tamaynut organisation, the most committed association in this regard, and the Agharas lkhir organisation based in Tawart, Agadir region, who organised a major national-level meeting on the land problem on 23 January 2013. More than 3,000 people attended the two-day seminar. At the end of the meeting, a press release was published, signed by several of the associations. This severely condemned the

government policy being implemented by the Waters and Forests Board (which has responsibility for demarcating the State's lands) without any consideration for indigenous peoples' rights. A delegation from these associations met with the head of the government to express their concerns but no response has thus far been forthcoming.

Teaching of the Amazigh language

The Association of Amazigh Language Teachers, Khénifra section, published a press release on 21 October 2013 in response to the anti-Amazigh position of the ministerial delegation for the Khénifra region. The press release:

- Strongly condemns the way in which Amazigh language teaching is being handled by the Provincial Delegation of Khénifra, as it demonstrates provocative contempt for an official language of our country;
- Calls on the relevant Ministry to intervene consistently and fairly in favour of Amazigh language teaching in Moroccan schools by making available the material and human resources that will enable the success of this important endeavour and put an end to this individual and capricious handling of the matter;
- Invites the Amazigh organisations, unions and human rights associations to participate in a sit-in to be organised in front of the offices of the Provincial Delegation for Education in Khénifra on Friday 25 October 2013.⁴

There has, however, been some progress with regard to Amazigh language teaching in universities. Following various protests on the part of the students, the Ibn Zoher University in Agadir, the capital of the Imazighen, thus opened a department for Amazigh culture and language in 2013.

Information provision

In February 2013, the editor of *Le Monde Amazigh*, an Amazigh-language newspaper, published a statement condemning what she described as "discrimination against the Amazigh press". The following is an extract:

We note with regret that a number of Moroccan ministries, national offices, public and private companies continue to practice open and systematic discrimination towards the Amazigh press. These include the Ministry of Tourism, headed by a minister from the Popular Movement, the Crédit agricole (CA), the Banque populaire (GBP), the Crédit Immobilier et hôtelier (CIH), Royal Air Maroc (RAM), the Office national des chemins de fer (CNCF), the Office chérifien du phosphate (OCP)... who continue to deprive the Amazigh newspapers of advertising at a time when they remain generous to other Arabic and French newspapers. This is damaging the equality between national newspapers.

We denounce the exclusion of the Amazigh press from press conferences and other activities organised by Moroccan ministries such as the Ministries of Foreign Affairs, the Interior and Communication, as well as from official activities to which most other Moroccan journalists are invited.

We denounce the exclusion of the Amazigh people from national awareness raising, protection and sensitisation campaigns, for example, the Mohammed V Solidarity Foundation's recent anti-corruption campaign, which was in all languages except Amazigh, and the national campaign to combat road traffic accidents...⁵

In addition, the Amazigh film industry receives little or no money from the State. The Issni Ough association, which organises the International Amazigh Film Festival in Agadir every year, has protested in this regard. The amount of grant provided by the Moroccan Film Centre (CCM) and the Ministry of Communication for the 7th International Amazigh Film Festival came to just 50,000 DH (around 4,500 euros). The Association noted with surprise the sum set aside for the only festival devoted to Amazigh cinema nationally. It spoke openly of the “ostracism” of Amazigh cinema by the Commission responsible for grants. It also stated that: “Amazigh cinema is not represented within this Commission” and, consequently, the “Issni N’ Ough International Amazigh Film Festival” association was calling for an investigation to verify the CCM’s budget and the criteria used in granting subsidies, along with the kinds of beneficiaries.⁶ ○

Notes and references

- 1 Tawada is an Amazigh word that means 'the March'. It is the logo of the Amazigh movement used to mobilise activists.
- 2 The Amazigh New Year is not recognised by the State although the population celebrate it each year in various ways. The 13 January 2014 this year corresponds to the first January of the Amazigh year 2964.
- 3 <http://www.chtoukapress.com/online/details-14267.html>
- 4 http://www.siwel.info/Maroc-Les-Amazighs-exigent-la-generalisation-de-l-enseignement-de-tamazight_a5576.html
- 5 <http://www.lematindz.net/news/11163-le-monde-amazighe-denonce-la-discrimination-contre-la-presse-amazighe-au-maroc.html>
- 6 <http://www.leconomiste.com/article/910619-agadir-pol-mique-autour-du-cin-ma-amazigh>

Dr. Mohamed Handaine is the President of the Confederation of Amazigh Associations of South Morocco (*Tamunt n Ifus*), Agadir, Morocco. He is a university graduate, historian and writer, and board member of the Coordination Autochtone Francophone (CAF). He is a founder member of the Amazigh World Congress and has published a number of works on Amazigh history and culture. He is also the IPACC North African Regional Representative as well as a member of the steering committee of the ICCA Consortium in Geneva.

ALGERIA

The Amazigh are the indigenous people of Algeria, and have been present in these territories since ancient times. The Algerian government, however, does not recognise the indigenous status of the Amazigh and there are no official statistics concerning their number. On the basis of demographic data relating to the territories in which Tamazight-speaking populations live, NGOs estimate the Tamazight-speaking population at around 11 million people, or 1/3 of Algeria's total population. The Amazigh are concentrated in five large regions: Kabylia (Kabyles) in the north-east, Aurès in the east (Chawis), Chenoua, region on the Mediterranean coast to the west of Algiers (Chenwis), M'zab in the south (Mozabites), and Tuareg territory in the Sahara. Several thousands Amazigh also live in the south-west of the country (Tlemcen and Béchar) and in the south (Touggourt, Adrar, Timimoun). Furthermore, large cities such as Algiers, Blida, Oran, Constantine, etc., are home to several hundred thousand people who are historically and culturally Amazigh but who have been partly Arabised over the course of the years, succumbing to a gradual process of acculturation.

The indigenous population can primarily be distinguished from other inhabitants by their language (Tamazight), but also by their way of life and their culture. After decades of popular struggles, the Amazigh language was finally recognised as a “national language” in the Algerian Constitution in 2002. The Amazigh identity, however, continues to be marginalised and folklorised by state institutions. Officially, Algeria is still presented as an “Arab country” and anti-Amazigh laws are still in force (such as the 1992 Law of Arabisation).

Internationally, Algeria has ratified the main international standards, and it voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, these texts remain unknown to the vast majority of citizens and, thus, not applied, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria in this regard.



Legislation and practices that marginalise Amazigh society and cultural identity

Recognition of Tamazight (the Amazigh language) as a “national language” by the Algerian Constitution 11 years ago has not resulted in any significant progress with regard to Amazigh identity, either in legislation or in administrative practice. Anti-Amazigh laws and regulations such as the law on generalisation of the use of the Arabic language¹ have still not been abolished. The Algerian state continues to refuse to recognise the country’s linguistic and cultural plurality, a stance that elicited the concern of the Committee for the Elimination of Racial Discrimination (CERD) during its 82nd session in March 2013,² when it deplored:

The absence from the report of statistical data on the composition of the population and also (...) the lack of relevant socioeconomic indicators on the

enjoyment of the rights guaranteed under the Convention by members of various groups, in particular the Amazigh and non-citizens, as such data are necessary to determine the progress made and difficulties encountered in implementing the provisions of the Convention”.

The only partially positive event noted in 2013 was the government’s publication of a list of 300 Amazigh first names (150 male and 150 female) that are now authorised for use. This was despite the fact that they had undertaken to authorise 500 names from a list of 1,000 proposed by the High Commission for Amazighness, the government body responsible for promoting the Amazigh language and culture.

Capacity within the public bodies devoted to promoting the Amazigh language and culture remains derisory in relation to the clear needs in areas such as teaching, research, the media and the High Commission on Amazighness (HCA). For example, the HCA’s budget for 2013 was 110 million Algerian Dinars,³ or 0.0025% of the overall state budget, for a Tamazight-speaking population that represents a third of the country’s inhabitants. This illustrates the Algerian government’s lack of will in relation to the cultural and linguistic rights of the Amazigh. Furthermore, the leaders of these bodies are appointed by the government and not by the Amazigh themselves, seriously compromising their independence and credibility. The CERD Committee, moreover, did not fail to show its concern in this regard when it told the Algerian government : “That the role and activities of the High Commission on Amazighness [should] be strengthened and that its activities be carried out both for and with the Amazighs in a manner that ensures respect for their rights and freedoms”.

It is also important to emphasise that the associations that do demonstrate their independence from the government, in particular Amazigh associations, are excluded from public funding, which constitutes a serious form of discrimination.

The rights of Amazigh women are doubly flouted due to the fact that they are both women and Amazigh. The CERD Committee explicitly raised this issue by stating that : “Amazigh women risk being subjected to double discrimination on the basis of ethnicity and gender” and recommending that the government : “Continue to promote women’s rights, focusing in particular on Amazigh women”.

Violations of fundamental freedoms and repression

In January 2013, Khalid Zerrari, an Amazigh rights activist from Morocco who had been invited to Algeria to participate in the Yennayer (Amazigh New Year) celebrations, was arrested by the Algerian police and held for four days before being deported to Morocco. On 10 March 2013, Bouaziz Ait-Chebib, President of the *Mouvement pour l'Autonomie de la Kabylie* (MAK), Kamira Nait-Sid, President of the Kabylia Women's Association and several other Kabyle activists were arrested in Tizi-Wezzu during a peaceful demonstration commemorating the "Amazigh Spring". In August 2013, Madghis Madi, an Amazigh of Libyan nationality and a researcher into Amazigh language and culture, was unlawfully deported from Algeria for no reason at all.

The Algerian authorities are still refusing to issue administrative authorisations to the Kabylia Women's Association and the Amazigh League of Human Rights, requests for which were submitted to Tizi-Wezzu Wilaya (Prefecture) in 2005. For these associations, this is equivalent to a ban on their legal action and thus a criminalisation of their activities.

The Mozabite (Amazigh) community, which has lived peacefully for centuries on its historic territory in the Mzab Valley (600 km south of Algiers) has, repeatedly and for several years now, been subjected to serious violence from Arab groups belonging to the Chaamba community. Originally nomads, the Chaamba tribe has gradually settled on different parts of the Mozabites' territory, including Taghardayt (Ghardaya in Arabic), the capital of Mzab, Isjen (Ben-Isguen), Mlishet (Melika), Tajnint (El-Ateuf), Bergan (Berrienne) and Aguerrar (Guerrara). There were three periods of severe violence in 2013 (January, October and December) during which clashes between the two communities resulted in several deaths and hundreds of casualties. According to reports from the Algerian League of Human Rights⁴ and also numerous civilian witnesses, the Algerian police deliberately took the side of the Chaamba community to protect its members and their belongings, targeting only the Mozabite population with rubber bullets and tear gas. It is also surprising and concerning that the Algerian government has taken no serious action to bring this violence, the principal and most numerous victims of which are the Mozabites, to an end.

In August 2013, at In-Ideq (Bordj-Baji-Mokhtar) in the far south of Algeria, near the Algerian border with Mali, the indigenous Tuareg community was at-

tacked by an Arab tribe known as the Brabiche. During the clashes, which resulted in between 9 and 40 deaths depending on the source, numerous witnesses stated that the army and Algerian police took the side of the Arab community, protecting them and supporting them in their attacks on Tuareg houses and shops. This would seem to demonstrate once more the Algerian authorities' bias towards Algerian Arabs and against the Amazigh.

The government has not commissioned any independent inquiry into the murderous events of Mzab and In-Ideq, despite the insistent demands of human rights organisations. ○

Notes and references

- 1 Law No. 91-05 of 16 January 1991 on generalisation of the use of the Arabic language. Article 4 states that: "The public administration, institutions, companies and associations, of whatever kind, are required to use only the Arabic language in all of their activities, including communications, administrative, financial, technical and artistic management". Article 7 states that: «Appeals, consultations and petitions before the courts must be in Arabic» and that: «Court decisions and judgments, opinions and decisions of the Constitutional Court and of the Court of Auditors shall be drawn up and issued only in Arabic».
- 2 www.ohchr.org, Committee for the Elimination of Racial Discrimination, 82nd session, 11/02 – 1/03/2013
- 3 Algerian OJ No. 10 of 13 February 2013
- 4 <http://www.la-laddh.org>, press releases of 25/11/2013 and 29/12/2013

Belkacem Lounes holds a PhD in Economics and is a university lecturer (Grenoble University), member of the Amazigh World Congress (NGO defending Amazigh rights) and author of numerous reports and articles on Amazigh rights.



WEST AFRICA

MALI

Mali's total population is estimated at around 15.5 million inhabitants. The Tuareg represent approx. 10% of the population. They live mainly in the northern regions of Timbuktu, Gao and Kidal, which together cover 2/3 of the country's area of 1,241,021 km². The Tuareg (pastoralists) and the Songhai (sedentary, from Gao and Timbuktu) represent the largest groups in northern Mali, and are historically opposed to each other.¹ Other significant populations are the Fulani (pastoralist), Berabish Arabs (pastoralist), Arabs (merchants) and a smaller numbers of Dogon (agriculturalists), Bozo (fisher nomads) and Bambara (majority in the south).

Traditionally, Tuareg are semi-nomadic pastoralists, rearing dromedaries, goats and sheep. They occasionally engage in trade, bartering game and dromedary meat, along with rock salt, in return for dates, fabrics, tea, sugar and foodstuffs. They have a distinct culture and way of life for which they have their own concept "temust", which can be translated as "identity" or "nationality". They speak the Tamashek language.

Tuareg living in Mali belong mainly to three different traditional political entities called "confederations": the Kel Tademekat, living around and north of Timbuktu; the Iwellemeden, living east of Gao and having Menaka and In Gall in the state of Niger as their main urban centres; and the Kel Adrar living around the Adrar Massif and the city of Kidal. Each of these political entities has a paramount chief, or *Amenokal* in Tamashek. Each federation is again subdivided into a web of sub-clans (or tribes) traditionally belonging to one of the five classes of Tuareg society: the *imazaghen* or nobility, the *ineslimen* or religious experts, the *imghad* or vassals, the *inaden* or handicraft workers and the *iklan* or servants/slaves. Today, the rigid difference between these classes is diminishing but the Kel Adrar (Iforaghs) and the Iwellemeden are still the most influential *imazaghen* clan, with differing interests. The *imghad* clans are often opposed to the *imazaghen* clans. These social and political structures and alliances are reproduced in the membership of the different armed groups and political orientations in Mali.

The Constitution of Mali recognises cultural diversity and the National Pact recognises the specific nature of the Tuareg-inhabited regions. In addition, legislation on decentralisation gives local councillors, including some Tuareg, a number of powers although not the necessary resources with which to exercise them.

Mali voted for to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the state of Mali does not recognise the existence of indigenous peoples on its territory as understood in the UNDRIP and ILO Conventions.



The rebellion

The instability and confusion that followed the coup d'état in March 2012 (see *The Indigenous World 2013*) facilitated the rebellion in the north of Mali. In two weeks, the rebels - with support from AQIM (Al-Qaeda in the Islamic Maghreb) and MUJAO (Movement for Oneness and Jihad in West Africa) - overran the Malian army and took control of the three largest northern cities Kidal, Gao and Timbuktu.² After the capture of Douentza, the MNLA proclaimed Azawad as an independent state on 6 April 2012. The African Union (AU), the Economic Community of West African States (ECOWAS) and the European Union (EU) all rejected the declaration of an independent Azawad. However, in November 2013, Azawad was accepted as a member of the Organization of Emerging African States (OEAS), and represented by the MNLA.³

By the end of 2012, the rebellion was still ongoing but had drastically changed in character. From the MNLA fighting a campaign against the Malian government for independence or greater autonomy for the northern region of Mali, known as Azawad (Kidal, Timbuktu, Gao), the political and military offensive was taken over in April 2012 by the Islamist groups of Ansar Dine, AQMI, MUJAO and the Belmoctar group. While the MNLA's goal was to fight for an independent, secular, multi-ethnic homeland for the Azawad people, the Islamist groups' goal was to fight for an Islamic state ruled by Sharia law (see *The Indigenous World 2013*). After the capture of Gao, Timbuktu and Kidal in April 2012, the Islamist groups began to impose strict Sharia law on the population. Conflicts between the Tuareg leaders and their vision for Azawad split the MNLA and Ansar Dine. The latter left the alliance with the MNLA and joined the battle with AQIM and MUJAO.⁴

Militias from different ethnic groups, such as the Arab National Liberation of Azawad (FNLA),⁵ Ganda Koy (Songhai) and Ganda Izo (Songhai), also opposed the MNLA's vision of the partition of Mali. They saw the project as a Tuareg project and therefore supported the Islamist groups against the MNLA.⁶ Despite the signing of a power-sharing treaty, the conflict between the MNLA and the Islamist groups escalated, and it was no longer possible to reconcile their different visions of the initial goal. Between June 2012 and the end of July 2012, the MNLA was driven out of Gao, Timbuktu and Kidal. In November 2012, the MNLA lost Ménaka, where the rebellion had started.

The MNLA was therefore forced to change its strategy. In October 2012, the FPA (Front for the Liberation of the Azawad) broke away from the MNLA, claiming that independence was no longer realistic and that they had to take up the fight against the Islamists. By December 2012, the MNLA had commenced peace approaches towards the Malian government. They understood that the coalition with the Islamist groups had been a very dangerous adventure for the Tuareg and Azawad. In January 2013, the *Mouvement Islamique d'Azawad* (MIA), a splitter group from Ansar Dine founded by Alghabass Ag Intalla,⁷ stated that it wanted to seek a peaceful solution to the conflict and to work for an inclusive political dialogue.

After the French intervention in January 2013, the MNLA declared that it was ready to fight against the Islamists on the French side but refused to allow the Malian army to enter Kidal. In late January 2013, the MNLA retook Tessalit and Kidal from the Islamists, with the help of the MIA. Fighters who had left the MNLA for Ansar Dine now began to return to the MNLA.

To understand the dynamic of the shifting alliances between armed groups and individuals in the region requires a deep understanding of the local history, and the different ethnic groups' social and political organization. In a society that lives in a very barren environment, the social and political strategy is driven by a strategy of survival. Alliances often change. Alliances and opposition, and individual interests, determine their adherence to the armed or non-armed groups. The same is to be found among the other ethnic groups.⁸

During the Tuareg uprising, individuals and groups changed sides, split up and then were again fighting on the same side. The complicated social structure makes it very difficult for an outsider to understand who is backing whom, and who has the legitimacy to speak for whom. As pointed out by Andy Morgan: "Today, the Tuareg are made up of individuals with residual tribal allegiances, different levels of wealth and social position, different attitudes to religion, life and the world beyond their horizon. Among the Tuareg of northern Mali, you will find every shade of opinion from diehard nationalist through moderate Islamist, convinced Salafist and heartfelt loyalist to the Republic of Mali".^{9 10 11}

Foreign intervention

The interim government of Mali had already requested foreign military intervention in 2012 but it was not before 20 December 2013 that the UNSCR (UN Secu-

ity Council) passed resolution 2085 approving the deployment of an African-led International Support Mission in Mali (AFISMA).¹²

By January 2013, the Islamist forces had commenced a new offensive and captured Konna, a strategic town located 600 km from Bamako. The government asked France for immediate assistance. Because of the threat of the collapse of the state, and the importance of Sévaré military airport, close to Konna, for a planned African-led support mission, France took action. On 11 January, the French military launched “*Opération Serval*”.

On 21 January 2013, Douentza was taken by French and Malian troops. On 29 January, Malian and French military sources claimed that the area of Gao and Timbuktu was under government control. As the French reached Kidal airport on 30 January, no Malian soldiers were with them because of the risk of confrontation with the Tuareg. The town was under the control of fighters from both the MNLA and MIA, and the MNLA stated that their fighters were maintaining control of the town alongside French forces but would not allow Malian forces into the area. By 8 February, the territory held by the Islamists had been re-taken by the Malian army, backed by French and Chadian forces.¹³

The Islamists left the area to seek refuge in the mountains of Adrar N’ifoghas where AQIM and its followers still had hidden camps close to water sources. The MUJAO remained in hidden areas of Gao and on the border with Niger and Algeria.

From this point, the fighting went into the guerrilla phase. The MUJAO launched the first suicide attacks in Gao and tried to take the city back, probably with the support of the local people. After heavy fighting the pro-government forces regained control. Gao was attacked again on 20 February when a car bomb exploded in Kidal. These attacks and suicide bombings carried out by MUJAO and other Islamist groups continued throughout the rest of the year both in Kidal, Timbuktu and Gao, with civilians, the MNLA, Malian and international forces, as well as international journalists, all being targeted. In November 2013, two French journalists were kidnapped and executed in Kidal.

Inter-ethnic conflicts also flared up in the wake of the withdrawal of the Islamists. On 14 August, violence broke out between Berabish Arabs and Tuareg Idnanes in Bordj Badji Mokhtar on the Algerian side of the border. Fighters from the *Mouvement Arabe de l’Azawad* (MAA) and the MNLA took part in the violence. However, the MNLA, MAA and HCUA all condemned the violence. In the wake of the French intervention, the UNSCR announced that the UN-led force MINUSMA (Multidimensional Integrated Stabilization Mission in Mali) would soon be de-

ployed. MINUSMA was approved on 25 April 2013 by UNSC resolution 2100 but was not officially deployed until 1 July.

Ceasefire

In January 2013, ceasefire negotiations commenced in Ouagadougou, Burkina Faso, with President Blaise Compaore as mediator representing ECOWAS. Representatives from the interim government in Bamako and the MNLA, Ansar Dine, MIA, MAA and HCUA were invited. The negotiations lasted almost five months before a ceasefire agreement was signed on 18 June 2013. According to this ceasefire agreement, the rebels must abstain from an independent Azawad state, allow presidential elections to take place and the authorities to return to Kidal for the elections. The rebels can remain in Kidal but are required to return to appointed internment camps under the supervision of UN peacekeepers (MINUSMA), they must stop carrying arms in public, and hand over the arms when the final peace accord has been signed. The arrested members of the signatory partners must be released. The gradual return of the Malian army to Kidal must be under the supervision of the UN peacekeeping mission. Other elements of the ceasefire agreement are that the Malian government has to accept the name Azawad in the ceasefire document and agree to continue the negotiations on the Tuareg demands for more autonomy and development for the region. The ceasefire agreement further specifies that the new president should commence the final peace negotiations 60 days after the presidential elections. A Committee for Evaluation and Follow Up on the Ouagadougou Accord (CSE), and a Council for Dialogue and Reconciliation (CDR) was foreseen in the ceasefire document in order to secure the peace process.

Elections

The presidential elections, held on 28 July 2013, were criticised for being too rash following considerable international pressure.¹⁴ Around 15% of the 6.8 million eligible voters did not receive their voting cards. Many more were not found on the electoral lists because these were outdated. More than half a million displaced people inside and outside Mali were unable to vote.¹⁵ The turnout in Kidal, Timbuktu and

Gao was 11%, 30%, and 50% respectively. Ibrahim Boubacar Keita (IBK) was elected president with 78% of the vote in the second round on 11 August.

At his investiture on 4 September, and in his New Year 2013 speech, Keita stated that national reconciliation, the war on corruption, reconstruction of the army and security, along with development of the northern regions, would be his primary priorities. A new Department for National Reconciliation and Development of the Northern Regions was set up, with responsibility for the peace process.

As part of the national reconstruction, parliamentary elections took place on 24 November and 11 December 2013. These elections were also criticised as being too hasty, with short campaigns, few parties represented in the north and too many displaced people unable to vote. IBK's RPM (Rally Pour Mali) party was the only party on the electoral list in Kidal, where the candidates were some of the leaders from the uprising.¹⁶ Low turnout and voting abuses in both Kidal and Timbuktu blurred the elections. In Kidal, some 100 supporters of separatist parties marched in protest against the elections for an independent Azawad. In the Timbuktu area, electoral materials disappeared and ballot boxes were stolen by armed men.¹⁷ The RPM, with supporting parties, won a majority of the 147 seats in parliament.

Peace negotiations

After the elections, the new president, Ibrahim Boubacar Keita, stated that he would not negotiate with armed forces and accused France of blocking the peace process because they had protected the MNLA. The rebels claimed that the negotiations were making no progress and that the Malian government was not respecting its commitments made in the Ouagadougou Accord. Subsequently, the MNLA and MAA ended their ceasefire on 26 September, following a clash between the Malian army and the rebels. Negotiations were resumed on 6 October after a meeting in Ouagadougou with President Blaise Compaore.

On 29 November, the MNLA again ended the ceasefire after the Malian army opened fire on stone-throwing protesters who were blocking a visit of the prime minister to Kidal. The rebels rejoined the peace process after the Malian authorities released 23 insurgents in accordance with the terms of the ceasefire signed in Ouagadougou. The MNLA, HCUA and MAA stated that they would participate in the CSE committee once more, and undertake the disarmament and return of combatants to the internment camps along with the release of prisoners.

During the last month of 2013, meetings were held in Bamako on decentralisation and regionalisation. The commitment of the government still seems ambiguous. At the same time, the political and military leaders of the MNLA, HCUA and MAA do not seem to agree on the outcome of the final peace agreement.

Human rights

The conflict has resulted in military and civilian abuses, and led to the mass displacement of more than 500,000 people, who found refuge in the south of Mali, the desert or in neighbouring Algeria, Burkina Faso, Mauritania and Niger. Once the Malian army had regained control in the northern regions, some people returned to their homes but the Tuareg and Arab refugees in particular remained in neighbouring countries because of the fear of revenge attacks from the Malian army and other ethnic groups.

Amnesty International has released several reports about human rights violations in Mali. It is stated that the armed conflict in the north of Mali and the military coup led to very serious human rights violations on both sides. The Malian army has committed extrajudicial executions, enforced disappearances, torture and the recruitment of child soldiers. In its fight against the MNLA, the army and civilians launched several indiscriminate attacks against Tuareg and Arabs.

Armed groups in the north are reported to have committed sexual violence, arbitrary killings, amputations, corporal punishment, the recruitment of child soldiers and the looting of tons of food from the World Food Program warehouses in Kidal, Gao and Timbuktu. Hospitals, hotels and government offices were also looted. They have forced Sharia law on the population, damaged or destroyed a number of historical sites in Timbuktu, and razed the Ahmed Baba Institute, a centre with thousands of priceless ancient documents, to the ground.¹⁸

In 2012, the interim government had already demanded the International Criminal Court (ICC) open up an investigation into war crimes committed during the conflict. In July and August 2012, the ICC made a preliminary investigation to determine whether a full investigation should be opened. Following several reports of abuses on both sides, the ICC prosecutor opened the case on 16 January 2013 and, on 27 November 2013, General Amadou Haya Sanogo¹⁹ was arrested and is expected to be charged with kidnapping and torture. The ICC will investi-

gate his case. On 27 December 2013, former president Amadou Toumani Touré was charged with high treason by the Supreme Court.²⁰ ○

Notes and references

- 1 The Tuareg and the Songhai have been in conflict over the caravan trade in Sahara since the 17th century. As the Songhai Empire declined, it was overrun first by Moroccans and then by Tuareg.
- 2 Lecocq et al: One Hippopotamus and Eight Blind Analysts: A multivocal analysis of the 2012 political crisis in the divided Republic of Mali. Extended Editors Cut. Review of African Political Economy, vol.137 (2013)
- 3 www.o eas.info/azawad-admission.pdf
- 4 Morgan, Andy: The causes of the Uprising in Northern Mali, February 2012. www.thinkafrican-press.com
- 5 Later changed the name to the *Mouvement Arabe de l'Azawad* (MAA).
- 6 The Songhai militias had been fighting alongside the Malian army against the Tuareg for many years . The FNLA was initiated and supported by the Toumani Touré government against the Tuareg. It later changed its name to the Mouvement Arabe de l'Azawad (MAA).
- 7 Son of the amenoukal Intalla Ag Ataher (supreme chief of the Ifoghas).
- 8 The members of the MNLA were mostly Tuareg (Idnan, ChamanAmas, Ifoghas) with Libyan experience but also some Berabish Arabs. Their political leader is Bilal Ag Cherif (Ifoghas) and military leader Colonel Mohamed Ag Nagim (Idnan). The Ansar Dine is composed mainly of Ifoghas. During the uprising, the ChamanAmas left the MNLA and joined Ansar Dine. The rupture between these two groups was also caused by the relation between Colonel Assalat Ag Habi (ChamanAmas) and Colonel Mohamed Ag Nagim (Idnan). The KelAntessar (Timbuktu region) opposed the MNLA because of its opportunistic behavior and the alliance with Ansar Dine during the rebellion. The so-called Loyalists (pro-Mali), including the Iwelmeden, are against the idea of an independent state. They argue that the MNLA only exists today because of the new role it has been given by the French in the fight against the Islamists.
 MUJAO, a breakout group from AQIM, and known to be involved in drugs trafficking and kidnapping, is mostly composed of Songhai, Berabish Arabs, Fulani and some Tuareg, Nigerians and Mauritians.
 The *Mouvement Arabe de l'Azawad* (MAA) militias composed of Berabish Arabs and Arabs was initially supported by the Toumani Touré government to fight against the Tuareg. The MAA is also suspected of being involved in drugs trafficking, and of having contact with MUJAO in the fight against MNLA in Kidal.
- 9 Morgan, Andy: What do the Touareg want? Al Jazeera English eMagazine, February 2013
- 10 Intégration de différentes tribus au sein de différents groupes rebelles: Mouvement national de libération de l'Azawad
http://www.reporters.dz/index.php?option=com_content&view=article&id=1928:integration-de-differentes-tribus-au-sein-de-differents-groupes-rebelles-mouvement-national-de-liberation-de-lazawad&catid=5:grand-angle&Itemid=6
- 11 <http://www.elwatan.com/international/les-dynamique-politiques-s-l-oeuvre-dans-l-azawad-nord-mali-12-08-2013-224320>

- 12 At the African Union summit in Addis Ababa on 27 January 2013, President Thomas Boni Yaya (Benin) regretted the fact that the African leaders' response to conflict in Mali had been too slow and ineffective. On 29 January, the first non-Malian African troops (Niger and Chad) entered north Mali, crossing its border from Niger in support of the Malian army.
- 13 On 2 February, Chadian troops from AFMISMA reached Kidal.
- 14 France and the US were eager to see Mali return to constitutional order, which would facilitate a security handover to a legitimately elected government.
- 15 <http://www.infosud.org/Mali-la-rude-mission-du-furtur,10496>
- 16 Hamada Ag Bibi, Kidal MP, Mohamed Ag Intallah. The warrant against them was cancelled to be able to participate in the election. Their candidature was validated by the Constitutional Court.
- 17 <http://www.reuters.com/article/2013/11/24/us-mali-election-idUSBRE9AN0J020131124>
- 18 <http://amnesty.org/en/region/mali/report-2013>, Mali: Five months of crisis – armed rebellion and military coup
- 19 Captain Amadou Haya Sanogo was leader of the coup d'état in April 2012. In 2013, a mass grave of soldiers (loyal to the government) was found near the garrison in Kati where the coup had started.
- 20 <http://www.rfi.fr/afrique/20131227-ex-president-mali-att-inculpe-haute-trahison>

Ingrid Poulsen is a Social Anthropologist from the University of Copenhagen. She specialises in Tuareg issues and has studied pastoral societies for more than 20 years. From 1999 – 2012 she worked in West Africa: as Danida adviser in Niger, at the Danish Embassy in Burkina Faso and as Country Director for Børnefonden in Benin.

NIGER

Niger's indigenous populations are the Peul, Tuareg and Toubou. These peoples are all transhumant pastoralists. Niger's total 2009 population was estimated at 14,693,110. 8.5% of the population are Peul, i.e. 1,248,914 individuals. They are mostly cattle and sheep herders but some of them have converted to agriculture because they lost their livestock during the droughts. They live in all regions of the country. The Peul can be further sub-divided into a number of groups, namely the Tolèbé, Gorgabé, Djelgobé and Bororo. 8.3% of the population are Tuareg, i.e. 1,219,528 individuals. They are camel and goat herders. They live in the north (Agadez and Tahoua) and west (Tillabery) of the country. 1.5% of the population are Toubou, i.e. 220,397 individuals. They are camel herders and live in the east of the country: Tesker (Zinder), N'guigmi (Diffa) and along the border with Libya (Bilma).

The Constitution of June 2010 does not explicitly mention the existence of indigenous peoples in Niger. The rights of pastoralists are set out in the Pastoral Code, adopted in 2010. The most important rights in the code include an explicit recognition of mobility as a fundamental right of pastoralists and a ban on the privatisation of pastoral spaces, which poses a threat to pastoral mobility. An additional important element in the Pastoral Code is the recognition of priority use rights in pastoral homelands (*terroirs d'attache*). Niger has not signed ILO Convention 169 but did vote in favour of the United Nations Declaration on the Rights of Indigenous Peoples.

At the start of the year, pastoral civil society had high hopes that 2013 would bring the long-awaited implementation of the Pastoral Code. Hope turned to despair, however, when events in Mali and Nigeria highjacked the national political agenda and redirected all attention towards issues of security and protection of territorial integrity.

The French military intervention in Mali (Operation Serval¹), which began on January 11, was one of the main events affecting pastoralists in both Niger and



Mali over the past year. The war made it difficult for pastoralists to use their traditional transhumance routes passing through northern Mali and into Burkina Faso. One important risk was the theft of cattle along the routes, fuelled by the armed groups' search for money to finance their continued struggle. Many pastoralists therefore stopped moving according to pasture availability and began choosing routes based on the security situation in a given area. This led to high concentrations of pastoralists in areas perceived to be more secure, thus intensifying the pressure on scarce pasture and water resources and increasing food insecurity. Many herders from northern Mali also took refuge in Niger through fear of violence and reprisals in Mali and this continues to aggravate the situation yet further.

The fact that some young pastoralists – from all ethnic groups - joined the different armed groups in northern Mali further complicated the situation for pastoral groups, as many people found it difficult to distinguish between a pastoralist

on transhumance and a rebel and/or member of the army, and so they were all increasingly viewed with suspicion. This had grave consequences on a number of occasions, with pastoral camps subjected to attacks and innocent lives lost for no reason. In addition, the increased activities of the Islamic jihadist group Boko Haram² in northern Nigeria made it difficult for Nigerien pastoralists to move southwards during the dry season, thus increasing the pressure on resources in the area of Lake Chad.

The growing insecurity resulted in increased donor interest in helping to break the economic marginalization of the pastoral zones. A clear change in discourse occurred within the World Bank when it urged African countries and the international development community to help protect and expand pastoralism on behalf of the large number of people living in the Sahel who rely on it as a major source of food and livelihoods. 2013 was therefore marked by insecurity but also by new emerging opportunities to influence the position of pastoralists in the Sahel.

The human rights situation

A violent conflict between pastoralists and agriculturalists broke out in Niger during 2013 with devastating consequences for both sides. In October, an attack was carried out against Fulani groups in settlements around N'Gonga village, in Boboye. Four Fulani were killed, 12 heads of livestock were burned and 113 houses destroyed; in addition, two motorcycles, nine sewing machines and 450,000 CFA (approx. 685 euros) were stolen. The attacks were committed by Zarma agriculturalists from neighbouring villages. In this case, the authorities visited the site, arrested more than 20 people and offered material support to the victims; however, only part of this has actually been delivered. The government promised 10,000,000 CFA (approx. 15,245 euros) but only 10,000 CFA (approx. 15 euros) has been paid to each of the 113 homeowners, and the remainder of the funds is still awaited. The Minister of the Interior has sent his condolences.

The conflict took place when the pastoralists were moving from north to south, to their homelands. The mayor of Ngonga took the decision to ban the arrival of pastoralists onto the municipality's territory and organized a group of 20 youths to confiscate the pastoralists' animals. They would only be returned to the owner on payment of 15,000 CFA (approx. 23 euros), which was to be shared between the municipality, the chiefs and the youths. Driven by a desire to make

money and gain recognition from the local authorities, the youths went as far as to go directly into a pastoral camp and let the animals loose. Despite resistance from the pastoralists, the youths continued to act and the violence escalated, with the result that one youth lost his life. The surrounding villages were informed, and this led to attacks on camps in the municipality, which produced the result described above. In the aftermath, the pastoralists used one of their only means of exerting pressure, that of collectively boycotting the large livestock market in the municipality, as it is an important source of revenue for the municipality through market taxation.

In addition, a large number of pastoralists (34 members of the pastoral association AREN) were killed in the region of Gao in northern Mali in retaliation for a crime committed previously by one of them. No authority has reacted, even though the families of the victims are actively working on the issue. The animals of the deceased have not been recovered. It is a vicious circle whereby there is no functioning justice system and so people start to defend themselves and this, in turn, aggravates the conflicts. These types of fatal encounter organized by gangs are a recurrent problem in Niger and the West African region. The Peul remain most vulnerable to these kinds of event due to their mobility and movement either alone or in small groups.

The situation of Indigenous youth and women in Niger

Pastoral youth are highly organized in relation to the situation in northern Mali. It is primarily the young who are sent off to participate in the peace talks. In relation to the role of pastoral women, they often take on a leadership role in conflict resolution at the local level. In this respect, it is worth mentioning the work of the Fulani women from Diffa, known as “lyaye” (meaning “mother of everyone” in Fulfulde), who are known around the country for advocating pastoralists’ rights and mediating between communities.

Renegotiation of the uranium mining contract

In November, the Niger government and French nuclear giant AREVA commenced negotiations to renew the contract for uranium extraction. The issue of

revenue-sharing related to uranium extraction has been top of the Tuareg agenda for decades. The lack of sufficient reinvestment of uranium profits to the benefit of the pastoral communities living near the large mining areas in the Agadez region has fuelled recurrent Tuareg rebellions. Current negotiations represent an historic opportunity for Niger to obtain better conditions for extracting these resources, including greater financial benefits. However, this time around the fight has changed as it is no longer confined to the Tuareg population but has mobilized a much broader sector of Nigerien society, making it a national rather than a pastoral issue.

Implementation of the Pastoral Code continues to drag on

Progress in implementing the 2010 Pastoral Code has been extremely slow and 2013 was no exception. Two acts were passed in 2013, five additional acts are now in draft form and seven have yet to be drafted. Those adopted relate to procedural issues, such as how conflicts are handled, whereas those not yet drafted go to the heart of the pastoral issue, namely land governance at decentralized level and land rights. Pastoral civil society in Niger is working intensively to try to speed up the implementation process but it is an uphill struggle.

Important regional meetings

The Malian situation led to increased attention on pastoralism both on the part of national policymakers and leading international institutions during 2013. Two important regional meetings were organized during the year, one in Nouakchott, Mauritania and a regional pastoral symposium in Ndjamena, Chad. The latter brought together 235 people scientists, development practitioners and representatives of national and regional public organizations, professional organizations and civil society — from 17 countries who exchanged experiences of improved policies for the sustainable development of pastoral areas. The declaration from the ministerial conference which closed this symposium sets out the political and strategic directions concerning governance and security, pastoral societies' resilience and socio-economic viability. The Nouakchott event was a high-level meeting organized by the presidents of Mauritania and Senegal, the World Bank and

the Permanent Interstates Committee for Drought Control in the Sahel (CILSS) and it focused on the needs of pastoral communities. The message coming out of the meeting was clear: there is an urgent need to mobilize more investment in support of pastoral systems in the arid lands of the Sahel.

These events reflect a change in discourse - moving pastoralism from the margins to the centre of donor and government interests. The Ndjamen Declaration explicitly states that the future of the Saharo-Sahelian areas is inconceivable without pastoral livestock herding and the irreplaceable role it plays in economic and social stability, as well as environmental and land management. The World Bank is currently setting up a task force on pastoralism in the Sahel in order to plan a new program worth USD 7 billion (BM/UE/BAD). ○

Notes and references

- 1 Operation Serval had, according to François Hollande, the following three objectives: 1) to stop the offensive from the terrorist groups; 2) to preserve the existence of the Malian state and to allow it to restore its territorial integrity; and 3) to prepare the deployment of the African-led International Support Mission (AFISMA), authorized on December 20 by the Security Council, which adopted Resolution 2085 unanimously.
- 2 The Congregation of the People of Tradition for Proselytism and Jihad better known by its Hausa name Boko Haram is an Islamic jihadist and takfiri militant and armed organization based in the north-east of Nigeria, north Cameroon and Niger.

Dodo Boureima is Secretary General of AREN, which is the largest pastoral association of Niger. He is also Permanent Technical Secretary of the regional pastoral network, Billital Marobé, covering seven countries of West Africa and representing 400,000 pastoralists. Dodo Boureima is himself a pastoralist.

Marianne Haahr is the Advocacy Coordinator at CARE Denmark (www.care.dk) focusing on the rights to food of small-scale producers and working in close collaboration with civil society in West Africa. She holds a Master's degree in Human Rights and Democratization from the Inter-European Institute for Human Rights, as well as a Master's degree in Human Geography from the University of Copenhagen.



EAST AFRICA

ETHIOPIA

The groups meeting the criteria for identification of indigenous peoples in Ethiopia include the pastoralists and the hunter/gatherers. Pastoralism in Ethiopia constitutes a unique and important way of life for close to 15 million of the country's total estimated population of 90 million. Pastoralists live in around seven of the country's nine regions, inhabiting almost the entire lowlands, which constitute around 61% of the country's landmass. Pastoralists own 40% of the livestock population in the country. They live a fragile existence, mainly characterized by unpredictable and unstable climatic conditions. They are affected by recurrent droughts, persistent food insecurity, conflict, flood, inadequate services and infrastructure and they are among the poorest of the poor in terms of disposable incomes, access to social services and general welfare. Access to healthcare and primary and secondary education is very low compared with other areas (mid- and highlands) of the country. The pastoral population is heterogeneous in its ethnic composition and social structure, having some larger ethnic groups such as the Afar, Oromo and Somalis with well over four million pastoral people between them. The rest are Omotic pastoral groups such as the Hamar, Dassenech, Nygagaton and Erbore, and the Nuer and other groups in the western lowlands.

There is no national legislation in Ethiopia mentioning or protecting the rights of indigenous peoples. Ethiopia has not ratified ILO Convention 169 and was absent during the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

On 25 January 2011, the country's then Prime Minister, Meles Zenawi, outlined his government's latest development plan for pastoral communities in south-western Ethiopia. He said that his government was leasing 150,000 hectares of land to foreign investors for sugar plantations, which would create 100,000 jobs for the local communities. However, this massive land lease, granted to foreign investors at an extremely cheap rate, and the construction of a hy-



droelectric dam in south-western Ethiopia known as Gilgel Gibe III, has generated no development in the region nor economic growth for the indigenous populations living there; on the contrary, it has left them poorer and more vulnerable.

Indigenous pastoral livelihood and production systems are not considered by the government to be a viable economic system that contributes to the national economy. In 2010-2011, the government thus confiscated large tracts of land from pastoral communities in south-western Ethiopia and leased them to Indian, Chinese, Saudi and other companies for sugar plantations and the cultivation of other crops. The pastoral communities were not consulted and nor was their approval ever asked. The communities were evicted to barren lands where it has been very difficult to sustain their livelihoods.

This commercial agricultural project in south-western Ethiopia involved huge risks on various levels: the eviction of indigenous communities, changing (if not destroying) their livelihood system; massive deforestation depriving the ecosystem of the natural vegetation upon which the indigenous livelihood system depends; the killing and imprisonment of community members who opposed the project and, above all, the lack of sustainability and “profitability” of the project.

Without taking these risks into due consideration, the Government of Ethiopia signed an agreement with Karturi Global Ltd., an Indian agribusiness company that had previously been involved in tax evasion in both Kenya and Ethiopia. Karturi recently went bankrupt and thus pulled out of the project. Indigenous communities have been evicted from their ancestral lands, their livelihood systems destroyed, the environment devastated, people killed and imprisoned and, at the end of the day, all this was for nothing. The regime openly admitted that the economic development, massive employment opportunities and bright future that Meles Zenawi painted in 2011 were simply not well thought through.

A recent report by Human Rights Watch and International Rivers¹ indicates that massive destruction of the environment has already taken place. “New satellite imagery shows extensive clearance of land used by indigenous groups to make way for state-run sugar plantations in Ethiopia’s Lower Omo Valley. Virtually all of the traditional lands of the 7,000-member Bodi indigenous group have been cleared in the last 15 months, without adequate consultation or compensation,” the report reads. The report also states that indigenous communities were evicted from their ancestral land.

One additional reason for the massive eviction of indigenous communities is the construction of a hydroelectric dam in Lower Omo Valley known as Gilgel Gibe III. Both scientists and human rights activists have long insisted that construction of the dam will devastate the lives of at least 500,000 people in Lower Omo Valley of Ethiopia and adjacent Kenya who depend on the Omo River for their livelihoods. The Human Rights Watch report states: “The imagery also shows the impact of a rudimentary dam built in July 2012 that diverted the waters of the Omo River into the sugar plantations. Water rapidly built up behind the shoddily built mud structure before breaking it twice. The reservoir created behind the dam forced approximately 200 Bodi families to flee to high ground, leaving behind their crops and their homes”. A new film produced by International Rivers, “A Cascade of Development on the Omo River”, reveals how and why Gilgel Gibe III will cause hydrological havoc on both sides of the Kenya-Ethiopia border. Most significantly, the Gilgel Gibe III dam and associated irrigated plantations are expected to change the pattern of flow of the river as it will cause a huge drop in the water levels of Lake Turkana, the world’s largest desert lake. Lake Turkana draws 90% of its water from the Omo River and, as stated by the Human Rights Watch report, its water level is projected to drop by about “two meters during the initial filling of the dam, which is estimated to begin around May 2014. If current plans

to create new plantations continue to move forward, the lake could drop as much as 16 to 22 meters. The average depth of the lake is just 31 meters". The report continues: "The river flow past the Gibe III will be almost completely blocked beginning in 2014. According to government documents, it will take up to three years to fill the reservoir, during which the Omo River's annual flow could drop by as much as 70 percent. After this initial shock, regular dam operations will further devastate ecosystems and local livelihoods. Changes to the river's flooding regime will harm agricultural yields, prevent the replenishment of important grazing areas, and reduce fish populations, all critical resources for livelihoods of certain indigenous groups."² ○

Notes and references

1 <http://www.hrw.org/news/2014/02/18/ethiopia-land-water-grabs-devastate-communities>

2 *Ibid.*

Melakou Tegegn has been chair of the Pastoralist Forum Ethiopia, which is engaged in advocacy work for pastoral rights. He is a member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights. He is a development specialist and political sociologist by training.

KENYA

In Kenya, the peoples who identify with the indigenous movement are mainly pastoralists and hunter-gatherers, as well as some fisher peoples and small farming communities. Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 79,000.¹ Pastoralists mostly occupy the arid and semi-arid lands of northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer,² Yaaku, Waata, El Molo, Aweri (Boni), Malakote, Wagoshi and Sanye, while pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas.

Kenya has no specific legislation on indigenous peoples and has yet to endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ratify International Labour Organization (ILO) Convention 169. However, Kenya has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC). Chapter Four of the Kenyan Constitution contains a progressive Bill of Rights that makes international law a key component of the laws of Kenya and guarantees protection of minorities and marginalized groups. Under Articles 33, 34, 35 and 36, freedom of expression, the media, and access to information and association are guaranteed. However, the principle of Free, Prior and Informed Consent (FPIC) remains a pipedream for indigenous peoples in Kenya.³



Wildlife Conservation and Management Bill

The Wildlife Conservation and Management Bill,⁴ which was passed by parliament in 2013, contains provisions important to indigenous peoples. The Pastoralist Development Network of Kenya (PDNK) was involved in reviewing the various drafts through the Kenya Rangelands Coalition, which it chairs. Safeguards within the bill that are relevant to indigenous peoples include: 1) participatory wildlife conservation and management whereby communities will be involved

and represented in decision-making bodies such as the community wildlife associations - in accordance with the 5th schedule of the Constitution; 2) designing, in consultation with the communities, innovative measures for mitigating human/wildlife conflicts and taking the necessary measures to ensure equitable sharing of benefits and; 3) negotiation of financial and other incentives for the advancement of the wildlife use activities of communities, landowners, private sector and non-governmental organizations. Other relevant safeguards include the representation of communities from community-managed wildlife areas in the regulatory bodies as well as benefit sharing with communities living in wildlife areas.

The bill also provides for: the development of mechanisms through which to collaborate with county governments and for communities to provide security for wildlife and establish wildlife conservancies and sanctuaries under their jurisdiction; ensuring that compensation is paid to the concerned communities for the issuance of permits; the safeguarding of community rights and benefit sharing in relation to bioprospecting; and adequate compensation in relation to personal injury or death and damage to crops or livestock caused by wildlife as well as community representation in the County Wildlife Compensation Committees.

National Land Commission

The National Land Commission Act was enacted in 2012 (as per Article 67 of the Constitution of Kenya).⁵ The National Land Commission, which came into effect in May 2012, has broad authority over all land in Kenya and has provided a ray of hope for indigenous peoples in the country, who have long-standing grievances related to their territories and resources – dating back to the colonial regime. However, the gazetting of the commission members was not devoid of controversy, owing largely to petitions filed in the High Court and baffling actions by the then President, Mwai Kibaki.⁶

In order to resolve the situation, diverse institutions, including the Constitution Implementation Commission (CIC), had to intervene and push for the gazetting of the Land Commission. The mandate of the National Land Commission is central to indigenous peoples' rights to their traditional lands and territories as it includes an obligation: to recommend a national land policy to the national government; to advise the national government on a comprehensive programme for the registration of land titles (both collective and individual) throughout Kenya; to conduct

research related to land and the use of natural resources and make recommendations to appropriate authorities; to initiate investigations, at its own initiative or following a complaint, into present or historical land injustices and recommend appropriate redress; to encourage the application of traditional dispute resolution mechanisms in land conflicts.

Nevertheless, the bizarre way in which land in Kenya has been handled, especially by the political elite, became clear when the Cabinet Secretary for Lands - ostensibly under instructions from the President - proceeded in August 2013 to generate and issue land titles for the Kenyan Coast even after both the National Land Commission and the Joint Committees of the National Assembly and the Senate's Departmental Committees for Lands and Delegated Legislation⁷ had stressed that the Land Commission was the sole body authorized by the Constitution and the law (the Land Act and Land Registration Act) to issue land title deeds.

This justifies the concerns of Kenya's indigenous peoples regarding the executive's unwillingness to cede any of its powers to the National Land Commission, as stipulated by the supreme law of the land. This only goes to confirm indigenous peoples' fears that although the National Land Commission is the sole custodian of justice and arbiter of land-related matters (including indigenous peoples' land grievances), it will have to brace itself for protracted battles with the economic and political elites of the country - especially with regard to historical and contemporary injustices related to land, ecological and natural resource rights.

Basic Education Act

The Basic Education Act was adopted by Parliament in 2013 and it contains articles that are favourable to indigenous communities. These include the recognition of mobile schools aimed at providing flexible institutions that allow for the mobility of pupils and teachers, specifically designed to suit the needs of nomadic communities. The Basic Education Act provides for the creation of the National Council⁸ of Marginalised and Nomadic Education to cater for this sector of Kenyan society, especially indigenous peoples, who face marginalization and neglect. The Act is also cognizant of the right of every child to be instructed in the language of his or her choice at the pre-primary and lower primary levels, which is in line with international human rights standards on indigenous peoples and education. In addition, the same Act recognizes the need for inclusivity, cohesion,

non-discrimination, an appreciation of ethnic diversity, the participation of communities in the development and management of basic education and special measures to facilitate the access of children from marginalized communities to higher levels of education. This Act has the potential to facilitate access to education on the part of indigenous children and youth.

New laws, same old story

Whereas the Constitution of Kenya has been hailed as the defender of citizens' rights, particularly those of minorities and marginalized communities, the Government of Kenya does not appear very keen on articulating its responsibilities, especially those that touch on the fundamental rights and freedoms of indigenous peoples.

Article 63 of the Constitution of Kenya guarantees the rights of communities to their lands and territories. Article 63 states that community land consists of land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines and that it includes ancestral lands and lands traditionally occupied by hunter-gatherer communities. However, despite these progressive constitutional provisions, indigenous peoples continue to suffer as a result of the state's lack of compliance with these provisions and with legal rulings on land issues. In 2013, various indigenous groups in Kenya such as the Endorois, Ogiek, Maasai and Sengwer, witnessed first-hand the glaring back-handed treatment meted out to indigenous peoples in Kenya with regard to their rights to land and natural resources.

The Endorois case

The Endorois are an indigenous pastoralist people with some 60,000 members who inhabit the Lake Bogoria region and who suffered evictions and land dispossession on the part of the government in the 1970s.

In May 2009, the African Commission on Human and Peoples' Rights (African Commission) ruled in the now famous *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. the Republic of Kenya* case that the Endorois eviction from their traditional land - in order to pave the way for tourism development - violated their hu-

man rights. The decision was historic since it recognized, for the first time in Africa, indigenous peoples' rights over lands and territories. The ruling made a raft of recommendations to the Kenyan government, which were to be implemented in accordance with both domestic and international law.

However, more than four years after this ruling, the Endorois people are still seeking its implementation. The entry into force of the 2010 Kenyan Constitution offered a ray of hope for the Endorois and other indigenous peoples with similar grievances, and yet three years have passed since the new constitution was promulgated and the Endorois have yet to obtain justice.

In a *Note Verbale* to the Republic of Kenya dated 29 April 2013,⁹ the African Commission reminded the Government of Kenya of its pledge - made at an oral hearing during the previous 54th Ordinary Session of the African Commission - to submit an interim report within 90 days of the hearing as well as a comprehensive report, including a road map with timelines and commitments for implementing the Endorois ruling. Furthermore, the African Commission sought to engage the Government of Kenya in a dialogue on the implementation of the Endorois decision in a seminar held in Kenya in September 2013, in which the UN Special Rapporteur on the rights of indigenous peoples also participated. However, the Government of Kenya unfortunately chose not to attend this seminar. Based on this non-compliance, the African Commission is now raising concerns over the lack of feedback from the Government of Kenya regarding the measures it has taken to implement the Endorois decision.

This goes to demonstrate that, even with a new and progressive constitution, indigenous peoples still face a herculean task in Kenya when seeking justice. It is hoped that the National Land Commission will take up this matter with the relevant branch of government as part of the process of seeking justice for historical injustices against an indigenous people.

The Ogiek of the Mau forest

The Ogiek are hunter-gatherers with a population of 78,691 (2009 census) residing in different forests across Kenya's Rift Valley, where they sustain their livelihoods and practise their religion and culture. According to Minority Rights Group (MRG), approximately 15,000 Ogiek live in the Mau Forest Complex,¹⁰ which they have occupied for at least 150 years. In July 2008, the Kenyan government

launched an aggressive campaign to evict people living in the Mau Forest Complex, including the Ogiek, ostensibly to protect Kenya's forests.

The Ogiek Peoples' Development Programme (OPDP) and Centre for Minority Rights (CEMIRIDE) took the case to the African Commission, which referred it to the African Court on Human and Peoples' Rights in Arusha, Tanzania. On 15 March 2013, the Court issued precautionary measures stating that: "The Government of Kenya must not evict the community from their land in the Mau forest as there exists a situation of extreme gravity and urgency, as well as a risk of irreparable harm to the Ogiek Community with regard to violation of their rights guaranteed under the charter..." The case is still pending before the African Court.

Eviction of Narasha Maasai

On 28 July 2013, the Maasai peoples residing in the geothermal-rich Narasha locality in Narok County, Rift Valley, were forcibly evicted from their village by armed police officers and hired thugs who maimed scores of Maasai,¹¹ destroyed their property and torched their houses over a 3,000 acre land dispute.

The evictions came in the wake of a 33-year-old land struggle in the area pitting the local Maasai against the Kenya Power Generating Company (Kengen), and took place in total disregard of court injunctions filed by the Maasai. The evictions were linked to expansions of the Olkaria geothermal power generation project, which is touted as the largest such project in the world. This geothermal project is situated on the ancestral lands of the local Maasai communities. These ancestral lands form part of the ancestral territories that the Maasai lost through the Anglo-Maasai treaties of 1904 and 1911 and which the community still lays claim to. The evictions took place even though the constitution explicitly guarantees the rights and fundamental entitlement of individuals and groups to property.

The Sengwer

The Sengwer are an indigenous people with 33,187 members, (2009 census). They have inhabited the Cherangany Hills in Kenya's Rift Valley for centuries and the nature of their existence is fundamentally linked to land and natural resource use, managed through intricate traditional decision-making mechanisms.

According to the United Kingdom-based Forest Peoples Programme (FPP), the evictions that took place in 2013 were conducted by the Kenya Forest Service and left in their wake burnt homes, school books, uniforms and the destruction of the Sengwer livelihood, which is connected to the Embobut forest. The Sengwer contended that they had unsuccessfully sought direct consultations with the Government of Kenya in order to ascertain why they should be classified as squatters, given Article 63 of the Constitution of Kenya, which recognizes the rights of hunter-gatherers to inhabit forests. FPP reasons that these evictions were motivated by World Bank funding of the government's REDD program (Reducing Emissions from Deforestation and Forest Degradation), which is being financed through the World Bank's USD 68.5 million Natural Resources Management Program being conducted in the Cherangany Hills. REDD is a carbon offset mechanism that uses forests and land as sponges to soak up developed countries' pollution.

According to information available online, when plans were mooted to move the Sengwer from the Cherangany Hills, the community turned to the courts and, in March 2013, the High Court in Eldoret issued interim orders forbidding the Kenya Forest Service and the police from carrying out the evictions. This injunction was renewed in November 2013.

The evictions are in blatant violation of the Kenyan Constitution, as well as international law on human rights, biodiversity conservation and the sustainable use of natural resources. The World Bank has a policy on indigenous peoples the aim of which is to promote their development in a manner that ensures that the development process fosters full respect for their dignity, human rights and uniqueness.

In seeking a suspension of these evictions and more consultations and safeguards, the Sengwer are citing Article 63(d) of the Kenyan Constitution, which recognizes the rights of communities to own ancestral lands traditionally occupied by hunter-gatherers, as well as Article 10, which underscores the importance of the principle of participation, of the protection of marginalized lands and of the sustainable development and co-management of the environment.

Unfortunately, the National Land Commission, the mandate of which includes conducting research related to land and the use of natural resources, and making recommendations to appropriate authorities, appears glaringly lacking in the Sengwer and Embobut forest issue.

The Kenyan government describes the Sengwer as "squatters" yet the Sengwer have inhabited this forest for millennia and were ensuring its survival long

before Kenya became a state. The case of the Embobut evictions displays the potential for governments, private companies and individuals to use the REDD process to dispossess and evict indigenous peoples from their forests, destroying those forests so that they can be included in the REDD programs and thus benefit from the carbon largesse of REDD.

Indigenous peoples and the UPR

As part of seeking greater government accountability for its commitment to the rights of indigenous peoples, the Universal Periodic Review (UPR) civil society working group in Kenya has a specific thematic group on indigenous peoples and minorities which monitors the government's implementation of its commitments made under the 2011 UPR. Issues of indigenous peoples' rights stand out as an area in which the government has either not implemented or is hesitant to implement those commitments.¹²

A number of recommendations relating to indigenous peoples' rights were made to the Government of Kenya during the 2011 UPR review. These include that:

- Kenya should support the United Nations Declaration on the Rights of Indigenous Peoples, and devote attention to the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, after his visit to the country in 2007 (Recommended by Mexico);
- Kenya should continue to make all efforts necessary to implement the recommendations of United Nations special procedures that have visited the country, and request international assistance to that end, if deemed necessary (Recommended by Bolivia);
- Kenya should implement all recommendations put forward by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples following his visit to Kenya in 2007, as well as ratify ILO Convention No. 169 (Recommended by Denmark);
- Kenya should consider ratifying ILO Convention 169, and take steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including through constitutional and statutory recognition of land

and resource rights and effective political participation (Recommended by Norway);

- Kenya should undertake specific measures to ensure the implementation of international United Nations and African human rights conventions, and develop and streamline domestic legislation ensuring the constitutional rights of citizens (Recommended by Finland).

With support from the International Work Group for Indigenous Affairs (IWGIA), PDNK has been seeking to monitor the level of implementation of these recommendations, to further inform indigenous peoples in Kenya of the potential for making use of the UPR process, and to prepare indigenous peoples in Kenya to take an active part in the forthcoming UPR review of Kenya in 2015. ○

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- 4 <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/WildlifeConservationandManagement%20Act2013.pdf>
- 5 Kenya Law Review Commission: <http://www.klrc.go.ke/index.php/constitution-of-kenya/117-chapter-five-land-and-environment/part-1-land/234-67-national-land-commission>. See also: <http://www.ustaw.info.ke/index.php/government/commissions-and-independent-offices/national-land-commission-nlc?showall=1&limitstart>
- 6 There were court cases filed by individuals challenging the process of selecting commissioners that were later thrown out by the court but, even with the court cases out of the way, the president did not move to officially confirm the commissioners through the gazette. Read more in: <http://www.capitalfm.co.ke/news/2012/12/kibaki-petitioned-to-appoint-national-land-commissioners/> and in: <http://www.cickenya.org/index.php/newsroom/press-releases/item/288-failure-by-the-president-to-appoint-the-national-land-commission>
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- 12 Find information about Kenya’s follow up of the UPR recommendations here:
www.upr-info.org/followup/assessments/.../kenya/MIA-Kenya
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Michael Tiampati has worked as a journalist in Kenya and East Africa for Reuters Television and Africa Journal. He has been working with indigenous peoples’ organizations in Kenya for more than 13 years, including the Centre for Minority Rights Development (CEMRIDE), Maa Civil Society Forum (MCSF) and Mainyoi-to Pastoralist Integrated Development Organization (MPIDO). He is currently the National Coordinator for the Pastoralist Development Network of Kenya (PDNK).

UGANDA

Indigenous peoples in Uganda include the traditional hunter/gatherer Batwa communities, also known as *Twa*, and the *Benet* and pastoralist groups such as the *Karamojong* and the *Ik*. They are not specifically recognised as indigenous peoples by the government.

The *Benet*, who number around 20,000 people, live in the north-eastern part of Uganda and are former hunter/gatherers. The 6,700 or so *Batwa*, who live primarily in the south-western region of Uganda, are also former hunter/gatherers. They were dispossessed of their ancestral land when the Bwindi and Mgahinga forests were gazetted as national parks in 1991.¹ The *Ik* number about 1,600 people and live on the edge of the Karamoja/Turkana region along the Uganda/Kenya border. The *Karamojong* people live in the north-east of Uganda and number around 260,117² people.

The 1995 Constitution offers no express protection for indigenous peoples but Article 32 places a mandatory duty on the state to take affirmative action in favour of groups who have been historically disadvantaged and discriminated against. This provision, while primarily designed or envisaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favour of indigenous peoples in Uganda.³ The Land Act of 1998 and the National Environment Statute of 1995 protect customary interests in land and traditional uses of forests. However, these laws also authorize the government to exclude human activities in any forest area by declaring it a protected forest, thus nullifying the customary land rights of indigenous peoples.⁴

Uganda has never ratified ILO Convention 169, which guarantees the rights of indigenous and tribal peoples in independent states, and it was absent in the voting on the UN Declaration on the Rights of Indigenous Peoples in 2007.

The Batwa sue the government

With no end in sight to their more than a decade-long landlessness and hopeless situation, the Batwa sought refuge in the courts of law on 10 February 2013. Through their umbrella community organisation, the United Organisation for Batwa Development (UOBDU), they petitioned the court for redress and are seeking reinstatement back into the forest or adequate compensation for loss of livelihood. The Batwa took this bold step after the government remained adamant that it would not recognise them as the rightful owners of the land from which they had been evicted in the Bwindi and Mgahinga forests, making it very difficult for them to obtain compensation. The Batwa continue to live on the margins of society in squatter-like conditions and abject poverty. Their plight continues to be avoided on the agenda set by the surrounding majority community. Their segregation is compounded by the prevailing traditional perception among other communities that they are backward, primitive and lack civic consciousness.⁵ Their political participation thus remains limited and their socio-economic rights are still ignored by the state and society.⁶

Uganda formulates a national land policy

Perhaps the single most important event of 2013 was the government's (through the Ministry of Lands, Housing and Urban Development) eventual formulation of the long-awaited national land policy. After three decades of uncertainty, Uganda now has a clear and agreed policy, and an action plan for its implementation is being prepared under the leadership of the Ministry of Lands. The policy, the government claims, will provide a framework for articulating the role of land in national development. According to the Ministry of Lands, the policy is supposed to harmonise the diverse views on historical land injustices, land management and land use. Its grand goal is: "To ensure efficient, equitable and optimal utilisation and management of Uganda's land resources for poverty reduction, wealth creation and overall socio-economic development." It is here that it is hoped that minority and indigenous peoples' land rights issues will be addressed.

As with most government policies, the land policy is well-intentioned, with clear objectives and goals. It remains to be seen, however, how the technical



implementation committee, comprising many stakeholders, will go about implementing it.

Uganda hosts the eastern Africa regional pastoralism symposium

In a bid to enable communities in the intra- and interstate drylands to address challenges such as climate change, trade, human and livestock mobility, conflicts and diseases, the Coalition of Pastoralists' Civil Society Organizations (COPACSO) organised a regional symposium drawing participants from eastern African states to discuss several frameworks and initiatives (including African Union Pastoralism Framework, the East African Common Market Protocols, the Comprehensive Afri-

can Agriculture Development Programme, the IGAD Drought Resilience and Sustainable Initiative and the Livestock for Livelihoods project) with a view to seeing how these can effectively help improve pastoralism as a livelihood system.

Pastoralists from West Africa - where a number of ECOWAS⁷ states have put in place laws that provide for legal recognition and protection of livestock mobility, protection of pastoral resources from encroachment and alienation, customary land management, use of formal and informal institutions for resource management and conflict resolution – participated in the symposium to share their experiences.

Situation of minorities and indigenous peoples

2013 was not an eventful year for other minorities and indigenous communities. The same pattern continued of an adamant government dragging its feet in terms of addressing longstanding issues. The Basongora, Benet, Ik and other groups continued their lobbying and advocacy work aimed at seeking redress from the government for loss of land and livelihood. The media did not stop publishing stories of helpless communities being illegally evicted from land with little or no government intervention.

In the oil-rich region of Hoima, the Bagungu communities in Buliisa district cried foul over low/unfair compensation from the Canadian oil and gas company, Total E&P. Through media reports, residents claimed that the company had compensated them around Sh 700 (USD 0.30) per square metre for a mature cassava garden, which was far below the market value. The New Vision (Thursday 24 October 2013) quoted the district women's parliamentary representative, Beatrice Mpairwe, as saying: "Cassava takes two to three years to mature and one stock can have between 10 to 15 tubers, which cost Sh 2,000 (USD 0.80) each. Why would someone offer you Sh 700 (USD 0.30) per square metre. What can that little money do?" ○

Notes and references

- 1 **United Organisation of Batwa Development in Uganda (UOBDU), 2004.** *Report about Batwa data.* August 2004, Uganda, p.3.
- 2 **Minority Rights Group International (MRG), 2011.** Land, livelihoods and identities; inter-community conflicts in East Africa (p.6), <http://www.minorityrights.org/download.php?id=1076>

- 3 **Minority Rights Group International (MRG), 2001**, Uganda: The marginalization of Minorities (p.9), www.minorityrights.org/download.php?id=143
- 4 *Land Act (1998)*, Articles 2, 32 and *National Environment Statute (1995)*, Article 46.
- 5 **Minority Rights Group International (MRG), 2011**. *Land, Livelihoods and Identities: Inter-community conflicts in East Africa*. <http://www.minorityrights.org/download.php?id=1076>
- 6 **Cultural Survival 2010**. *Quarterly magazine*, <http://www.culturalsurvival.org>
- 7 ECOWAS is the acronym for Economic Community of West African States.

Mohamed Matovu is the Africa Regional Information Officer at Minority Rights Group International. He is a media trainer and works with regional networks in Africa and Europe on behalf of underprivileged communities, specifically minorities and indigenous peoples.

TANZANIA

Tanzania is estimated to have a total of 125 – 130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as indigenous peoples, four groups have been organizing themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Although accurate figures are hard to arrive at since ethnic groups are not included in the population census, population estimates¹ put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belongs at 87,978, the Hadzabe at 1,000² and the Akie at 5,268. While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalization. They also experience similar problems in relation to land tenure insecurity, poverty and inadequate political representation.

Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but does not recognize the existence of any indigenous peoples in the country and there is no specific national policy or legislation on indigenous peoples *per se*. On the contrary, a number of policies, strategies and programmes that do not reflect the interests of the indigenous peoples in terms of access to land and natural resources, basic social services and justice are continuously being developed, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.

Land grabbing and evictions

Just as in the preceding years, the major challenges that continued to face pastoralists and hunter-gatherer communities throughout 2013 were a denial of access to land and natural resources critical for their survival and for maintenance of their livelihoods. Evictions and land grabs continue to take place widely,



causing land and natural resource conflicts between the marginalized and evicted communities and other land users such as farmers, investors and wildlife conservationists. The government is, to a large extent, the catalyst in these conflicts since it is behind many of the land grabs and evictions. In 2013, land conflicts were reported in several areas.³

Kilombero and Ulanga evictions

There were serious evictions and use of force against Sukuma, Maasai and Barabaig pastoralists in Kilombero and Ulanga districts in 2013. The evictions took

place through the so-called “Operation Save Kilombero Valley”, which started on 30 October 2012. The operation was carried out in a brutal manner and had serious and negative consequences. Despite the government claiming that the operation was carried out peacefully, in reality the police used excessive force, including intimidation and violence. Pastoralists were threatened, impoverished through all sorts of “fines”, dispossessed and ordered to leave with their livestock. The evictions were thus associated with numerous forms of human rights violations.⁴

Positive developments in the Loliondo conflict

The Loliondo land conflict, which has dominated civil society activism and media reporting in recent years, was again dominant in the media in 2013. The government has, for several years, been trying by all means to justify leasing the Maasai land in Loliondo in northern Tanzania to the United Arab Emirate wildlife hunting company Ortello Business Corporation (OBC), in the name of wildlife conservation. This has taken place even though the land is recognized as village land and thus, according to the land laws, should be governed by the village institutions. However, in 2013, after a great deal of national and international pressure, the government gave in and agreed that the land belongs to the villages.

The situation in Rufiji

In May 2013, pastoralists who had been evicted from the Ihefu district in 2006 and resettled in Rufiji district were now being accused of being invaders and were once again given notice to vacate some of the villages they had been resettled in (such as Kilimani, Chumbi, Ngorongo Magharibi, Nyamwage and others). In relation to the massive evictions of pastoralists from Ihefu district in 2006, the government had announced among other things that it had prepared for the relocation of the evicted pastoralists to Rufiji and constructed all the necessary infrastructure that would allow the pastoralists and their livestock to survive in the area. However, as was documented in a research report by PINGOs Forum in 2013, in reality the government only constructed five cattle dips and one borehole in the whole district.⁵ The government also promised to demarcate land for the evicted pasto-

ralists in the relocation areas. The reality, however, showed that the residents of those areas into which the pastoralists were move were not informed or prepared to receive the people from Ihefu and that far less land was demarcated than promised and needed. The plan had been to demarcate land for the evicted pastoralists in 39 villages but, in the end, only seven villages were demarcated.

In their struggle to fight for their rights, pastoralists in Nyamwage village opened a land case in 2012 (Case No. 272 of 2012 between the pastoralist groups of Nyamwage village and Rufiji District Council) suing the government for subdividing their land and giving it to an investor. The case has been opened in the Dar es Salaam High Court Land Division and is still pending.

Land grabbing in the name of wildlife management

In areas bordering Tarangire National Park in Monduli, Simanjiro, Babati and Kondo districts, grabbing of pastoralists' livestock grazing areas is taking place in the name of wildlife conservation. For example, the Randile⁶ Wildlife Management Area (RWMA) (situated in Monduli district) has negatively impacted on the grazing areas of the pastoralists in Lolkisale village, whose traditional grazing lands have been turned into wildlife management areas and whose vital access to grazing areas is in danger of being prohibited. The establishment of the Burunge⁷ WMA, which is found within the same eco-system, has been challenged by the villages within that WMA. The villages maintain that the process of establishing the WMA was not transparent, that the villages were not fully involved in the process and that their right to free, prior and informed consent was violated.

Operation Tokomeza

One of the major issues for indigenous peoples in Tanzania in 2013 was so-called "Operation Tokomeza", which led to serious human rights violations. On 4 October 2013, the Government of Tanzania launched the operation, which, according to the government, was intended to eradicate poaching, which seriously affects the wildlife in different conservation areas. Operation Tokomeza was a military operation, and the Minister of Natural Resources and Tourism was directly involved. The operation was meant to crack down on poachers, who were reported

to have been slaughtering nearly 30 elephants a day for their tusks, threatening a USD1.82 billion tourism industry. The gravity of the human rights violations caused by the operation resulted in a huge national scandal. The government was forced to establish a parliamentary committee tasked with conducting investigations into the allegations of human rights violations. The findings of the parliamentary committee⁸ revealed gross violations of human rights by the state organs involved and resulted in the sacking of four ministers⁹ in November 2013.

Geographical coverage of the operation and security institutions involved

Operation Tokomeza took place around and outside the protected areas of Selous, Mikumi, Manyara, Saadani Udzungwa, Serengeti, Mkomazi, Ruaha, Mahale, Gombe and Tarangire National Parks; the Maswa, Ikorongo and Mkungunero Game Reserves; and in areas of mangrove forest such as Handeni, Kazimzumbwi, Kisarawe, Rufiji and Mkuranga. Most of these areas are places where pastoralists reside.

Operation Tokomeza involved a total of 2,371 people from various security institutions: 885 troops from the Tanzania People's Defense Force (TPDF), 480 people from the police force, 440 people from the anti-poaching unit (KDU), 383 Game Scouts from the National Parks (TANAPA), 99 soldiers from the Agency for Forestry Services (TFS), 51 Game Scouts from Ngorongoro Conservation Area Authority (NCAA), 23 prosecutors and 100 magistrates. It is contrary to normal practice to appoint judicial officers to deal with such an operation as this bypasses the normal judicial system and procedures. This is tantamount to interference with the independence of the judiciary and is contrary to the Constitution.

Human rights abuses committed by Operation Tokomeza

Although Operation Tokomeza was designed to eradicate poaching throughout the whole country, it was in reality diverted to mainly targeting and attacking pastoralists who live adjacent to protected areas, as noted in the findings of the Parliamentary Commission's investigation report.¹⁰ Operation Tokomeza was carried out in a way that violated important provisions of the Constitution of the United Republic of Tanzania, such as the right to life as provided under Article 14,¹¹ the right to property under Article 24,¹² the right to protection under Article 16¹³ and all other human rights as provided for by the Bill of Rights in the Constitution. Moreo-

ver, the very involvement of the military forces in Operation Tokomeza was unconstitutional.¹⁴

The Sub Committee of the Standing Parliamentary Committee on Land, Natural Resources and Environment released its report entitled “*Taarifa ya Kamati ya Kudumu Ya Bunge ya Ardhi, Maliasili na Mazingira Kuhusu Thamini ya Matatizo yaliyotokana na Operesheni Tokomeza*” (The Report of the Parliamentary Standing Committee on Land, Natural Resources and Environment on Evaluating the Problems Resulting from Operation Tokomeza) on 22 December 2013. The report documented serious human rights violations, including torture, harassment, causing injury to and permanent disability of pastoralists, murder (e.g. the late Emiliano Gasper Mara from Glapo-Babati), burning of homesteads (e.g. Kabage village in Katavi, which was set ablaze) and killing of livestock, which were brutally burned and shot. Instead of targeting the poachers, the operation targeted pastoralists by destroying their property, burning their houses and looting cash and other items.

Many pastoralists were given huge and unlawful fines for unknown reason, with no receipt or a receipt showing a much smaller amount than actually paid. If they failed to pay the fines, their livestock were seized and shot dead or sent for auction and sold at very low prizes.

There are also cases of pastoralists being accused of and charged with wrongful allegations such as unlawful possession of arms, possession of marijuana or trophies. One example was Mr Cosmas from Galapo in Babati, who was charged with possession of guns, an allegation that was found to be untrue. Mr Venus Aly from Kilombero was tortured to “admit” that he was in possession of weapons that he never had.

Several pastoralists lost their lives during the operation, including Wegesa Kirigiti from Remagwe village, Peter Sea from Rito village (Tarime district), Mohamed Buto from Masasi district and Gervas Zoya from Kasulu district. These people were killed during a torture process in which they were forced to admit that they were involved in poaching. There is also documentary evidence provided by the public media regarding the torture and death of Ms Emiliana Gasper Maro.

The report of the Parliamentary Committee¹⁵ also revealed that some of the Game Reserves had been expanding their borders, creating conflicts with the pastoralists. These expansions have been taking place without consulting the people of the surrounding areas. There is, for instance, the case relating to the expansion of the borders of the Gurumeti Game Reserve in Bunda district, where

some of the villages have been losing their land. Residents of Kegonga and Sangga villages in Tarime district are also in a boundary dispute with Tanzania National Parks (TANAPA), claiming that their land has been taken by TANAPA.

The Parliamentary Committee report mentions the names of some of the victims of human rights violations and of some of the junior government officials accused. However, the report does not mention any of the politicians, government leaders or ministers who were responsible for diverting the operation from combatting poaching to attacking innocent pastoralists. The report does note that some members of parliament are responsible for poaching activities but fails to give their identities. It also notes that some ministers gave instructions to the operation team to leave political leaders of all levels alone but it does not reveal the identity of these ministers and no recommendations are made on what actions should be taken towards them.

As provided by law,¹⁶ the Tanzania People's Defense Force (TPDF) has no mandate to deal with criminal matters relating to national civilians, which is the jurisdiction of the police force. The Parliamentary Committee said nothing regarding the use of the TPDF to conduct civilian operations when the President had not declared a state of emergency. Instead it recommended that the government should organize: "Another operation that will be implemented by the Tanzania People's Defense Force and National Security Department", which is contrary to the Constitution of the United Republic of Tanzania.¹⁷

Constitutional review process

2013 saw Tanzania continue the constitutional review process that was started in 2011. From the very beginning, indigenous peoples organized themselves under a joint new mechanism called the "Pastoralists and Hunter-Gatherers Katiba Initiative" (Kai Initiative), which brings together more than 14 pastoralist and hunter/gatherer organizations with a view to engaging in the constitutional review process. The work of the Kai Initiative is being coordinated by the indigenous peoples' umbrella organization, PINGOs Forum. The process has included mobilizing indigenous peoples to enable them to give their views to the Constitutional Review Commission; gathering the opinions of indigenous peoples; drafting recommendations and submitting them to the Constitutional Review Commission; and establishing constitutional fora which submitted further comprehensive recom-

mendations to the Commission – especially on issues dealing with indigenous peoples and rights to land and natural resources. Some of the very important recommendations that have been clearly accommodated in the current draft constitution are the rights of minorities, which are stipulated in Article 46, which provides for representation, right to land, affirmative action on education and improvement of the economy of minorities. Article 46 defines minorities as communities whose livelihood is dependent on natural resources and the environment for their livelihood. Although the draft Constitution is not comprehensive with regard to the rights of pastoralists, it does recognize pastoralists as one of the groups whose rights to land and natural resources have to be protected. Further advocacy and lobbying work is continuing in the Constituent Assembly in order to ensure a comprehensive chapter on this issue. By the end of 2013, and as required by the Constitutional Review Act, the members of the Constituent Assembly (which debates and works on the new Constitution) had been appointed. The Kai Initiative submitted nine names for consideration and, of these, six members of the Kai Initiative were appointed by the President of Tanzania as members of the Constituent Assembly, including the coordinator of the Kai Initiative. ○

Notes and references

- 1 www.answers.com/Maasai ; www.answers.com/Datoga; www.answers.com/Hadza.
- 2 Other sources estimate the Hadzabe at between 1,000 – 1,500 people. See, for instance, **Madsen, Andrew, 2000:** *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community*. Copenhagen: IWGIA.
- 3 Land conflicts were reported from among others: Loliondo and Ololosokwan village in Ngorongoro district; Mpanda Wildlife Management Area (WMA) (in the villages of Mpimbwe, Ubende, and Kamsisi in Mpanda district); Kilosa district, Rufiji district; Burunge WMA in Babati district; Yaeda Chini in Mbulu district; Embolie Murtangos involving seven villages in Kiteto district; Kimotorok village in Simaniro district and Mariwanda, Kihumbu, Unyari, Mehari, Nyamatoke, Bukore, Mgeta and Kiandege villages in Bunda district.
- 4 The PINGOs Forum Fact-finding Report. Undertaken in January, March, October, November 2012 and February 2013.
- 5 Rufiji fact-finding report, 2013.
- 6 Randile WMA in Monduli was gazetted on 1 February by GN. No. 21 of 2013. The Minister gazetted this under the Wildlife Conservation Act No. 5 of 2009 [CAP. 283] under section 32.
- 7 Mwada, Sangaiwe, Vilima Vitatu, Minjingu, Olasiti, Ngoile, Maweni, Manyara and Magara.
- 8 The Report of the Parliamentary Standing Committee on Land, Natural Resources and Environment on Evaluation of Problems Resulting from Operation *Tokomeza*, December 2013. Page 13
- 9 The four ministers were the Minister for Livestock and Fisheries, the Minister for Natural Resources and Tourism, the Minister for Internal Affairs and the Minister of Defence.

- 10 The Report of the Parliamentary Standing Committee on Land, Natural Resources and Environment on Evaluation of Problems Resulting from Operation Tokomeza (Operation Tokemeza report), December 2013. Page 12.
- 11 The Constitution of The United Republic of Tanzania, 1977, Art 14.
- 12 *ibid*, Art 24.
- 13 *ibid* Art 16.
- 14 The Tanzanian Military Defense Force (TPDF) only has a mandate to protect the national boundaries from foreign invaders. Articles 44 and 147 of the Constitution further provide conditions that the president has to fulfill before giving orders to the military to execute any specific duties. These provisions were not adhered to before involving the military in an operation that seriously affected the indigenous peoples and their property.
- 15 Operation Tokemeza report, page 16.
- 16 URT, Defence Force Regulation Vol. 1 of 1966 and The National Defence Act, 1966 the TPDF.
- 17 Operation Tokomeza report, page 20.

Edward T Porokwa is the Executive Director of Pastoralists Indigenous NGOs Forum (PINGOs Forum), an umbrella organization for pastoralists and hunter-gatherers in Tanzania. He is an indigenous lawyer and an Advocate of the High Court of Tanzania. He has been working on indigenous human rights issues for the last 15 years.



CENTRAL AFRICA

RWANDA

The indigenous Batwa population of Rwanda is known by various names: ancient hunter-gatherers, Batwa, Pygmies, Potters or the “historically marginalized population”. The Batwa live throughout the country and number between 33,000 and 35,000 people out of a total population of around 11,000,000, i.e. 0.3% of the population.¹ They have a distinct culture, often associated with their folkloric and traditional dance and the intonation of their specific language.

Prior to 1973, when national parks were created in Rwanda, the Batwa lived mainly from hunting and gathering in the territory’s natural forests. They were expelled from their ancestral lands with no warning, compensation or other means of subsistence and they now constitute the poorest and most marginalized ethnic group in Rwanda.

Their complete lack of representation in governance structures has been a great problem for the Batwa. However, Article 82, para 2 of the Rwandan Constitution, amended by Revision No. 2 of 8 December 2005, stipulates that eight members of the Senate must be appointed by the President of the Republic, who shall also ensure representation of the historically marginalized communities. However, at the moment the Batwa have only one representative in the Senate.

The Rwandese government still does not recognise the indigenous or minority identity of the Batwa and, in fact, all ethnic identification has been banned since the 1994 war and genocide, even though the government voted in favour of the UN Declaration on the Rights of Indigenous Peoples. Because of this unwillingness to identify people by ethnic group, there is no specific law in Rwanda to promote or protect Batwa rights.

Parliamentary elections

In September 2013, Rwanda held parliamentary elections in which the governing party, the Rwanda Patriotic Front (RPF), won with a clear victory. Of the 80 seats in parliament, 53 were directly elected and 24 were reserved for women,



youth and the disabled, indirectly appointed by local and national councils. No Batwa was appointed to the parliament and no Batwa candidate was represented during the elections.

UN Committee on Economic, Social and Cultural Rights

Rwanda presented its combined second to fourth reports during the 50th session of the UN Committee on Economic, Social and Cultural Rights in May 2013. In its concluding observations,² the Committee expressed concerns regarding the situation of the Batwa peoples in Rwanda and made numerous recommendations to

the government for a better promotion and protection of their economic, social and cultural rights.

The Committee recommended that it “firmly combat stereotypes, stigma and discrimination against and marginalization of Batwa, including by ensuring the effective application of its anti-discrimination legislation”. The Committee also expressed concerns at the high rate of unemployment and poverty among the Batwa and recommended to “tak[ing] steps to reduce the rate of unemployment and to reinforce targeted plans and programmes designed to combat unemployment [and poverty]”. The Committee also recommended “that the State party adopt legislation on rent control and strengthen its measures to improve access to adequate housing for all, in particular for disadvantaged and marginalized persons and groups, in particular the Batwa community. The Committee also recommends that the State party conduct inclusive consultation before any displacement of the population and ensure relocation in adequate settlements with conditions comparable to those they previously enjoyed”. Finally the Committee expressed concerns regarding the Batwa’s access to health and education and recommended that “the State party pursue its efforts to ensure access to health-care services for all its population without distinction... [and] strengthen measures aimed at reducing the dropout rates of children belonging to marginalized and disadvantaged families, in particular the Batwa families, in primary and secondary schools.”

Report of the United Nations Special Rapporteur on adequate housing

The UN Special Rapporteur conducted a visit to Rwanda in July 2012 and presented her report³ during the 22nd session of the Human Rights Council in February 2013. The report includes a chapter on the particular situation of the Batwa in which the Special Rapporteur indicates that the negative stereotypes and prejudices against the Batwa have many consequences, including “more difficulty gaining access to land, landownership and decent housing.” The Special Rapporteur therefore recommended that the government of Rwanda “focus attention on the Batwa with a view to taking urgent measures to address the unequal treatment that they experience in all areas of economic, social and political life in the country. To grant them recognition of their special status, as recommended by the African Commission on Human and Peoples’ Rights and the International Work Group for Indigenous Affairs, would seem to be an appropriate step towards the

establishment of temporary special measures to correct the discriminatory practices of the past, of which these populations continue to be victims.” ○

Notes and references

- 1 According to a socio-economic survey carried out in 2004 by CAURWA (*Community of Indigenous Rwandans*) now known as COPORWA (*Community of Rwandan Potters*), in collaboration with the Statistics Department of the Ministry of Finance and Economic Planning.
- 2 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fRWA%2fCO%2f2-4&Lang=en
- 3 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/105/38/PDF/G1310538.pdf?OpenElement>

Geneviève Rose is project coordinator for IWGIA's African Commission on Human and Peoples' Rights Programme. She holds an M.A. in Conflict Resolution and International Studies from the University of Bradford, UK.

BURUNDI

The Batwa are the indigenous people of Burundi. A census conducted by UNIPROBA (*Unissons-nous pour la Promotion des Batwa*) in 2008 estimated the number of Batwa in Burundi to be 78,071¹ or approximately 1% of the population. These people have traditionally lived by hunting and gathering alongside the Tutsi and Hutu farmers and ranchers, who represent 15% and 84% of the population respectively.

The Batwa live throughout the country's provinces and speak the national language, Kirundi, with an accent that distinguishes them from other ethnic groups. No longer able to live by hunting and gathering, they are now demanding land on which to live and farm. The census conducted by UNIPROBA in 2008 showed that, of the 20,155 Batwa households in Burundi, 2,959 were landless, or 14.7% of the total. And, of these landless households, 1,453 were working under a system of bonded labour, while the other 1,506 were living on borrowed land. It should, moreover, be noted that those households that do own land have very small areas, often no more than 200 m² in size.

Some positive actions are being undertaken in Burundi, aimed at encouraging the political integration of the Batwa. This integration is the result of the implementation of a number of laws and regulations in force in Burundi, including the Arusha Accord of 28 August 2000, the National Constitution of 18 March 2005 and the 2010 Electoral Code, which explicitly recognise the protection and inclusion of minority ethnic groups within the general system of government.² The 2005 Constitution sets aside three seats in the National Assembly and two seats in the Senate for Batwa. Burundi abstained from the vote on the UN Declaration on the Rights of Indigenous Peoples.

Right to participate in decision-making bodies

A number of events were organised in 2013 aimed at stabilising the political situation in Burundi. Talks were organised by the United Nations Office in



Burundi (BNUB) (from 11 to 13 and 22 to 24 March) on the murders and arrests of opposition party leaders that took place during the 2010 elections. Although these activities were of concern to all Burundians, with the aim of ensuring that the forthcoming 2015 elections take place in an atmosphere of democracy, good governance and human rights, the Batwa were not invited to participate.

Another large-scale political event in Burundi during the year was the revision of the country's constitution, its electoral code and its communal law. Batwa parliamentarians were active in the discussions on these reforms, arguing that the Batwa's right to participate should be enshrined in one of these legislative texts. They organised a press conference and were in contact with the President of the Republic of Burundi. They called for, that in the Constitution, Article 1, on the

composition of ethnic groups in Burundi, Article 129(1) and (2) on the composition of the government, Article 143 on public companies, Article 164 on representation in the National Assembly and Article 180 on ethnic representation in the Senate to be revised to include 10% Batwa representation.

Despite all these efforts, the President proposed amendments to the National Assembly and Senate without taking the concerns of Batwa parliamentarians into account.

Access to justice

The Batwa of Burundi do not have fair access to justice. This is due to a number of factors, including strong prejudice against them, extreme poverty and a lack of information. This has meant that they are unable to enjoy the same advantages as other sectors of national society.

To mitigate this lack of information and legal assistance, *Unissons-nous pour la Promotion des Batwa* (UNIPROBA) has, with funding from TROCAIRE, established legal assistants for the Batwa in the provinces of Bururi, Bujumbura Rural and Cibitoke. The Fund for Global Human Rights has also helped UNIPROBA to hire a lawyer to defend cases of Batwa land grabs. UNIPROBA visited the National Commission for Land and Other Assets (CNTB) in September 2013. During this visit, the Chair of the Commission expressed a desire to help the Batwa recover their land but stated that an inventory of the land plundered from the Batwa would be needed if the CNTB was to help them to do so.

The central prison in Mpimba currently holds 105 Batwa prisoners, most accused of theft. Many of these inmates have been held for several years without any legal assistance. This situation is widespread throughout the country's prisons and there is a need to see how best these detainees could be helped.

Situation of indigenous Batwa women

The Batwa women of Burundi participate in virtually no decision-making bodies. In partnership with UN Women, UNIPROBA has been conducting an awareness raising project aimed at helping Batwa women and girls to know their rights.

The project has strengthened the capacity of 680 indigenous young girls to claim their right to participate in the local councils (*conseils de collines*) and of 340 adult indigenous women to claim their right to participate in the commune-level councils (*conseils communaux*).

In 2013, a National Women's Forum and a National Children's Forum were established in Burundi. Large numbers of Batwa women ran for election in 2013 as members of the National Women's Forum at local (*colline*) level. A young female Mutwa, a university student named Imelde Sabushimike, was one of the organisers of these elections nationally. The fact that an indigenous woman was accepted as an organiser of these elections is already a highly remarkable feat. Young Batwa girls were also co-opted to form part of the National Children's Forum at commune level.

Education of Batwa in Burundi

The number of Batwa children attending primary and secondary school is very low and the number of Batwa students studying in the country's universities is even lower, providing an indicator of the poverty of this community: to date, only four Batwa have completed their university studies in Burundi (there are currently six more attending university). The main difficulties preventing the Batwa from accessing education are poverty, hunger, ignorance, lack of follow-up, marginalisation, the rapes of Batwa girls (which are often followed by unwanted pregnancies), early marriage, etc.

During a workshop organised to celebrate International Day of the World's Indigenous Peoples in August 2013, a discussion group was held on education, with funding from IWGIA. Recommendations were made to the government and UN agencies involved in education and global development with regard to how the level of education among the Batwa could be improved, given that education is the key to all development.

International Day of the World's Indigenous Peoples

During August 2013, UNIPROBA organised a workshop to publicise International Day of the World's Indigenous Peoples. During this workshop, discussions fo-

cused generally on rights to education, land and natural resources and access to justice and on raising the awareness of the different state representatives in the Great Lakes Region with regard to the World Conference on Indigenous Peoples, due to take place in New York in September 2014. ○

Notes and references

- 1 UNIPROBA, *Rapport sur la situation foncière des Batwa du Burundi*, August 2006 - January 2008, Bujumbura, p16.
- 2 See Law No. 1/10 of 18 March 2005 implementing the Constitution of the Republic of Burundi.

Vital Bambanze is a Mutwa from Burundi. He is a founding member of UNIPROBA and Chair and Central Africa Representative of the Indigenous Peoples of Africa Coordinating Committee (IPACC). He is now a member of the Senate and of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). He has a degree in Social Arts from the Department of African Languages and Literature, University of Burundi.

REPUBLIC OF CONGO

The Republic of Congo covers an area of some 342,000 km². It has estimated forest cover of 22,471,271 hectares (or approx. 2/3 of its total area) and a deforestation rate of 0.08%. A 2007 estimate put the Congolese population at 3.7 million inhabitants. The Second Survey (ECOM)¹ updated this demographic data, giving an estimated total of 4,085,422 inhabitants in 2011. This is made up of two different groups of people: the indigenous peoples and the Bantu. Official estimates of the former stand at around 50,000 individuals, or approx. 1.2% of the total 2007 population. However, a 2008 study² gave a much larger estimate of their demographic weight, as much as 10%. According to the different sources available, the indigenous people are among the poorest and most marginalised sectors of society. They include the Bakola, Tswa or Batwa, Babongo, Baaka, Mbendjele, Mikaya, Bagombe and Babi, and mainly reside in the departments of Lékoumou, Likouala, Niari, Sangha and Plateaux. The indigenous peoples are traditionally nomadic or semi-nomadic hunter-gatherers, although some of them have now become settled and are employed in farm work, livestock raising, commercial hunting or as trackers, prospectors or workers for logging companies.

In 2011, the Republic of Congo became the first country in Africa to promulgate a specific law on indigenous peoples: the Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of Congo. This law has remained virtually dead letter, however, due to a lack of implementing regulations. The Republic of Congo has not ratified ILO Convention 169 but did vote in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

General developments in the legislative and political context

Drafting of the implementing regulations for the Law on Indigenous Populations

The President of the Republic of Congo enacted Law No. 5-2011 of 25 February 2011 on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of Congo following a participatory process that lasted almost eight years.

Law No. 5-2011 of 25 February 2011, which is a piece of landmark legislation in Africa, comes at just the right time to combat the marginalisation and discrimination suffered by indigenous populations.

There are still, however, a number of outstanding challenges to be overcome before this law can become effective:

- The awareness of all actors responsible for applying the law, and of the indigenous people, needs to be raised. Indigenous peoples should develop ownership on the law in order to make use of it.
- The implementing regulations for this law need to be published, a process that has thus far been suspended. The Ministry of Justice and Human Rights has provided no response to the different requests made to it by civil society and indigenous peoples in this regard.

There are draft implementing decrees awaiting signature that relate to major areas of implementation: the establishment of an inter-ministerial monitoring and evaluation committee; the right to citizenship and special measures facilitating the granting of identity documents; administrative recognition of indigenous villages; access to social and health services; consultation and participation procedures for indigenous populations within decision-making institutions; the sharing of benefits resulting from the use and exploitation of traditional knowledge; the protection of cultural assets, sacred and spiritual sites; special measures facilitating indigenous children's access to education.

Faced with this blockage, which is rendering this law virtually inoperable, civil society has decided to pursue a series of advocacy actions aimed at the public authorities.



Revision of the Forest Code

The Ministry for Sustainable Development, the Forest Economy and the Environment (MDDEFE) has commenced a review of Law No. 16-2000 of 20 November 2000 on the Forest Code.

The government has requested the assistance of the French Development Agency (AFD) in this regard. The experts in charge of this work are currently in the process of gathering stakeholder inputs. Through the Platform for the Sustainable Management of Forests³ (PGDF), the CSOs⁴ - including organisations pro-

moting indigenous rights - have organised a number of activities aimed at producing their contribution, which has been submitted to the appropriate body. A series of departmental consultations will now be conducted to finalise the document, which will then be passed to parliament for adoption.

Formulation of a forestry policy in the Republic of Congo

The government has taken the decision to draft a national forestry policy. Its concept note sets a deadline of 2025 for this policy and its guidance states that forest spaces should achieve the following objectives:

- Ensure the integrity and sustainable management of forest ecosystems;
- Meet the population's needs for forest products and environmental services;
- Perpetuate and secure the financing of the forest sector.

The following activities have been undertaken:

- The process for formulating the forest policy has been initiated (July);
- An assessment of the forest sector has been conducted (November);
- The objectives and strategic choices have been defined (November);
- The guidance document on forest policy has been prepared (December).

The CSOs, including organisations promoting indigenous rights, participated in a number of these activities. Their input related to guaranteeing the rights of local and indigenous communities. This process was, however, conducted in Brazzaville in a relatively short space of time. Moreover, there are concerns that the local and indigenous populations in the departments were not consulted. The agenda provided was not clear in this regard.

Policies, programmes, projects etc. with consequences for indigenous peoples

UNICEF-CONGO cooperation programme

In partnership with the Ministry of Justice and Human Rights and the Ministry of Social Affairs, UNICEF has been implementing the final phase of its 2009-2013

programme of cooperation with the Republic of Congo, with a particular focus on women's and indigenous rights. These activities have been conducted with the involvement of CSOs, including organisations promoting indigenous rights, UN agencies and other development partners of the government. The following activities have been implemented in relation to indigenous peoples:

- Adoption of the national action plan to improve the quality of life of indigenous peoples;
- Facilitation of the organisation of the pre-session meeting of the UN Permanent Forum on Indigenous Issues (UNPFII) in Brazzaville from 11 to 15 March 2013;
- Facilitation of the celebration, at the government's initiative, of International Day of the World's Indigenous Peoples at Ouessou in Sangha;
- Advocacy for the signing of the implementing regulations governing Law No. 5-2011 on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of Congo;
- Coordination of basic service provision for indigenous peoples (registration of births, distribution of identity documents, healthcare, HIV awareness raising, distribution of school supplies...);
- Drafting of strategic directions and priorities for the 2014-2018 cooperation programme.

Forests and Economic Diversification project

Through the MDDEFE, and with support from the World Bank, the government is implementing the Forests and Economic Diversification project (PFDE). Initiated in 2012, this five-year project aims to build the MDDEFE's capacity to promote the implementation of forest legislation and to create a favourable environment for the participation of local populations and the private sector in the sustainable management of forests and reforestation. The following activities have been implemented in the context of Component 3 on the involvement of local and indigenous peoples in forest resource management:

- Production of terms of reference for the campaign to raise the awareness of people living close to forest concessions;

- Production of a questionnaire for consulting local and indigenous populations;
- Mission to evaluate the involvement of local and indigenous communities in Sangha (22 to 28 August 2013), Lékoumou and Niari (11 to 17 September 2013);
- Validation of the analysis report on the involvement of indigenous populations and local communities in forest resource management (31 October 2013 and 07 November 2013).

The CSOs, including organisations involved in promoting indigenous rights, participated in these activities. Moreover, in line with the analysis report's recommendations, the implementation of a series of activities is envisaged.

The indigenous movement

Established in 2007, RENAPAC⁵ is a platform intended to represent the indigenous movement. RENAPAC has been involved in most of the processes and policies affecting indigenous peoples. Nonetheless, the weak capacity of its organisers is a significant drawback. One challenge it needs to overcome is their lack of capacity to design, produce and implement projects. The process by which they are taking up ownership of the Law on the Promotion and Protection of the Rights of Indigenous Populations also needs to be strengthened.

While the PGDF has made the protection of indigenous rights one of its priorities, the dynamism of APSAC,⁶ based in Sibiti in Lékoumou department, more than 300 km south-west of Brazzaville, was noteworthy in 2013. This organisation, led by Jean Denis Toutou Ngamiye, has been involved in a number of monitoring, legal assistance and advocacy actions, particularly with regard to the murders, forced labour and forced displacement of indigenous people in its area.

Despite the law, indigenous peoples continue to suffer discrimination and marginalisation, hence the need for a more dynamic civil society. ○

Notes and references

- 1 Second Congolese Survey of Households (ECOM 2011), Report on the analysis of the CWIQ aspect , October 2011.
- 2 Analysis of the situation of indigenous women and children, UNICEF 2008.
- 3 Network of more than 20 Congolese CSOs working in different areas such as human rights, indigenous rights, biodiversity protection and local development. The OCDH (Congolese Observatory for Human Rights) is a member of this platform.
- 4 Civil society organisations.
- 5 National Network of Indigenous Populations of the Congo.
- 6 Association for the socio-cultural promotion of indigenous peoples in the Congo.

Roch Euloge N'zobo is program coordinator at the Congolese Center for Human Rights (Observatoire Congolais des Droits de l'Homme - OCDH), of which he has been a member since 1994. He is a lawyer and has worked for many years for human rights, democracy and the rights of indigenous peoples. He has actively participated in the drafting of the law on the rights of indigenous populations in the Republic of Congo.

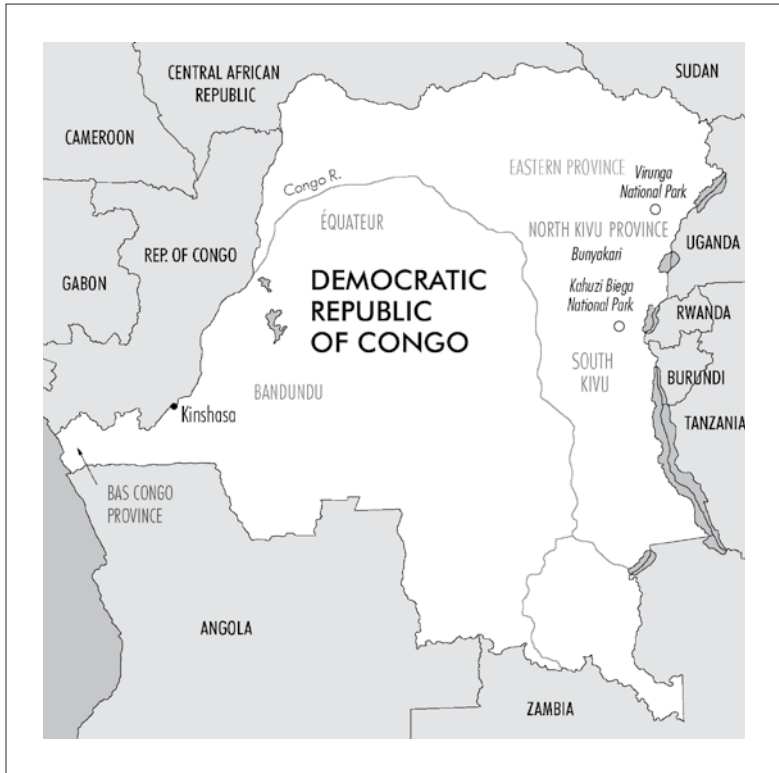
DEMOCRATIC REPUBLIC OF CONGO

Indigenous Peoples is the term accepted by the government and civil society organisations when referring to the Pygmy people of the Democratic Republic of Congo (DRC).

The government estimates that there are around 600,000 Pygmies in the DRC (1% of the Congolese population), while civil society organisations argue that there are up to 2,000,000 (3% of the population). They live in nomadic and semi-nomadic groups in ten of the country's eleven provinces and are divided into four main groups: the Bambuti (Mbuti), the Bacwa (Baka), the Batwa (Twa) of the west and the Batwa (Twa) of the east. The life of indigenous peoples in the DRC is closely linked to the forest and its resources: they live from hunting, gathering, collecting and fishing and they treat their illnesses with the help of their pharmacopoeia and medicinal plants. The forest forms the heart of their culture and their living environment.

The situation of the indigenous peoples in the DRC is alarming. In the face of external pressure they are increasingly being stripped of their ancestral land and forced to adopt a sedentary life under marginal conditions. This is leading to a weakening of their traditional economy, the irreparable abandonment of their cultural practices and increasing poverty. If their rights as indigenous peoples, as enshrined in international law, are not taken duly into account, pressure from logging and ongoing forest reforms risks diminishing their living space still further, depriving them of the resources on which they depend for their survival and resulting in the disappearance of their culture and their traditional knowledge.

There is no law or policy for the promotion and protection of indigenous peoples' rights in the DRC. However, a draft law on the rights of indigenous peoples has now been developed by civil society organisations in collaboration with parliamentarians. The DRC is a signatory to the UN Declaration on the Rights of Indigenous Peoples.



Specific law on indigenous peoples in the DRC

The first draft of the Law on Indigenous Peoples was elaborated in early 2013 by the Parliamentary Group for the Defence and Promotion of the Rights of Indigenous Pygmy Peoples in the DRC (DGPA) and its 43 member organisations. In an effort to open the process up and make it more participatory, the draft law was then sent for comment to several international and regional institutions and experts in order to strengthen it on the basis of regional and international legal instruments. The different observations made were compiled and incorporated into the draft, which was then sent for review to members of parliament, Congolese civil society organisations and other representatives of the country's institu-

tions, meeting in a workshop organised for this purpose in Kinshasa in June 2013. Following this crucial stage, in September 2013, civil society actors, MPs and indigenous representatives received training on the methodology to be applied during local consultations with indigenous peoples.

The consultation process on the draft law on indigenous peoples in the DRC

The draft law was presented to indigenous community members by means of a process of national consultations in 10 of the 11 provinces of the DRC. The consultations took place in two rounds, the first five provinces (Equateur, Bandundu, Orientale, South Kivu, Katanga) covering a total of 13 villages incorporating indigenous peoples' settlements (September 2013), followed by the remaining five provinces (North Kivu, Maniema, Kasaï Oriental, Kasaï Occidental and Kinshasa) covering a total of 11 villages (October-November 2013).

The aims of this consultation process were to:

- Test the draft law in different real-life settings in order to quantify its effectiveness once adopted and promulgated;
- Ascertain the specific features of indigenous peoples coming from different provinces of the country in order to incorporate them into the proposal;
- Enable MPs who were members of the group to construct their argument on the basis of experience and not hearsay;
- Correctly discern the local problems and challenges in order to take them into account in the final proposal for submission to parliament;
- Create a solid database that could be used to produce the implementing regulations once the law was adopted and promulgated;
- Enable all stakeholders; including provincial edicts, development programmes etc., to clearly understand the local context in which indigenous peoples live in order to adapt future initiatives to it.

Sub-regional exchange and experience-sharing workshop on indigenous issues between Congo Brazzaville and the DRC

In October 2013, the DGPA organised a sub-regional workshop to share the initial findings of the consultations with all national stakeholders in order to usefully inform the second round of consultations. The workshop was also aimed at exchanging information with actors from Congo Brazzaville in order to draw on their experience of indigenous legislation. The workshop furthermore enabled an evaluation of the way in which the indigenous law adopted in Congo Brazzaville in 2011 had been implemented in order to strategically inform the process of drafting implementing regulations in the DRC once the law has been passed by the Head of State.

Indigenous peoples' Festival in Kinshasa

A National Indigenous Peoples' Festival was held for the first time in December 2013 with the aim of celebrating indigenous culture and mobilising public opinion around indigenous issues by using the festival as a strong advocacy and lobbying tool for the adoption of a specific law on indigenous peoples in the DRC. The festival provided an opportunity for exchanging, discussing, promoting and enhancing knowledge of indigenous peoples and different elements of their culture (dance, song, basketwork, arts).

The aims of the festival were to:

- Encourage the general public to discover the indigenous world in order to revitalise an indigenous image that has been long tarnished and thrown on the scrapheap of history;
- Revive indigenous culture and practices;
- Demonstrate the fundamental contribution of indigenous peoples to the sustainable management of forest ecosystems and, consequently, to combatting climate change;
- Incorporate indigenous knowledge into the DRC's national cultural heritage;

Demonstrate the need and importance of putting specific legislation in place for indigenous peoples in order to put an end to the social injustices they suffer and encourage their responsible integration into Congolese social life, while respecting their free, prior and informed consent.

Following all these events in 2013, both national and international public opinion mobilised strongly around indigenous issues in the DRC and it is hoped that this will lead to the adoption and promulgation of a law to improve the living conditions of the indigenous peoples of the country since, despite these positive elements, indigenous rights are still largely ignored.

Armed conflicts and their impact on indigenous peoples

2013 was characterised by multiple ethnic conflicts in which various armed groups continued to violate the rights of indigenous peoples. These groups included, in particular, the *Mouvement du 23 mars* (M23) in North Kivu, the *Forces Démocratiques de Libération du Rwanda* (FDLR) in south Kivu, *Bakatakatanga* in Katanga and other unidentified armed groups in Orientale Province. These conflicts have resulted in an atmosphere of desolation within the indigenous community due to the pillaging and arson of their settlements, the rapes of indigenous women, the use of indigenous women and youths as gun bearers for the rebel groups, and the massacres and mass displacements of indigenous peoples.

Access to justice

A number of indigenous organisations in the DRC are working to support indigenous peoples to take cases to the country's courts regarding abuses and violations of their rights. One ongoing case is that of the Kahuzi Biega National Park (PNKB). Some 6,000 indigenous individuals were removed from the park by the government in 1975 without any compensation or relocation measures. The community, supported by an organisation called *Environnement, Ressources Naturelles et Développement* (ERND), has established a group of 66 indigenous claimants to defend the case in court. The case went before the Kavumu Court in 2009 but this latter declined to exercise jurisdiction, saying it was not competent. The claimants then initiated an appeal through the Bukavu Court of Appeal, which

also stated that it was not competent to hear the case. In 2013, the ERND, in cooperation with the DGPA, assisted the claimants to take the case to the Supreme Court of Justice, the highest jurisdictional body in the country. Preparatory work is now underway in the hope that the Supreme Court will hear the case in 2014 and issue a final ruling in favour of these people, who have been stripped of their lands and ancestral territories. ○

Patrick SAIDI HEMEDI, is a development worker and defender of minority rights in charge of the Planning and External Relations Department of the “Dynamique des Groupes des Peuples Autochtones de la RDC” (DGPA), Coordinator of “CONGO WATCH”, Technical Advisor on climate issues to the “Réseau des Populations Autochtones et Locales pour la Gestion Durable des Ecosystèmes Forestiers de la République Démocratique du Congo” (REPALEF RDC), and Deputy Editor of the “Revue Africaine des Peuples Autochtones” (RAPA).

GABON

It would seem particularly complicated to conduct a census in Gabon and the figures vary according to the source. The latest figures, from the 2010 census, suggest a total of 1,480,000 inhabitants.

The population comprises around 50 different ethnic groups with distinct cultures and languages, the main ones being the Fang (32%), the Mpongwè (15%), the Mbédé (14%), the Punu (12%), the Baréké or Batéké, the Bakota, the Obamba, etc.

Throughout Gabon, there are also hunter-gatherer-farmer communities (often known as Pygmies) made up of numerous ethnic groups (Baka, Babongo, Bakoya, Baghame, Barimba, Akoula, Akwoa, etc.) with different languages, cultures and areas of origin. The size of their population varies depending on the source but ranging from 7,000 to 20,000 individuals; however, there are no official figures for Gabon's indigenous population since the 2012 national census did not include this group. Pygmy communities are found both in towns and in forest areas. Their means of existence and their cultures are inextricably linked to the forest, which covers 85% of the country.

In 2005, Gabon agreed that its Indigenous Peoples' Development Plan (PDPA) should form part of the World Bank's loan agreement to the Forest and Environment Sector Programme (PSFE).¹ This was the first official recognition from the Gabonese government of the existence of indigenous peoples and its responsibility towards them. In 2007, Gabon voted in favour of the UN Declaration on the Rights of Indigenous Peoples.²

Community forests

The 2001 Forest Code (under review since 2005) comprises articles relating to the management of "community forests"³ although the implementing regulations for these articles have never been issued. However, the Gabonese govern-



ment still envisages establishing community forests within the context of pilot projects. Regional programmes to demarcate such forests have continued, particularly in the north-east of the country around the Minkébé National Park, where Nature Plus, a European NGO, is pursuing a five-year (2010 -2014) community forestry programme.

Local Management Consultative Committees for national parks

In 2002, during the Earth Summit in Johannesburg, President Omar Bongo announced the creation of 13 national parks. It was anticipated that each of these parks would have a local management consultative committee (CCGL). In 2013, three national parks in the south (Mayumba, Makoulaba, Louango) established

their CCGLs. The remaining 10 CCGLs will need to be created by the first quarter of 2014. This process begins by identifying the villages concerned, as they need to sign land management contracts. These are set out in Law 3/2207 as

Contracts signed between the management of a national park and the rural communities surrounding it, establishing how these communities will be involved in conserving the biological diversity of the park or its surrounding area with a view to encouraging economic benefits for them.

Villages are only affected if they have agricultural activities less than 2 km from the park boundary or hunting activities less than 5 km from the park boundary. Beyond 5 km they are no longer in the rights-of-use zone, unless fishing in the water courses.

Each CCGL includes representatives from the village, civil society, the administration and the private sector. The indigenous NGOs have set an objective of having at least one indigenous participant on every CCGL.

Development of agrifuel plantations

Palm oil and rubber plantations are multiplying in Gabon. In 2012, moreover, the government announced that it intended to make Gabon the number one producer of palm oil in Africa. The President's "Strategic Plan for Emerging Gabon" anticipates increased monocropping of palm oil and rubber in plantations in order to develop the agricultural exports sector. The government also wants to encourage both company plantations and "community plantations" run by the local population.

These plantations will be promoted in three regions: Mouila, Kango and, above all, Bitam / Minvoul. The Olam agricultural company has signed an agreement to develop what it claims will be the largest rubber plantation in the country, covering 28,000 hectares, and to build a processing plant at Bitam and Minvoul. The inhabitants of Bitam and Minvoul have criticised the project, fearing that it will give rise to land conflicts. They are opposed to the production of single species rather than the more traditional crops usually grown in the region. This criticism has resulted in the creation of local project monitoring committees and a commission that federates these committees, known as the "Collective of village populations affected by the Olam project in Woleu-Ntem". This has already given rise to

an open letter, a memorandum and a letter rejecting the results of an environmental impact assessment.

National Forum on the Conference on ecosystems of dense rainforests in Central Africa (CEFDHAC)

A workshop to revive the CEFDHAC-Gabon national forum and provide information on climate change was held in Libreville from 24 to 25 September 2013. The aim of this workshop was, among other things, to support the national forum in producing its basic texts and to inform the participants of the challenges of climate change and REDD+. It was attended by civil society members of the national forum, the administrations involved in the sustainable management of forest ecosystems and the development partners (IUCN, CARPE). During the workshop, a mapping of actors active in the area of climate change and REDD+ was conducted, as well as an assessment of the communication and capacity building needs identified in this area.

A global process of reviving CEFDHAC was commenced within the context of implementing projects in support of “civil society participation in the sustainable management of forest ecosystems through consultation platforms in rural areas, networks of actors, national and sub-regional CEFDHAC fora” and “promoting the inclusive participation and representation of stakeholder groups in the REDD+ discussions in the Congo Basin”. These initiatives are being implemented by the International Union for Conservation of Nature (IUCN).

Indigenous representation

Throughout 2013, the two organisations defending Pygmy culture and rights nationally: MINAPYGA, Indigenous Minorities and Pygmies of Gabon, and ADCP-PY, the Association for the Development of Pygmy Peoples' Culture in Gabon, were active and implementing numerous projects. Both were involved in the work of the National Agency for National Parks (ANPN) to draft the National Parks Act, as well as in the work of revising the Forest Code. ○

Notes and references

- 1 See Dr. Kai Schmidt-Solteu: Programme Sectorial Forêts et Environment (PSFE), Plan de Développement des Peuples Autochtones. Final Report, July 2005.
- 2 For more information see African Union: *Report on the African Commission's Working Group on Indigenous Populations/Communities' research and information visit to the Republic of Gabon 2007*. ACHPR & IWGIA: 2010; "Gabon" in *The Indigenous World 2008*. IWGIA: 2009; and GITPA: *Mission Report - Information mission to Gabon from 9 to 20 October 2013*. Available at: <http://www.gitpa.org/Qui%20sont%20nous%20GITPA%20100/ACTUlettre%20GABON%20WEB.htm>.
- 3 According to the Gabonese Forest Code, community forest is "a portion of the rural forest domain allocated to a village community with a view to conducting activities or undertaking dynamic processes for a sustainable management of resources on the basis of a simplified management plan" (Article 156, sub-section 5).

Patrick Kulesza is executive director of GITPA, the Groupe International de Travail pour les Peuples Autochtones (France). He led an

Denis Massande is the President of ADCPPY, the Association pour le Développement de la culture des peuples pygmées du Gabon (Libreville).

Léonard Fabrice Odambo Adone is President of MINAPYGA, Minorités Autochtones et Pygmées du Gabon (Libreville).

CAMEROON

Among Cameroon's more than 17 million inhabitants, some communities self-identify as indigenous. These include the hunter/gatherers (Pygmies), the Mbororo pastoralists and the Kirdi mountain communities.

The Constitution of the Republic of Cameroon uses the terms indigenous and minorities in its preamble; however, it is not clear to whom this refers. Nevertheless, with the developments in international law, civil society and the government are increasingly using the term indigenous to refer to the above-mentioned groups.

Together, the Pygmies represent around 0.4% of the total population of Cameroon. They can be further divided into three sub-groups, namely the Bagyeli or Bakola, who are estimated to number around 4,000 people, the Baka - estimated at around 40,000 - and the Bedzan, estimated at around 300 people. The Baka live above all in the eastern and southern regions of Cameroon. The Bakola and Bagyeli live in an area of around 12,000 square kms in the south of Cameroon, particularly in the districts of Akom II, Bipindi, Kribi and Lolodorf. Finally, the Bedzang live in the central region, to the north-west of Mbam in the Ngambè Tikar region.

The Mbororo people living in Cameroon are estimated to number over 1 million people and they make up approx. 12% of the population. The Mbororo live primarily along the borders with Nigeria, Chad and the Central African Republic. Three groups of Mbororo are found in Cameroon: the Wodaabe in the Northern Region; the Jafun, who live primarily in the North-West, West, Adamawa and Eastern Regions; and the Galegi, popularly known as the Aku, who live in the East, Adamawa, West and North-West Regions.

The Kirdi communities live high up in the Mandara Mountain range, in the north of Cameroon. Their precise number is not known.

Cameroon voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007 but has not ratified ILO Convention 169.

Legislative changes

There were no major legislative developments in the field of indigenous rights in 2013 since most of the reforms and programmes commenced in previous years have yet to be finalised.

Cameroon agreed to shelve its draft bill of law on marginal populations in 2010 and has since then been working through various stages in a study aimed at defining the criteria by which to identify Cameroon's indigenous peoples. The first phase of this study was completed in 2013 and the next phase consists of conducting field studies. However, there are no plans to involve indigenous peoples or civil society organisations in this process. There is thus as yet no clear definition of "indigenous people" in Cameroon, and there has so far been no decision on whether a specific programme or law will be adopted to guarantee indigenous peoples' equality within the country.

Reforms of the Forest Code are still underway but there has been very little consultation of the civil society organisations working in this field, or within indigenous communities themselves. The right to land and natural resources was not included in the versions of the forest law proposed during 2013.

Visits of UN experts to Cameroon

The UN High Commissioner for Human Rights, Mrs Navi Pillay, visited Cameroon in July 2013 and, during her visit, raised indigenous peoples' issues with the relevant actors.¹ The UN Independent Expert on minority issues also travelled to Cameroon in September 2013, arriving in Yaoundé prior to visiting different regions, including the north-west, south and far north. Among others, she met with senior officials from national and regional government, NGO representatives and members of different communities. Her Cameroon mission report is due to be presented to the Human Rights Council in 2014.²

Cameroon presented its second report during its universal periodic review (UPR) in May 2013 and accepted a significant number of recommendations made by the other Member States. Among other things, Cameroon agreed that, by 2017, it would intensify its efforts to improve equality for all before the law and added that, in relation specifically to indigenous peoples, a study was already being undertaken



to identify them; this would enable the production of a strategy by which to better take these peoples into account, and to better protect their rights.³

Cameroon before the African Commission on Human and Peoples' Rights

Cameroon presented its periodic report to the African Commission on Human and Peoples' Rights (ACHPR) in October 2013, the recommendations for which will be adopted in 2014.⁴ NGOs⁵ submitted a supplementary report to the African Commission on the situation of indigenous rights in Cameroon, with particular focus on the situation of indigenous women, and asked the African Commission

to make specific recommendations to ensure that indigenous peoples' rights were respected in the country.

Other events

In June 2013, workshops were organised in M'Balmayo by the Government of Cameroon and the UN Subregional Centre for Human Rights and Democracy in Central Africa. These focused on validating the study on defining indigenous peoples in Cameroon and on implementing the recommendations made to Cameroon by the UN and ACHPR.⁶

Elections

There has been no major programme established to encourage indigenous participation in the political life of Cameroon. Few indigenous people stood in either the parliamentary or local elections in 2013.

Large development projects

Large-scale projects, such as the Kribi deep seaport and palm oil plantations, continue to be developed. For most of these projects, indigenous peoples are not consulted and little is done to obtain their consent. These communities are often relocated and compensated in a subjective manner, with no clear procedure or objectives.

By way of example, Bagyeli communities in Ocean Department have been affected by a SOCAPALM palm oil plantation that appears to want to expand its plantation's activities, something that would further reduce the communities' access to forest resources. Other exploitation projects in Ocean Department will also result in the forced displacement of indigenous peoples, including a new deep seaport at Kribi, a very large project the construction work for which commenced in 2011 and which has thus far caused the forced displacement of several indigenous communities, without adequate compensation. A railway line stretching more than 500 kms from the Mbalam iron mine to this port is also under

construction. In all three cases, there has been little consultation of the indigenous communities, who have thus not given their free, prior and informed consent.

Access to justice

A communication was sent to the UN Special Rapporteur on the rights of indigenous peoples with regard to allegations of constant threats and intimidation of Mbororo human rights defenders in 2013. The Special Rapporteur asked the Government of Cameroon to investigate these issues and take all necessary measure to protect Mbororo human rights defenders from risks to their life and personal integrity caused by their human rights work. However, no action has yet been taken.⁷

Climate change

In the context of writing the REDD+ National Strategy for Cameroon, the World Wildlife Fund (WWF), the *Centre pour l'Environnement et le Développement* (CED) and the German international cooperation fund (GIZ), under the supervision of the Ministry of the Environment, Nature Protection and Sustainable Development, coordinated the production of national guidelines on free, prior and informed consent during 2013. These guidelines will now be applied by organisations working with indigenous peoples in the field in order to ensure their consent is obtained. ○

Notes and references

- 1 Press release from the UN High Commissioner for Human Rights during her mission to Cameroon in July 2013.
<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=13497&LangID=F>
- 2 Press release from the UN Independent Expert on minority issues during her mission to Cameroon:
<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=13711&LangID=F>
- 3 Page of the High Commissioner for Human rights regarding Cameroon's UPR in 2013: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CMSession4.aspx>

- 4 Page of the African Commission on Human and Peoples' Rights on the periodic review of Cameroon in 2013: <http://www.achpr.org/fr/states/cameroon/reports/3-2008-2011/>
- 5 Centre pour l'Environnement et le Développement (CED), Okani, Réseau Recherche Actions Concertées Pygmées (RACOPY), Association pour le développement social et culturel des Mbororo (MBOSCUA), International Work Group for Indigenous Affairs (IWGIA) and Forest Peoples Programme (FPP).
- 6 Report of the ACHPR's Working Group on Indigenous Populations/Communities: <http://www.achpr.org/fr/sessions/54th/intersession-activity-reports/indigenous-populations/>
- 7 Report of the UN Special Rapporteur on the rights of indigenous peoples, James Anaya, on communications received in 2012-2013: <http://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenous-Peoples/Pages/CommunicationsReports.aspx>

Tharinda Puth is a human rights consultant and, in 2013, conducted field visits to indigenous communities in Cameroon. She has contributed to the production of a supplementary report on their situation, focusing on indigenous women. This report was submitted to the African Commission on Human and Peoples' Rights in October 2013 in the context of an examination of Cameroon's periodic report. She also assisted the Special Rapporteur on women's rights in Africa in 2011-2012. She can be contacted on tharinda.puth@gmail.com.



SOUTHERN AFRICA

NAMIBIA

The indigenous peoples of Namibia include the San, the Nama, the Himba, Zemba and Twa. Taken together, the indigenous peoples of Namibia represent some 8% of the total population of the country.

The San (Bushmen) number between 27,000 and 34,000, and represent between 1.3% and 1.6% of the national population. Each of the different San groups speaks its own language and has distinct customs, traditions and histories. They include the Khwe, the Hai||om, the Ju|'hoansi, the!Xun, the Naro and the!Xoo. The San were, in the past, mainly hunter-gatherers but, today, many have diversified livelihoods, working as domestic servants or farm labourers, growing crops and raising livestock, doing odd jobs in rural and urban areas and engaging in small-scale businesses and services. Over 80% of the San have been dispossessed of their ancestral lands and resources, and today they are some of the poorest and most marginalised peoples in the country.

The Himba number some 25,000 and reside mainly in the semi-arid north-west (Kunene Region). The Himba are pastoral peoples who have close ties to the Herero, also pastoralists who live in central and eastern Namibia. Zemba and Twa communities live in close proximity to the Himba in north-western Namibia. The Nama, a Khoe-speaking group, number some 70,000.

The Constitution of Namibia prohibits discrimination on the grounds of ethnic or tribal affiliation but there is no recognition of the rights of indigenous peoples or minorities in the Constitution. The Namibian government prefers to use the term “marginalised” communities instead of indigenous communities, defining “indigenous” by reference to European colonialism, implying that the vast majority of Namibians are, in fact, indigenous. Namibia therefore has no national legislation dealing directly with indigenous peoples. However, in 2007, Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples although it has not ratified ILO 169. Several binding international agreements play an important role in affirming and further building on the already established human

rights norms represented in UNDRIP: Namibia is a signatory of the African Charter on Human and Peoples' Rights, which stands as the primary human rights instrument in Africa. Furthermore, Namibia ratified the Convention on the Rights of the Child (CRC) in 1990, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1992 and signed the International Covenant on Civil and Political Rights (ICCPR) in 1994.

In 2005, the Office of the Prime Minister (OPM) established the San Development Programme (SDP). In 2007, the programme's mandate was expanded to cover other marginalised communities (the Twa, Zemba and Himba) who, it was argued, were also marginalised and would need special support. In 2009, it became the Division of San Development, still under the OPM. The implementation of this programme is an important milestone in promoting the rights of indigenous peoples/marginalised communities in Namibia.

Participation and political representation

Participation and political representation are the main principles that ensure that citizens take part in decision-making processes in any democratic country. The Government of Namibia has increased its efforts to guarantee the consultation, participation and representation of Namibian indigenous peoples in recent years, primarily through the recognition of some of their traditional authorities (TAs). However, many indigenous peoples, especially the San, are poorly represented in mainstream politics. For example, no San individual is a Member of Parliament and only one San, a Jul'hoan woman from Tsumkwe district, is a regional councillor.

Five San traditional authorities (TAs) (Hai||om, !Kung, Jul'hoansi, Omaheke North and Omaheke South) have been recognised by the government. Other San, living in the Kavango, Zambezi, Ohangwena, Oshana, Omusati regions, have no separate TA but fall under the traditional authorities of neighbouring groups. As a result, the interests of these San communities lack any form of political representation. Moreover, of the five recognised San traditional authorities,

three have faced serious complaints from their communities in recent years, on issues including a lack of communication, inappropriate behaviour, corruption, a lack of transparency, favouritism and nepotism. Nevertheless, San communities still perceive the institution of traditional authority to be an important tool for making their voices heard.

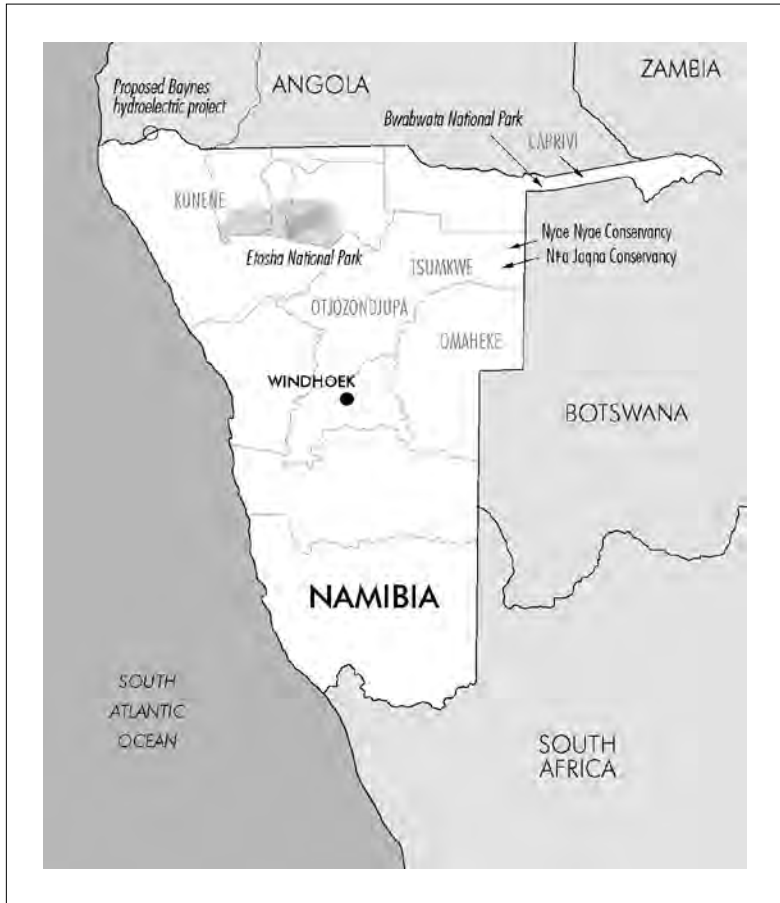
Another representative body, the Namibian San Council, was established around 2006 with strong NGO support. This council currently consists of 14 members, one from each TA (but not the chief), and one elected community representative from each of the six main San groups (including the Khwe and San representatives from Ohangwena). It has the potential to play an important role for the San in Namibia in terms of representing San interests in decision-making processes – especially given the perception of many San that their TAs are not fulfilling this responsibility. During 2012 and 2013, the San Council participated in a number of capacity-building workshops. It remains to be seen whether the Namibian San Council can eventually become an important representative organisation nationally and internationally.

Land

One of the primary factors creating dependency and marginalisation among the San of Namibia today is their widespread loss of land and access to natural resources.

San people's access to land varies considerably from region to region and between different land tenure systems: San live on commercial or communal farms owned by other people; they live in urban townships, in communal areas where the majority of residents belong to other (more dominant) ethnic groups; they live in conservancies, in national parks and on resettlement farms.

In general, the vast majority of San still have no *de jure* land rights and many have difficulties in securing such rights. Access to land and natural resources on the part of the San in Kavango is threatened by the development of small-scale farms. Hai||om on Farm Six (Oshikoto region) lost access to land and resources due to the allocation of "their" land to Owambo farmers and their cattle in 2009. Although this relocation was supposed to be a temporary solution, the Owambo farmers were still there in 2013 and there is little prospect that the situation will



change. Hai||om in the Etosha National Park are being pressured into leaving the park by excluding them from the benefits of a tourism concession and related issues. For some San communities, however, access to land has improved in recent decades. For example, the N=ã Jaqna Conservancy was gazetted in 2003 in Otjozondjupa region and Khwe and other residents in Caprivi have been granted user rights within the Bwabwata National Park (Zambezi and Kavango regions) since 2006. However, even communities with improved access to land still face serious threats today, e.g. in the N=ã Jaqna Conservancy (illegal fencing), the Nyae Nyae Conservancy (influx of Herero farmers with cattle) and the Bwab-

wata National Park (influx of Hambukushu and their cattle, no *de jure* rights to reside in the park).

The Namibian government, through the Division of San Development, is primarily trying to address the land dispossession of San communities with the purchase of resettlement farms, employing a group resettlement model. At least eight resettlement farms have been acquired for San communities in the Kunene, Oshikoto and Otjozondjupa regions since 2008. In their approach, the OPM has placed a great deal of emphasis on finding a place for the San to stay, and on establishing housing, education and healthcare services in these new San resettlement projects. However, the OPM provides virtually no post-settlement support in terms of developing sustainable farming livelihoods, although in recent times more attention has been given to supporting water infrastructure and livestock development. The group resettlement farms are usually densely populated and often overstocked with animals. A comprehensive strategy has yet to be formulated. Currently, most of the San in resettlement projects are highly dependent on outside support. This includes primarily food aid provided under the SDP along with the Old Age Pension, paid by government to Namibians over 60 years of age. In addition, none of the resettled San beneficiaries have ever received any title deed in their individual name.

In sum, the lack of access to land and secure land tenure remained a major challenge for the San in 2013 in respect of their poverty, marginalisation, identity and cultural survival.

Culture and discrimination

Respect for indigenous cultures – and a concomitant commitment to protecting the values and traditions enshrined in the cultures of indigenous peoples – remains woefully underdeveloped and neglected in contemporary Namibian society. For example, many Namibians do not know what languages are spoken by the people subsumed under the term “San”, nor which discrete communities are found among the San of Namibia. Furthermore, the notion that San still roam around the whole country is widespread. San are often perceived as lacking in culture because, on the one hand, outsiders are ignorant of their traditions and, on the other – from an evolutionist perspective – the San way of life is perhaps looked upon as dating back to a Stone Age culture, thus implying

that other ethnic groups are on a higher rung of the evolutionary ladder. Certainly, there are also some segments of Namibian society that see the San (and other indigenous peoples, such as the Himba), as noble savages, skilled environmentalists who are fully in tune with the arid environment they live in and traverse. Both diametrically opposed ideas about the San share a tendency, by and large, to disregard the historical developments that have affected different San groups in different ways.

Education

In comparison to other countries in southern Africa, Namibian educational policies are the most progressive in terms of meeting the educational requirements of its minorities. Regrettably, not all of these policies are enforced and the reality is that wide inequalities still exist in terms of educational access and attainment. Recent research has consistently highlighted the fact that San communities are by far the most disadvantaged ethnic groups in the education system and few San complete their secondary education.³ The reasons for this include poverty, discrimination, the remote location of villages, cultural mismatch (language, and differences related to cultural and social practices), inappropriate curricula, lack of role models and teenage pregnancies. The generally low level of education among indigenous peoples severely affects their economic situation. As a result, San are often unable to compete in the formal job market and are therefore highly dependent on menial work.

Policy development and research

Most importantly, the Office of the Ombudsman began the process to develop a White Paper on Indigenous Peoples in Namibia in 2013, with the support of the ILO programme “Promoting and Implementing the Rights of the San Peoples of the Republic of Namibia”.⁴

Furthermore, in cooperation with the Desert Research Foundation in Namibia (DRFN), the Legal Assistance Centre (LAC) completed its reassessment of the status of San in Namibia. The objective of the study is to provide informa-

tion on the livelihoods of the different San communities in Namibia in order to assist stakeholders such as the OPM, line ministries, Regional Councils, NGOs and development partners to improve the design and implementation of projects aimed at enhancing the living conditions of the San. The results of the research will be published in early 2014.

UN Special Rapporteur publishes report

In April 2013, the United Nations Special Rapporteur on the rights of indigenous peoples, James Anaya, published his report “The situation of indigenous peoples in Namibia”, which examined the human rights situation of indigenous peoples in the Republic of Namibia on the basis of research and information gathered during his visit to the country from 20 to 28 September 2012. Although he acknowledges the achievements of the government with regard to improving the situation of indigenous peoples, he observed “a lack of coherent Government policy in Namibia that assigns a positive value to the distinctive identities and practices of these indigenous peoples, or that promotes their ability to survive as peoples with their distinct cultures intact in the fullest sense, including in relation to their traditional lands, authorities, and languages”.⁵

Hydropower at the Kunene River

Another development in 2013 concerned the Himba and Zemba in Kunene Region, in the context of the plan by the governments of Angola and Namibia to build the “Baynes Dam”, a hydropower scheme 50 kms west of Epupa at Baynes on the Kunene River. In February 2013, through the Permanent Joint Technical Commission (PJTC), the governments of Angola and Namibia released the findings of an Environmental and Social Impact Assessment (ESIA) of the feasibility of developing the Baynes project, which concluded that the site would be less disruptive to the life of the local Himba than the Epupa project (planned in the 1990s).⁶ The study did not, however, come up with any conclusive recommendations as to when the project should commence. In March 2013, around 1,000 Himba and Zemba people protested at Opuwo, the capital of Kunene Region, against the building of the hydropower plant at the Baynes site.⁷ The protest was

mainly in relation to the uncertainty of when the dam was to be built and the lack of consultation with Himba and Zemba communities in the whole process. A Himba delegation has also approached a legal firm to assist them in dealing with this and other matters, such as the non-recognition of their traditional authorities by the Namibian government, which they refer to as the continuous marginalisation of the Himba and Zemba communities in Kunene Region. ○

Notes and references

- 1 For more information on the San see Dieckmann, Ute et al. (in press): "Scraping the Pot": San in Namibia Two Decades after Independence. Windhoek: Legal Assistance Centre.
- 2 The Twa have traditionally been hunters and gatherers in the mountains, while the Himba and Zemba (also Tjimba) are cattle breeders and small-scale agriculturalists (see <http://www.norad.no/en/tools-and-publications/publications/reviews-from-organisations/publication?key=403144>).
- 3 See, for example, the Ministry of Education, Namibia (Ed.) (2010): EMIS (Education Management Information system). Windhoek. Dieckmann et al (Eds.) (forthcoming): "Scraping the Pot" San in Namibia Two Decades after Independence. Windhoek: Legal Assistance Centre & Desert Research Foundation.
- 4 The Namibia component of the Indigenous Peoples Programme under the 2008/12 partnership programme of the Spanish Agency for International Development Cooperation and the International Labour Organization.
- 5 Anaya, James (2013). Report of the Special Rapporteur on the rights of indigenous peoples: The situation of indigenous peoples in Namibia. Human Rights Council. <http://unsr.jamesanaya.org/country-reports/the-situation-of-indigenous-peoples-in-namibia>
- 6 <http://www.erm.com/Global/Public%20Info%20sites/Baynes/BID-version-English-23-April-2013-FINAL.pdf>.
- 7 <http://earthpeoples.org/blog/?p=4071>.

Ute Dieckmann is research coordinator at the Land Environment and Development Project of the Legal Assistance Centre in Namibia. Her research over the last decade has focused on San and land reform in Namibia. She is currently coordinating the reassessment of the status of San in Namibia.

BOTSWANA

The Botswana government does not recognize any specific ethnic groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous. However, 3.3% of the population identifies as belonging to indigenous groups, including the San (known in Botswana as the Basarwa) who, in July 2013, numbered some 61,000. In the south of the country are the Balala, who number some 1,600 and the Nama, a Khoekhoe-speaking people who number 2,000. The majority of the San, Nama and Balala reside in the Kalahari Desert region of Botswana. The San in Botswana were traditionally hunter-gatherers but nowadays the vast majority is small-scale agro-pastoralists, cattle post workers, or people with mixed economies who reside both in rural and urban areas. They are sub-divided into a large number of named groups, most of whom speak their own mother tongue in addition to other languages. These groups include the Ju/'hoansi, Bugakhwe, Khwe- Ani, Ts'ixa, †Au||ein, !Xóǀ, Hoan, †Khomani, Naro, G/ui, G//ana, Tsasi, Deti, Shua, Tshwa, Danisi and /Xaise. The San, Balala, and Nama are among the most underprivileged people in Botswana, with a high percentage living below the poverty line.

Botswana is a signatory to the conventions on women (CEDAW), the rights of the child (CRC) and on the elimination of all forms of racial discrimination (CERD). It is also a signatory to the United Nations Declaration on the Rights of Indigenous Peoples but has not signed the only international human rights convention that deals with indigenous peoples, the *Indigenous and Tribal Peoples Convention No. 169 of 1989* of the International Labour Organization (ILO).

There are no specific laws on indigenous peoples' rights in the country nor is the concept of indigenous peoples included in the Botswana Constitution.

International human rights instruments and agencies

Botswana took part in the Universal Periodic Review (UPR) of the Human Rights Council from 21 January to 1 February 2013.¹ The Botswana government did not directly address the eight issues raised in the summary report of the Office of the High Commissioner for Human Rights concerning indigenous peoples.²

Botswana has not provided a comprehensive summary of information on San/Basarwa peoples in the country. It has also not conducted an assessment of the implementation of the judgments of the High Court regarding the case of *Roy Sesana vs the Attorney General* in relation to the Central Kalahari Game Reserve (December, 2006). The government denies that there has been any abuse of people entering or living in the Central Kalahari Game Reserve (CKGR). In relation to the UPR review, at least three non-government organizations provided stakeholder reports on Botswana's involvement in indigenous peoples' issues, two of them international and one from Botswana. The government did not address the points raised by these organizations. One response to the issues raised by the Human Rights Council was a promise from Botswana that the government would establish an independent human rights body and that it would continue to uphold the human rights and fundamental freedoms of all people in the country, including minorities.

In May, Botswana San representatives and personnel from the Remote Area Development Program (RADP) of the Ministry of Local Government participated in the 12th Session of the UN Permanent Forum on Indigenous Issues (UNPFII). The San presented a statement on the rights of San peoples and they also met with the Botswana delegation to the United Nations in New York. Since the UNPFII meeting, San organizations in Botswana have met several times (June, October and December 2013) and have discussed the issues raised in the 2013 Universal Periodic Review and follow-ups to recommendations made by the Committee on the Elimination of Racial Discrimination (CERD) to Botswana in 2010.

The UN Special Rapporteur on the rights of indigenous peoples continued to monitor the situations of indigenous peoples in Botswana in 2013. The Special Rapporteur was especially concerned about three issues: (1) the treatment of people living in and around the Central Kalahari Game Reserve; (2) the need to

provide all people in the country with access to social services and water, including those in the CKGR; and (3) continued efforts by the government to resettle remote area communities, within which San are a majority.³

Imposition of a country-wide hunting ban

The Office of the State President in Botswana announced a hunting ban which came into effect in September, at the close of the 2013 hunting season.⁴ The government henceforth will not issue licenses to either citizens or foreigners. Government officials said that people who needed to hunt for subsistence purposes would continue to receive hunting licenses. However, as of the end of 2013, no such licenses had been issued by the Director of the Department of Wildlife and National Parks in the Ministry of Environment, Wildlife and Tourism.

The ban means that people who depend on wildlife as a source of protein will no longer be able to hunt. It also means that the community trusts that were formed under Botswana's Community-Based Natural Resource Management Program (CBNRMP), many of which comprise primarily San members, will no longer be able to lease out wildlife to safari companies, adversely affecting household and community incomes.

Arrests of people for possession of wildlife products, including meat and, in some cases, ostrich eggs, occurred at an intensified rate in 2013. Some of those arrested had to pay substantial fines or had to retain lawyers to assist them in dealing with their legal cases, at very significant cost.

Issues in the Central Kalahari

Many former residents (some 500 San and Bakgalagadi) have returned to the Central Kalahari Game Reserve after being resettled by the government in the late 1990s and early part of the new millennium. In 2013, they were living in five communities in the reserve: Molapo, Mothomelo, Metsiamonong, Gugamma and Gope, where they continued to face pressures from the government. Individuals who either had meat in their possession or were attempting to enter the reserve without a permit were allegedly exposed to torture and mistreatment by members of the Special Support Group (SSG) of the Botswana Police, as well as regular



police and game scouts. Residents of communities in the CKGR, as well as from the three sites that CKGR residents were resettled to (New Xade, Kaudwane, and Xere), which contained some 3,500 people in 2013, were reportedly subjected to arrests and intimidation. Some of the residents of the resettlement sites filed cases concerning mistreatment by government officials in 2013.

The third Botswana High Court legal case brought by people from the CKGR involving access to the reserve was dismissed by a High Court judge on 13 September 2013.⁵

There were no meetings of the Central Kalahari Game Reserve negotiating team in 2013. San organizations sought direct meetings with the President of

Botswana, Seretse Ian Khama, but no arrangements for any meetings had been made by the end of 2013.

Another major concern of people in the Central Kalahari was lack of access to medicines, including anti-retrovirals (ARVs) for people with HIV/AIDS residing on the reserve.

The Ranyane resettlement case

In 2013, the Ghanzi District Council and the Ghanzi Land Board decided that the residents of a small 600-person rural community in the southern part of Ghanzi District had to move to another remote area settlement called Bere. Various reasons were offered for the resettlement, including the suggestion that the area was in a wildlife corridor known as the Western Kgalagadi Conservation Corridor (WKCC).

In mid-2013, the district council brought trucks in to move the population to Bere. Little consultation with the community members occurred prior to the actions of the council and land board, and no compensation was provided.

NGOs, including Ditshwanelo, the Botswana Centre for Human Rights, obtained the services of lawyers to represent the people of Ranyane and filed a legal case against the Ghanzi council and land board in May. On 18 June, the High Court ruled in favor of the residents of Ranyane and told the council and land board to cease and desist in their efforts to resettle them.⁶

One outcome of this successful legal case was the decision by the Government of Botswana to impose visa restrictions on one of the lawyers involved in the case, Gordon Bennett, who was also the lead lawyer in the three High Court cases relating to the rights of the San and Bakgalagadi of the CKGR. Mr. Bennett was not given a visa to return to Botswana to take part in the third CKGR legal case in which the High Court ruled against the residents and former residents of the reserve.

Environmental and social stress

Water continued to be a major problem for communities in remote areas of the country in 2013. There was only one single water point available to people in the

CKGR, at Mothomelo. People in the reserve had to either leave the reserve to get water or travel long distances to Mothomelo to obtain drinking water. Breakdowns in water facilities in settlements outside of the reserve and increases in water fees have had negative effects on water access, especially for poorer households.

San and other communities in north-western and western Botswana were coping with a major drought which affected agriculture, livestock production, foraging and household nutrition, resulting in both adults and children suffering from hunger and nutritional stress. The government responded by providing drought relief commodities and labor-based cash-for-work programs. There were sentiments expressed by residents of settlements slated by the government for resettlement that food, pensions and other livelihood support systems were being withheld in order to bring pressure on them to move elsewhere.

Extractive industries

In November-December 2013, a major controversy arose over the use of fracking (hydraulic fracturing) techniques in protected areas, including Chobe National Park and the CKGR.⁷ This controversy added to the debates over diamond mining and other extractive industries in Botswana.

Mining and mineral prospecting activities were ongoing in 2013 in many parts of Botswana, including areas south and east of the Tsodilo Hills and the Okavango Delta, an extensive (16,000 km²) wetland containing substantial wildlife and diverse plants as well as dozens of rural indigenous communities with a rich history.⁸ Botswana's bid to make the Okavango Delta a World Heritage Site, discussed extensively in the country in 2013, had not been decided upon by the international WHS Committee as of the end of 2013.

For their part, the indigenous peoples of Botswana continue to press for their social, economic, cultural and environmental rights to be high on the agenda of the Botswana government and the international community in coming years. ○

Notes and references

1 See Human Rights Council (2013) *Working Group on the Universal Periodic Review, Fifteenth session, Geneva, 21 January – 1 February, 2013. National Report Submitted in Accordance with*

- Paragraph 5 of the Annex to the Human Rights Council Resolution 16/21. Botswana.* Gaborone: Government of Botswana and Geneva: Human Rights Council. A/HRC/WG.6/5/BWA/1.
- 2 Human Rights Council, (2013) *Working Group on the Universal Periodic Review, Fifteenth session, Geneva, 21 January – 1 February, 2013. Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph.5 of the Annex to the Human Rights Council Resolution 16/21. Botswana.* Geneva: Human Rights Council. A/HRC/WG.6/5/BWA/2 paragraphs 7 and 8, p. 4, and paragraphs 45-48, pp. 10-11. See also the Summary Report, paragraphs 33-36, p.6. *Summary A/HRC/WG.6/5/BWA/3.*
 - 3 Information to the authors from the staff of the Office of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, May 2013,
 - 4 The announcement of the hunting ban was made in 2012. See Jumanda Gakelebone (2013) Botswana. In *The Indigenous World 2013*, Caecilie Mikkelsen, ed. pp. 425-432. Copenhagen: International Work Group for Indigenous Affairs.
 - 5 This was the third in a series of cases brought against the government by residents and former residents of the Central Kalahari. The first two, one in 2006, and the second in 2011, were won by the San and Bakgalagadi, as described in previous issues of the *Indigenous World*.
 - 6 See Ditshwanelo (2013) *Press Statement 3 on the Relocation of Residents of Ranyane on 18 June 2013.* Gaborone, Botswana: Ditshwanelo (the Botswana Centre for Human Rights); see also Founding Affidavit, Ranyane Case, Botswana High Court, 18 June, 2013. MAHGB-000295-13 In the matter between Dithame Mmakgomo and 12 others vs the Ghanzi Land Board, the Ghanzi District Council, and the Ghanzi District Commissioner. Lobatse: Botswana High Court. Filed 13 May 2013.
 - 7 See, for example, Jeff Barbee, Mira Dutschke, and David Smith (2013) Botswana Faces Questions over Licenses for Fracking Companies. *The Guardian*, 17 November, 2013; Robyn Dixon (2013) Botswana Accused of Allowing Fracking in National Parks. *Los Angeles Times*, 3 December, 2013.
 - 8 See Steve Boyes (2013) Tsodilo: Mining between Two World Heritage Sites. *Newswatch*, National Geographic.com/3013/11/30. Washington D.C. National Geographic Society, 30 November, 2013.

Wayne A. Babchuk is a lecturer in the Department of Anthropology, University of Nebraska-Lincoln and also holds teaching appointments in the Departments of Educational Psychology and Sociology at UNL. wbabchuk1@unl.edu

Robert K. Hitchcock is a member of the board of the Kalahari Peoples Fund (KPF), a non-profit organization devoted to assisting people in southern Africa, rkhitchcock@gmail.com

ZIMBABWE

The Zimbabwe government does not recognize any specific groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous.

Two peoples who self-identify as indigenous in Zimbabwe are: 1) the Tshwa (Tyua, Cuaa) San, who are found in the Tsholotsho District of Matabeleland North Province and the Bulalima-Mangwe District of Matabeleland South Province in western Zimbabwe, and 2) the Doma (Wadoma, Vadema) of Chapoto Ward in Guruve District and Mbire District of Mashonaland Central Province and Karoi District of Mashonaland West Province in the Zambezi Valley of northern Zimbabwe. There are approximately 2,500 Tshwa and 1,000 Doma in Zimbabwe, making up 0.3% of the country's population.

The Tshwa of western Zimbabwe, who are sometimes referred to as the Amasili or Abathwa, are divided into a number of different named groups, including the Xaise, Ganade, Cirecire, Jitswa and Kaitsum.¹ The Doma are also sub-divided into what they term 'clans', each of which has a name, history and, in some cases, totems.

The Tshwa and Doma have a history of foraging and continue to rely to a limited extent on wild plant, animal and insect resources. Most Tshwa and Doma households tend to have diversified economies, often working for members of other groups. Many of the Tshwa and Doma live below the poverty line in Zimbabwe and together make up some of the poorest people in the country.

Zimbabwe is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples. As with other African nations (with the exception of the CAR) Zimbabwe has not adopted the *Indigenous and Tribal Peoples Convention No. 169 of 1989* of the International Labour Organization (ILO), although it may reconsider its position in coming years.

There are no specific laws on indigenous peoples' rights in the country nor is the concept of indigenous peoples included in the Zimbabwe Constitution.

A new Constitution

A revised Constitution was adopted in Zimbabwe in March 2013, which contains sections relevant to indigenous peoples. In particular, the Constitution identifies “Koisan” as one of the 16 recognized languages of Zimbabwe (“Khoisan” refers to a wider language group, including languages spoken by the San and Khoekhoe, among others). The wording of the Constitution promotes the equitable treatment, development and use of the 16 official languages in Zimbabwe.

Discussions with the Ministry of Primary and Secondary Education last year² underscored the fact that the Ministry expects to produce basic school materials in the San language, Tshwao. It remains to be seen whether the Zimbabwe government has the resources and capacity to develop an orthography of Tshwao, along with culturally appropriate educational and language materials. Given the volume of work required, a timeframe of 5 to 10 years should be expected if Tshwao development is taken forward.

Other sub-sections within the new Constitution of relevance to indigenous peoples include promoting actions to empower “all marginalised persons, groups and communities in Zimbabwe” and the protection of “indigenous knowledge systems, including knowledge of the medicinal and other properties of animal and plant life”. Furthermore, the Constitution addresses the elimination of discrimination and promotes investment and basic service provision to marginalized groups and areas.

The level of effective implementation of the new Constitution remains to be seen, alongside that of previously signed international declarations and conventions, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (UNDM). The ongoing establishment of the Zimbabwe Human Rights Commission, enshrined in the new Constitution, and new programmes under the Ministry of Justice, Legal and Parliamentary Affairs seek to implement previously ratified conventions, as recommended by the 2011 Universal Periodic Review of the UN Human Rights Council.



Livelihoods and pressing issues

Like other people in Zimbabwe, the Tshwa and Doma were affected by the hyperinflation and economic stagnation that prevailed in the first decade of the new millennium. However, a tentative return to growth since 2009 had fostered relative improvements by 2013. Nevertheless, both Tshwa and Doma people continue to face a number of pressing issues, including high rates of unemployment, food insecurity, poverty, limited access to clean water, sanitation and health problems, low to moderate access to social services such as education and health facilities, insecurity of land tenure, and losses of cultural identity and language. A number of Tshwa and Doma people and organizations working with them maintain that they are marginalized and suffer from discrimination. Some of the problems people face stem from physical isolation and a lack of access to external support. A few Tshwa and Doma have joined other Zimbabweans in neighbouring countries in order to seek jobs.³

Some of the Tshwa in Tsholotsho and Bulalima-Mangwe districts worked in 2013 for Ndebele and Kalanga as field hands, herders and domestic workers.

They assisted them in collecting water, firewood, poles and termite earth, constructing homes, building fences, ploughing fields and harvesting crops. There were also a few Tshwa and Doma working in the mines of South Africa and Zimbabwe in 2013, and Tshwa were hopeful about their employment possibilities in a newly discovered diamond area in Doge, Tsholotsho.

In the past, in North and South Matabeleland and in Mashonaland West Provinces, Tshwa and Doma communities have taken part in Zimbabwe's Communal Areas Management Programme for Indigenous Resources (CAMPFIRE), which was initiated in the 1980s. Over time, there have been changes in CAMPFIRE, and the benefits going directly to local communities have been reduced, with district councils taking up to 85 per cent of the funds deriving from community-based natural resource management activities. The numbers of jobs in CAMPFIRE programmes had declined to the point where, in 2013, fewer than 20 Tshwa and Doma people were employed. Similar trends were seen among those Tshwa and Doma working for the Zimbabwe Parks and Wildlife Authority (ZNPWA) and in national parks, reserves and monuments in the country.

Imprisonments and relocation

In September 2013, it was announced that 103 elephants and other animals had been killed by cyanide placed at water holes and salt licks in the southern part of Hwange National Park. Subsequently, over two dozen people, some of whom were Tshwa, were arrested for alleged involvement in the poisonings and for possession of elephant tusks. Two of the alleged poachers received sentences of 15 and a half years for violations of Zimbabwe's wildlife laws. Prosecutions have not yet been brought against a number alleged middlemen and funders of the ivory poaching, while others have been acquitted.⁴ At least a dozen households that lived close to the southern border of Hwange, including some Tshwa, were told that they had to relocate to places some distance away from the park and were in the process of doing so at the end of 2013, although they have not been notified of any detailed resettlement plans or assistance, which has caused substantial concern.

Political and social participation

Government ministries in Zimbabwe sought to expand their work with Tshwa and Doma and other minorities in 2013. These ministries included the Ministry of Local Government, Public Works and National Housing, the Ministry of Women's Affairs, Gender and Community Development, the Ministry of Labour and Social Welfare, and the Ministry of Primary and Secondary Education. Unlike Botswana, Namibia and South Africa, Zimbabwe does not have a unit or programme devoted specifically to minority affairs. The government espouses what it terms "indigenisation" which means, in effect, localization, empowerment and expansion of economic opportunities for all Zimbabwean groups considered disadvantaged before independence, in line with the *Indigenisation and Economic Empowerment Act* (IEEA).

While it has been argued that Tshwa and Doma face difficulties in gaining access to positions of authority, there are at least a dozen or more Tshwa and Doma village heads and chiefs, including some women. These local authorities are consulted by government officials, district councillors and educational institutions and by non-government organizations. Local Tshwa and Doma authorities play significant roles in decision-making at the local level; they serve as intermediaries with the state, they mediate disputes and they assist in land-use and development planning. The Tshwa have their own organization but the Doma do not.

Media visibility

Various media reports on Zimbabwe's San communities appeared throughout 2013 as a result of improved community representation and media contacts, including reports by a San CBO, Tsoro-o-tso San Development Trust. These included coverage on access to water, food and livelihoods, land rights and issues pertaining to language and the new Constitution. Notably, President Mugabe mentioned San development issues during a visit to Tsholotsho in May 2013.

Indigenous language, culture and identity issues

A common but mistaken perception of San peoples in Zimbabwe in 2013 was that they do not wish to participate in education and that they “resist civilization”.⁵ In fact, a substantial proportion of Tshwa and Doma children are in school. In many cases, Tshwa and Doma adults state that they want their children to be educated; however, one of the problems that many of them have is a lack of cash to pay school fees.

In Tsholotsho, the Tsoro-o-tso San Trust held cultural festivals for Tshwa in 2013, including one at Gariya on 17 August. Tshwa communities also established an Early Childhood Development Centre at Gariya in December 2013. The Tsoro-o-tso San Development Trust and a related San CBO, the Creative Arts and Educational Development Association, collaborated with local communities and with staff from the University of Zimbabwe in investigating the Tshwao language. They held workshops and meetings with Tshwa communities as part of a major effort to promote Tshwa cultural and language revitalization.⁶

The Doma, like the Tshwa, are also seeking to promote their social, economic and cultural rights and enhance their well-being. Both the Tshwa and the Doma hope to participate in meetings on indigenous peoples and minorities in the future and to work alongside other groups in Zimbabwe to facilitate equity, social justice and human rights in the country. ○

Notes and references

- 1 Data obtained through fieldwork in 2013; See also Davy Ndlovu (2013a) *In Their Own Words: A Contemporary History of the Lost and Forgotten San People in Zimbabwe*. Dlamini, Zimbabwe: Creative Arts and Educational Development Association; Davy Ndlovu (2013b) *Tshwao Language Development and Revitalization Programme: Concept Note*. Dlamini, Zimbabwe: Creative Arts and Educational Development Association.
- 2 Meetings with Ministry officials at the Ministry of Primary and Secondary Education in Harare and private communications between senior ministry staff with Robert Hitchcock and Ben Begbie-Clench in March-April and November-December 2013.
- 3 For a discussion of the situation in Zimbabwe and its effects in terms of movements of people to neighbouring countries, see Bill Derman and Randi Kaarhus, eds. (2013) *In the Shadow of a Conflict: Crisis in Zimbabwe and Its Effects in Mozambique, South Africa, and Zambia*. Harare: Weaver Press.

- 4 Radio Netherlands Worldwide (2013) Zimbabwe: Clampdown on Elephant Poaching Threatens San. Amsterdam: Radio Netherlands Worldwide, 3 December 2013
- 5 See Nqobile Bhebhe (2013) San People Resist Civilisation: Mugabe. *Newsday*, Tuesday, 14 May 2013.
- 6 Divine Dube (2013) A New Era for the Khoisan in Zimbabwe. *Newsday*, 16 August 2013.

Ben Begbie-Clench is a consultant working on San issues and former director of the Working Group of Indigenous Minorities in Southern Africa (WIMSA), benbegbie@gmail.com

Ashton Murirwa is a lecturer in the Department of Political and Administrative Studies, University of Zimbabwe, murirwashie@gmail.com

Davy Ndlovu is Head of the Creative Arts and Educational Development Association, davyndlovu@yahoo.com

Robert K. Hitchcock is a member of the Board of the Kalahari Peoples Fund (KPF), a non-profit organization devoted to assisting people in southern Africa, rkhitchcock@gmail.com

SOUTH AFRICA

South Africa's total population is around 50 million, of which indigenous groups are estimated to comprise approximately 1%. Collectively, the various First Indigenous Peoples groups in South Africa are known as Khoe-San, comprising the San and the Khoekhoe. The San groups include the ǀKhomani San, who reside mainly in the Kalahari region, and the Khwe and!Xun who reside mainly in Platfontein, Kimberley. The Khoekhoe include the Nama, who reside mainly in the Northern Cape Province, the Koranna mainly in the Kimberley and Free State provinces, the Griqua in the Western Cape, Eastern Cape, Northern Cape, Free State and KwaZulu-Natal provinces and the Cape Khoekhoe in the Western Cape and Eastern Cape, with growing pockets in the Gauteng and Free State provinces. In contemporary South Africa, Khoe-San communities exhibit a range of socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have created the space for a deconstruction of the racially-determined apartheid social categories such as "Coloureds". Many previously "Coloured" people are now exercising their right to self-identification and identifying as San and Khoekhoe or Khoe-San. First Nations indigenous San and Khoekhoe peoples are not recognized as such in the 1996 Constitution, however, although this is shifting with their being accommodated in the pending National Traditional Affairs Bill of 2013. Additionally, South Africa has voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples but has yet to ratify ILO Convention 169.

National Traditional Affairs Bill

The National Traditional Affairs Bill was published for public comment during September 2013. It seeks to consolidate the National House of Traditional Leaders Act (2009) and the Traditional Leadership and Governance Framework Act (2003).¹ The Bill also provides for matters relating to the recognition of Khoe-



San communities, their leadership and its structures. The Bill is of particular historic value since it is the first time that draft legislation has included provisions relating to the statutory recognition of the Khoen and San communities and its leaders. It also sets out specific criteria for the recognition of cultural communities and their leaders to qualify as such. Criticism of the Bill includes its disregard of the effects of colonialism and apartheid on Khoen-San culture and communities, in particular through the historically weighted label "Coloured".² In addition, it is suggested that the Bill does not offer the Khoen-San community any meaningful rights, and thus further entrenches the existing challenges around traditional leadership in South Africa. However, the National Traditional Affairs Bill can be seen as a legislative framework that holds the possibility for positive engagement on the part of the Khoen-San with regard to their heritage and cultural identity. On this basis, the Bill is an opportunity to begin the historical restoration process for this community.

Draft Restitution of Land Rights Amendment Bill 2013

The South African Cabinet approved the Draft Restitution of Land Rights Amendment Bill on 23 May 2013. The Bill gives persons or communities the opportunity to institute their claims for land restitution only if they were dispossessed of their lands after 1913. For Khoe-San communities, whose land dispossession happened well before 1913, the barrier to having their land restitution addressed remains. The UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people recommended in his 2005 report to the South African government that the 1913 cut-off date for consideration of claims be removed so as to allow the Khoe-San communities to claim back their land.³ Additionally, the Bill proposes the deadline for all land claims to be extended to 2018.

The South African government recently formed a reference group with interested Khoe-San groupings to advise the government on the Khoe-San historical land claims. This process has been labelled as problematic by members of the National Khoi-San Council (NKC) because their recognized structures, such as the NKC, were not meaningfully consulted or included in this process.

Historic benefit-sharing agreement - Buchu plant

During November 2013, the San and Khoekhoe signed an historic benefit-sharing agreement with a South African pharmaceutical company under South Africa's Biodiversity Act 10 of 2004. Buchu is a small shrub endemic to the Western Cape Province that is used for its essential oils and the medicinal qualities of which are associated with the San and Khoekhoe's indigenous knowledge. The benefit-sharing agreement acknowledges that the Khoekhoe and San's medicinal plant knowledge predates that of subsequent South African inhabitants and that the Khoekhoe and San are legally entitled to a fair and equitable share of the benefits that result from the company's processing and commercial development of the Buchu plant. Although the San have been previously involved in similar agreements, this marks the first time that the Khoekhoe, represented by the NKC, have entered into such an agreement to recognize their indigenous knowledge as such. The Khoekhoe and San collectively formed a negotiating team that was

representative of both groupings. In terms of this historic partnership, the National Khoi-San Council and the San Council⁴ act as a representative structure for the Khoekhoe and San peoples respectively in order to protect their rights associated with the traditional knowledge of related plants.⁵

Khomani San (Kalahari)

In 1998, under the democratic South African government's Land Restitution legislation, the †Khomani San received some 25,000 ha of ancestral land in the Kalahari Gemsbok National Park (Northern Cape Province) and a further 36,000 ha outside of the park. Although designed to partially redress past injustices, the process soon experienced major difficulties. In 2004, after a three-day investigation into the rapidly deteriorating situation, the South African Human Rights Commission (SAHRC) described the case as one of "sad neglect" by all tiers of government, exacerbated by mismanagement on the part of successive ill-prepared and poorly-resourced community structures. In 2005, following an in-situ analysis, the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people reinforced the South African Human Rights Commission's call for the South African government to address the situation as a matter of urgency. A lack of effective response led the claimant community to institute formal legal proceedings against the minister and state structures involved. After a series of failed initiatives to obtain satisfactory responses from the government, their appointed legal representatives finally lodged formal litigation documents with the High Court in October 2012. The state parties opted not to oppose the court action and a settlement proposal, in which the state undertook to honour its initial contractual obligations and take further steps to rectify the situation, was agreed and accepted by the people during 2013.⁶

Ancestral remains - Dawid Stuurman

Captain Dawid Stuurman, born in 1793, was an indigenous Khoekhoe leader from the Gamtoos valley on the East Coast of South Africa. He played a key role in the Khoi rebellion, or Third Frontier War from 1799 – 1803. He is regarded as a hero for his role in fighting the injustices imposed on the Khoekhoe peoples by

the colonists. He twice escaped from Robben Island but, on his third attempt, was recaptured and taken aboard the convict ship, *Brampton*, to New South Wales in Australia as a prisoner in 1823. He subsequently died in Australia. At the beginning of 2013, the Khoe-San began a campaign to lobby for the return of his remains to South Africa. The National Khoi-San Council became involved and made a presentation to the South African parliament in February 2013. After numerous attempts and research, it became clear that formal identification of Dawid Stuurman would not be possible since his remains are buried in a mass grave underneath the new railway station in Sydney. In the light of these developments, it has been decided instead to focus on a ceremonial/spiritual repatriation.

A team of indigenous and spiritual leaders, as well as South African government officials, will travel to Australia to perform certain spiritual rituals to mark the departure of the soul of Dawid Stuurman to his native homeland. Deeply rooted in their ancient belief systems, the Khoe-San understand that his soul will only come to rest if his last rite of passage is completed. This repatriation also seeks to restore not only the pride and dignity of the late Dawid Stuurman but that of the whole of South Africa's indigenous people, who continue to feel marginalised in the new democratic South Africa. ○

Notes and references

- 1 The two Acts comprise the legislative framework that governs the South African traditional leaders and the National House of Traditional Leaders. This legislative framework applied to the formally recognized cultural groupings in South Africa, of which the Khoe-San did not form a part.
- 2 The Khoe-San communities suffered a denial of their rights and denigration of their cultural and value systems, and they were later classified as "Coloureds" under the old race classification laws. (*Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, 2005*).
- 3 Ibid.
- 4 The San council is a community organization representing the San communities specifically. It was formed during the period of the plant species "Hoodia" (a local succulent plant) agreement whereby the San groupings had to enter into benefit-sharing discussions around this plant.
- 5 <http://natural-justice.blogspot.in/2013/08/natural-justice-legally-supports.html>
- 6 <http://www.khomanisan.com/about-us/#HistoryOfTheSan>

Lesle Jansen is a First Nations Indigenous lawyer in South Africa. She holds a Master's degree in Indigenous Peoples in International Law from the University of Arizona (USA). She has also completed a second Master's degree in the Rule of Law for Development from Loyola University (Chicago) in Rome, Italy. She serves as an expert member to the ACHPR's Working Group on Indigenous Populations/Communities in Africa and is currently working with a team of environmental lawyers called Natural Justice (naturaljustice.org). They work with indigenous and local communities on their relationship with natural resources. She is based in Cape Town.

PART II

INTERNATIONAL
PROCESSES

WORLD CONFERENCE ON INDIGENOUS PEOPLES

On 21 December 2010, the UN General Assembly adopted a resolution (A/RES/65/198) to organize a high-level plenary meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (HLPM/WCIP). This meeting will be held in New York, 22 -23 September 2014, the objective being to share perspectives and best practices on the realization of the rights of Indigenous Peoples, including pursuing the objectives of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The name of this meeting is misleading as it is in reality a special session of the General Assembly and not a fully-fledged World Conference. But regardless of its name, Indigenous Peoples have seen fit to engage in the HLPM/WCIP process to ensure it upholds and realizes Indigenous Peoples' rights. In January 2012, a global coordinating group (the GCG) was established as a global working group made up of representatives from the seven indigenous regions as well as the women's caucus and the youth caucus (see *The Indigenous World 2013*). It was established to coordinate indigenous preparatory activities as well as to advocate for the full and effective participation of Indigenous Peoples in the HLPM/WCIP processes.

In 2013, Indigenous Peoples continued with their preparatory activities, which culminated in the adoption of the Alta outcome document (AOD) at the indigenous global preparatory conference held in Alta, Norway (the Alta conference). The AOD creates a global platform for Indigenous Peoples to use in the remaining processes of the HLPM/WCIP. It has also received international acclaim and support both in relation to its content and to the process by which it was adopted.

Regional and thematic caucus preparatory meetings

As part of the preparatory process, Indigenous Peoples held regional and thematic caucus preparatory meetings. Each meeting had a threefold objective – to bring people together; to share information and elaborate upon the expectations of the HLPM/WCIP and its outcome; and to articulate and prioritize their respective issues and solutions. Three regional preparatory meetings were held in Asia, Africa and the Arctic during 2012 (see *The Indigenous World 2013*), with the remaining meetings taking place in 2013. The 2013 meetings were the Latin American and Caribbean meeting held in Iximulew, Guatemala, the North American meeting held in San Diego, US, the Pacific meeting held in Sydney, Australia, the Russian meeting held in Salekhard, Russia, the women's caucus meeting held in New York, US and the youth caucus meeting held in Inari, Finland.

The meetings were organized by a working group or a host organization and funding was raised by the indigenous Global Coordinating Group (GCG). Each meeting produced an outcome document or declaration, all of which can be found on the GCG website www.wcip2014.org

The meetings canvassed a wide range of issues and reflected the dire situations faced by Indigenous Peoples in their regional and local environments. **Latin America and the Caribbean** demanded respect and recognition of Indigenous Peoples' individual and collective rights. They noted that current models of economic development do not uphold Indigenous Peoples' rights - particularly the right of self-determination and free, prior and informed consent. They made specific recommendations regarding the implementation of the UNDRIP, including: development that is compliant with Indigenous Peoples' rights; the inclusion of children, youth and women in policy-making and implementation; and the full and effective participation of Indigenous Peoples in the evaluation of the post-2015 development agenda.

North America's position was to take a careful and vigilant approach to the HLPM/WCIP due to concerns regarding Indigenous Peoples' participation in the process. As such, they decided on a strategy for their involvement and agreed to review their continuing participation after the Alta conference. Specific recommendations related to: a repudiation of the Doctrine of Discovery; that the UN hold an official world conference; the creation of an international mechanism and

oversight monitoring body for redress and restitution of Treaty violations; and violence and indigenous women, amongst others.

The **Pacific** region approached their meeting by looking to themes and issues that had been raised by Pacific Indigenous Peoples at international fora. Various delegates made presentations in their areas of expertise, discussions were held and recommendations were reflected in the final report. Some of the themes were: involvement of Indigenous Peoples in the UN system; health; justice; violence against women; self-determination; free, prior and informed consent; militarization and decolonization.

Given the **Russian** government's focus on natural resource extraction, it is not surprising that the Salekhard Declaration focused on the lands, territories and resources of Indigenous Peoples; development based on uses that do not disturb nature's balance; international oversight of violations of Indigenous Peoples' rights; and a specific call for the endorsement of the UNDRIP by those states that did not support its adoption in 2007, including Russia.

The **women's caucus** outcome document focused on a number of issues but made special mention of the autonomy and integrity of indigenous women and their bodies. The outcome document notes that this issue is one of the most pervasive human rights violations affecting indigenous communities and it contains specific recommendations on: missing and murdered women and girls; human trafficking; police violence and brutality; women and children in conflict zones; apprehension of children in state custody; forced displacement; and violence against human rights defenders.

The **youth caucus** declaration draws attention to young people's inability to practice their languages, culture and livelihoods if Indigenous Peoples' rights are not realized. They made specific recommendations, including: that education be delivered in indigenous languages; that states promote Indigenous Peoples' right of self-determination in order to protect, maintain and evolve indigenous cultures; and that states and the UN take effective measures to combat and minimize the effects of climate change, empower indigenous youth to protect and manage their environment, and build youth capacity on sustainable development practices. They also recommended that the UN appoint a Deputy Secretary-General and an Assistant Secretary-General on the rights of Indigenous Peoples.

Alta drafting group

The wealth of issues and recommendations from the regional and caucus preparatory meetings provided a sound basis upon which to build an international platform. In order to distil the emerging themes and recommendations, the GCG created a drafting group whose objective was to draft the first version of an outcome document in advance of the Alta conference, the global conference that would bring together Indigenous Peoples in June 2013. The drafters were chosen by their respective regions and caucuses and met in May 2013 in Madrid.

During the Madrid meeting, the Alta drafting group reviewed the two General Assembly resolutions relating to the HLPM/WCIP. They took particular note of the kind of outcome document that will be adopted, i.e., a concise action-oriented outcome document. They also took note of the kinds of session that the HLPM/WCIP will contain - one interactive dialogue and three round-tables. They decided to draft the AOD in such a way as to reflect a short action-oriented outcome document that contained concrete recommendations with a focus on four themes, one theme for each component of the HLPM/WCIP. The four themes are: Indigenous Peoples' lands, territories and resources; UN system action for the implementation of the rights of Indigenous Peoples; Implementation of the rights of Indigenous Peoples; and Indigenous Peoples' priorities for development (free, prior and informed consent).

The UN Permanent Forum on Indigenous Issues

The 12th session of the UN Permanent Forum on Indigenous Issues (UNPFII) included an agenda item on the HLPM/WCIP. The GCG made eight recommendations, four of which were adopted by the UNPFII. Those four recommendations were: that the HLPM/WCIP use the UNDRIP as the normative framework for the HLPM/WCIP; that the modalities resolution be given the widest and most generous interpretation possible in order to achieve the full and effective participation of Indigenous Peoples; that the President of the UN General Assembly reappoint a state facilitator and an indigenous facilitator to undertake informal consultations; and that the holding of the informal interactive hearing be held back-to-back with but separate from the 13th session of the UNPFII.

The 12th session of the UNPFII was held prior to the Alta conference. In order to support the Alta conference, the UNPFII noted that all conclusions and recommendations from the Alta conference had to be taken into consideration in the HLPW/WCIP decision-making processes and that the outcome document from the Alta conference should be considered as a firm basis for the identification of specific themes for the HLPW/WCIP.

Alta conference

In June 2013, the Sami Parliament of Norway hosted the Alta conference. The meeting was attended by over 600 delegates and observers; each indigenous region had 57 places with 34 of those places being funded.

After three days of drafting, negotiations and late nights, the conference adopted the AOD by consensus. Its adoption was cause for much celebration and an historic and politically unifying moment for the global indigenous movement.

The AOD sets out the principles by which Indigenous Peoples are engaging in the HLPW/WCIP process. It refers to the provisions of the UNDRIP that affirm the inherent rights of Indigenous Peoples to participate fully in decision-making that affects them, and notes that those provisions will continue to guide and frame Indigenous Peoples' work.

The AOD affirms that the inherent and inalienable right of self-determination is pre-eminent and is a prerequisite for the realization of all rights, and that Indigenous Peoples have the right of self-determination and permanent sovereignty over their lands, territories, resources, air, ice, oceans and waters, mountains and forests. For the full text go to www.wcip2014.org

Expert Mechanism on the Rights of Indigenous Peoples

The AOD was submitted to the 6th session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) as a conference room paper. During the agenda item on the HLPW/WCIP, the overwhelming majority of delegates noted the valuable work undertaken in Alta. Speakers noted the need for financial and technical support, called for endorsement of the AOD by EMRIP, recommended that the

AOD serve as the basis for the drafting of the final outcome document for the HLPW/WCIP and that the themes of the AOD be the themes for the HLPW/WCIP.

The EMRIP also produced a conference room paper which described how their studies and advice reflect many of the recommendations set out in the AOD. It was submitted in order to facilitate ways of working together by highlighting key points of confluence. This was an excellent way for the EMRIP to support the AOD as well as highlighting how the work they have completed supports the AOD recommendations.

EMRIP recommended that the Human Rights Council support the AOD themes as the themes for the HLPW/WCIP and that the document be considered in the drafting of the final outcome document for the HLPW/WCIP.

Special Rapporteur on the Rights of Indigenous Peoples

During the same session of the EMRIP, the Special Rapporteur on the Rights of Indigenous Peoples (SRIP) also supported the AOD. He stated that “the Alta document is an important normative instrument and plan of action in its own right” and continued by saying, “I will refer to the recommendations contained in the document to guide my approach to issues I examine within the scope of my mandate. I expect that the EMRIP and the PF as well as the future Special Rapporteur will do the same.” The SRIP also noted that the HLPW/WCIP provides four major opportunities – it can contribute to the development of new measures for the direct participation of Indigenous Peoples within the UN; it can help to advance greater and more concerted efforts within the UN system to promote the rights of Indigenous Peoples; it can assist in promoting action at the national and local levels to secure the realization of Indigenous Peoples’ rights; and it can be an opportunity for celebrating Indigenous Peoples and their contributions worldwide.

Human Rights Council

The next major UN human rights meeting to take place following the EMRIP was the Human Rights Council. A panel discussion on the HLPW/WCIP took place. One of the youth caucus representatives to the GCG, Tania Pariona was a panelist. She encouraged states to adopt the Declaration as the normative framework

for the HLPW/WCIP and highlighted recommendations from the AOD that specifically addressed youth issues. The Human Rights Council adopted a resolution that took note of the AOD and recommended that the AOD themes be taken into account when considering the themes for the HLPW/WCIP.

Third Committee of the General Assembly

It was important to monitor the annual resolution on Indigenous Peoples' rights of the Third Committee of the General Assembly and lobby for language that supported the AOD and which was consistent with the modalities resolution. As such, lobbying was carried out in the hallways of the UN which resulted in the Committee noting the AOD, recommending the four themes be taken into account when considering the specific themes for the round-table and interactive panel discussions for the HLPW/WCIP, and that the AOD be taken into account when preparing the outcome document of the World Conference.

The AOD was also tabled at the 67th session of the General Assembly by a number of states, where it became an official UN document - A/67/994.

Conclusion

By the end of 2013, Indigenous Peoples had completed their regional and caucus preparatory meetings, held an international indigenous preparatory conference which produced a global platform for indigenous advocacy, and ensured the safe passage of the AOD through the UN system. The process by which the AOD was created was inclusive, open and long term, thereby strengthening its legitimacy. The substance of the AOD intentionally reflects the structure of how the HLPW/WCIP will be conducted and provides a clear snapshot of indigenous identified priorities and solutions aimed at bringing about greater realization of the Declaration, i.e., operationalizing the Declaration in concrete and tangible ways. ○

Tracey Whare is the Rapporteur of the Indigenous Peoples' Global Coordinating Group. Email: traceycastrowhare@gmail.com

ALTA OUTCOME DOCUMENT



Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples. 10 – 12 June 2013, Alta.

Introduction

We Indigenous Peoples and Nations (hereinafter referred to as Indigenous Peoples) representing the 7 global geo-political regions including representatives of the women's caucus and the youth caucus have gathered in the traditional territories and lands of the Sami people at Alta, Norway. Our purpose was to exchange views and proposals and develop collective recommendations on the UN High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (hereinafter referred to as HLPN/WCIP), which will convene in New York, 22 – 23 September 2014. This document sets forth our recommendations along with the historical and current context of Indigenous Peoples.

Preamble

As the original and distinct Peoples and Nations of our territories we abide by natural laws and have our own laws, spirituality and world views. We have our own governance structures, knowledge systems, values and the love, respect and lifeways, which form the basis of our identity as Indigenous Peoples and our relationship with the natural world.

Indigenous Peoples have been instrumental in the advocacy for and recognition of human rights including the collective and individual human rights of Indigenous Peoples and have participated in international forums and processes. This has, among other things, resulted in the adoption of the ILO Convention 169 and

the UN Declaration on the Rights of Indigenous Peoples (herein after referred to as the Declaration), the establishment of the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the UN Special Rapporteur on the Rights of Indigenous Peoples.

For centuries, we Indigenous Peoples have faced and continue to face colonization of our lands, territories, resources, air, ice, oceans and waters, mountains and forests. This has resulted in patterns of domination, exploitation and subjugation of our Peoples. Such patterns can be traced to claims of discovery and conquest, papal bulls, royal charters, “manifest destiny” and other erroneous and legally invalid doctrines.

These claims have manifested in colonial strategies, policies, and actions designed to destroy Indigenous Peoples thereby resulting in the ongoing usurpation of Indigenous Peoples’ lands, territories, resources, air, ice, oceans and waters and, mountains and forests; extensive destruction of Indigenous Peoples’ political and legal institutions; discriminatory practices of colonizing forces aimed at destroying Indigenous Peoples’ cultures; failure to honour Treaties, agreements and other constructive arrangements with Indigenous Peoples and Nations; genocide, ecocide, loss of food sovereignty, crimes against humanity, war crimes and the militarization of Indigenous Peoples and our lands; corporatization and commodification of Indigenous Peoples and our natural resources; and the imposition of “development” models that are destroying the life-giving capacities and integrity of Mother Earth and producing a range of detrimental impacts of which climate change could prove to be the most destructive.

The provisions of the Declaration that affirm the inherent rights of Indigenous Peoples to participate fully in decision-making that affects us, will continue to guide and frame our work for the HLPW/WCIP.

We further affirm that nothing in this process or its outcomes may be interpreted as diminishing or eliminating any of the rights of Indigenous Peoples contained in the Declaration, or any of the other international standards which protect, defend and uphold the inherent economic, social, cultural, civil, political, educational and spiritual rights of Indigenous Peoples.

We reaffirm the peremptory norms of international law, including on equality and non-discrimination, and assert that the realization of the rights of Indigenous Peoples, including those affirmed in the Declaration, must be upheld by States, individually and collectively, free from all forms of discrimination including discrimination based on race, ethnicity, religion, gender, sexual orientation, age and

disability. We also reaffirm that the Declaration must be regarded as the normative framework and basis for the Outcome Document and its full realization.

We affirm that the inherent and inalienable right of self determination is preeminent and is a prerequisite for the realization of all rights. We Indigenous Peoples, have the right of self determination and permanent sovereignty over our lands, territories, resources, air, ice, oceans and waters, mountains and forests.

We condemn violence against Indigenous women, youth and children as one of the worst human rights violations affecting Indigenous Peoples and families. Violence against Indigenous women, youth and children is dehumanizing and also affects their spiritual development and violates their fundamental rights.

We have identified four overarching themes that encapsulate those issues that are of greatest importance to us as Indigenous Peoples. We recommend that each overarching theme be the respective theme for each of the three round tables and the one interactive dialogue that make up the HLPM/WCIP. Each of the four themes are accompanied by specific and concrete recommendations for inclusion in the final Outcome Document of the HLPM/WCIP.

Theme 1: Indigenous Peoples' lands, territories, resources, oceans and waters

1. *In order* to fulfil their obligations to guarantee Indigenous Peoples' right of self determination and permanent sovereignty over our lands, territories, resources, air, ice, oceans and waters, mountains and forests, we recommend that States, as a matter of urgency, establish effective mechanisms through agreements reached with the Indigenous Peoples concerned, to effectively implement the aforementioned rights consistent with State's obligations under international law, the UN Charter, the Declaration and Treaties and agreements concluded with Indigenous Peoples and Nations;
2. *Recommend* that States affirm and recognize the right to the protection, preservation and restitution of our sacred places, sites and cultural landscapes and establish mechanisms that can effectively promote the implementation of these rights including through the allocation of sufficient financial resources;
3. *Recommend* that States, in keeping with Indigenous Peoples law, traditions, customs, and land tenure systems, and with the full, equal and effective participation of Indigenous Peoples, establish tribunals, commissions or other

bodies with full judicial authority, to identify lands, territories and resources including lands taken without the free, prior and informed consent to which Indigenous Peoples have inherent rights through traditional ownership and/or use, including through delineation and demarcation, and to resolve disputes, including through the recovery of such lands, territories and resources. In all of the aforesaid situations, the laws, customs and usages of Indigenous Peoples shall be recognized;

4. *Recommend* that States comply with judicial pronouncements, decisions of national and international courts and recommendations of Treaty bodies and establish and provide adequate resources for effective redress for historical injustices in relation to Indigenous Peoples' lands, territories and natural resources;
5. *Recommend* that States with the full and effective participation of Indigenous Peoples establish mechanisms, to ensure the implementation of the right of free, prior and informed consent before entering the lands and territories of Indigenous Peoples, including in relation to extractive industries and other development activities. We further recommend that States cease the removal of Indigenous Peoples from their ancestral lands and territories. In cases where they are being or have been removed, displaced and/or dispossessed, States shall provide restitution or when this is not possible, just, fair and equitable compensation including the return of land and humanitarian assistance as required by the Indigenous Peoples affected;
6. *Recommend* that States uphold and respect the right of self determination and the free, prior and informed consent of Indigenous Peoples who do not want mining and other forms of resource extraction, "development" and technologies deemed as degrading to their human, cultural reproductive and ecosystem health. Where mining and other forms of resource extraction are already occurring, States shall develop mechanisms with the full and effective participation of Indigenous Peoples to develop a comprehensive strategy for ecologically sustainable and equitable development to end and prevent uncontrolled and unsustainable industrial contamination and degradation with plans for clean-up, remediation and restoration. Such a strategy shall incorporate strengthening the capacity of Indigenous youth in relation to sustainable development practices based on Indigenous knowledge and the relationship with the land as well as the protection and promotion of the important role of traditional knowledge holders including Indigenous Elders and women;

7. *Recommend* that States implement a comprehensive human rights and ecosystem based approach into all climate change measures and initiatives recognizing and valuing Indigenous world views including knowledge systems, technologies, innovations and practices, customary institutions and Indigenous governance, lands and resources, with enforceable safeguards in all climate agreements. We further recommend the urgent transition away from fossil fuel dependence towards decentralized, locally controlled, clean, renewable energy systems and infrastructure; and
8. *Recommend* that States develop and enforce in conjunction with Indigenous Peoples legislation or policies to acknowledge and protect Indigenous Peoples' traditional and subsistence livelihoods and other customary or culturally based land and resource uses and Indigenous economies and that such legislation or policies be adopted with the free, prior, and informed consent of Indigenous Peoples.

Theme 2: UN system action for the implementation of the rights of Indigenous Peoples

1. *Recommend* the creation of a new UN body with a mandate to promote, protect, monitor, review and report on the implementation of the rights of Indigenous Peoples, including but not limited to those affirmed in the Declaration, and that such a body be established with the full, equal and effective participation of Indigenous Peoples;
2. *Recommend* that the General Assembly call for the establishment of an international mechanism to provide oversight, redress, restitution and the implementation of Treaties, agreements and other constructive arrangements between Indigenous Peoples or Nations and States, predecessor and successor States;
3. *Recommend* that States provide legal recognition to Indigenous Peoples as Indigenous Peoples where so demanded by the Peoples concerned, consistent with the provisions of the Declaration that affirm the inherent rights of Indigenous Peoples;
4. *Recommend* that the General Assembly appoint an Under-Secretary General for Indigenous Peoples, in order to strengthen the capacity and efforts of the UN towards ensuring the full realization of the rights of Indigenous Peoples as

well as the inclusion and reflection of these rights including the right to full and effective participation in decision making in all activities of the UN;

5. *Recommend* that all UN agencies, programs and funds engaging in activities impacting on Indigenous Peoples appoint an officer, or establish a team of officers on a permanent and full- time basis, with particular responsibility to ensure that all such activities are responsive to and adapted for the particular situation of Indigenous Peoples and to provide training and capacity building for all new and existing UN staff regarding Indigenous Peoples' rights;
6. *Recommend* that all UN agencies, funds and programmes engaging in activities impacting on Indigenous Peoples form advisory councils or forums composed of representatives of Indigenous Peoples including women, youth and persons with disabilities to engage in dialogue and provide advice on policy making and country and regional level operations;
7. *Recommend* that a review be undertaken of the nomination processes for UN mandated positions relating to Indigenous Peoples' rights to ensure that the processes are consistent with the Declaration. Further we recommend that more Indigenous candidates with expertise on Indigenous Peoples' rights be appointed to Treaty monitoring bodies;
8. *Recommend* that following the HLPW/WCIP, work be undertaken to organize an official UN World Conference on Indigenous Peoples with the full, equal and effective participation of Indigenous Peoples at all stages;
9. *Call* on the World Heritage Committee, UNESCO and States to revise the World Heritage conventions operational guidelines to ensure the rights and territories of Indigenous Peoples are respected in the nomination, designation, management and monitoring of world heritage sites incorporating or affecting their lands, territories, resources, ice, oceans and waters, and mountains and forests and to ensure that Indigenous Peoples' right to free, prior and informed consent is obtained in world heritage decision making processes;
10. *Pursuant* to the universal application of the right of self determination for all Peoples, recommends that the UN recognize Indigenous Peoples and Nations based on our original free existence, inherent sovereignty and the right of self determination in international law. We call for, at a minimum, permanent observer status within the UN system enabling our direct participation through our own governments and parliaments. Our own governments include inter alia our traditional councils and authorities;

11. *Recommend* States, UN agencies and donor groups ensure the rights of Indigenous Peoples are respected in development aid cooperation; and
12. *Recommend* that the Declaration be a minimum human rights standard used in the Human Rights Council Universal Periodic Review so that States are formally assessed in relation to their progress in implementing the rights of Indigenous Peoples.

Theme 3: Implementation of the Rights of Indigenous Peoples

1. *Based* on the right of self determination Indigenous Peoples have the right and authority to develop and implement on an equal basis with States the standards and mechanisms that will govern relationships between them and, with the full, equal and effective participation of Indigenous Peoples we recommend that:
 - a) States develop processes to ensure that regional, constitutional, federal/national, provincial, and local laws, policies and procedures comply with the Declaration and other international human rights standards that uphold the rights of Indigenous Peoples;
 - b) Indigenous Peoples institutions, conflict resolution processes and judicial systems are respected and protected; and
 - c) that National Human Rights Institutions develop specific programmes that focus upon the implementation of the Declaration;
2. *Recommend* that States enter into new Treaties, agreements and other constructive arrangements with Indigenous Peoples and Nations as a way to effectively implement their rights and resolve violent conflicts and disputes and that the implementation of all Treaties, agreements and other constructive arrangements be ongoing and effective;
3. *Recommend* that States using the principles of Indigenous consent, ownership, control and access, collect, analyze and disaggregate data on Indigenous Peoples, including Elders, women, youth, children and persons with disabilities, to help draft and implement public children and persons with disabilities;

4. *Recommend* that States recognize that the implementation of the rights of Indigenous Peoples includes the review, formulation, amendment and implementation of laws, policies, and strategies and that these processes must be undertaken with the free, prior and informed consent of Indigenous Peoples, and be informed by evidence based on ethical collection, analysis, and the use of disaggregated data;
5. *Recommend* that States uphold and implement the rights of Indigenous women as sacred life givers and nurturers as well as strengthen – with the full and effective participation of Indigenous women – the protection of Indigenous women and girls through the formulation and implementation of national, regional and international plans of action developed in conjunction with Indigenous Peoples effective laws, policies and strategies;
6. *Recommend* States with the full, equal and effective participation of Indigenous women, youth and girls take immediate action to review, monitor and provide comprehensive reports on violence against Indigenous women, youth and girls, in particular sexual violence, domestic violence, trafficking and violence related to extractive industries as well as provide redress for victims;
7. *Recommend* States cease current, and refrain from any further, militarization and initiate processes to demilitarize the lands, territories, waters and oceans of Indigenous Peoples. This can be achieved inter alia through the repeal and/or discontinuance of “anti terrorist”, national security, immigration, border control and other special laws, regulations, operations and executive orders that violate the rights of Indigenous Peoples. Special measures should be taken to ensure the protection of Indigenous Elders, women, youth, children and persons with disabilities, particularly in the context of armed conflicts;
8. *Recommend* that States in conjunction with Indigenous Peoples establish and develop commissions of inquiry or other independent, impartial and investigative mechanisms to document matters of impunity and other human rights concerns of Indigenous Peoples and to ensure that recommendations to governments to end impunity for violations of Indigenous Peoples’ rights are effectively implemented. We further recommend that perpetrators be brought to justice and the victims compensated and rehabilitated;
9. *Recommend* that States work proactively, nationally and internationally with the full equal and effective participation of Indigenous Peoples to develop ef-

- fective mechanisms to identify and repatriate sacred and culturally significant items and ancestral remains, in accordance with Indigenous Peoples' customs, traditions and beliefs;
10. *Recommend* that States fully honour and in conjunction with Indigenous Peoples create conditions for the right of self determination of Indigenous Peoples including through formal decolonization processes to those Indigenous Peoples who seek it, and that all administering powers of non-self governing territories take all steps necessary to eradicate colonialism in all its forms and manifestations;
 11. *Recommend* that States, in conjunction with Indigenous Peoples support the effective implementation of Indigenous Peoples' right of self determination through providing financial support and revenue sharing to Indigenous Peoples;
 12. *Recommend* also that States, relevant UN system organizations and international financial institutions and donor organizations support the implementation of Indigenous Peoples' right of self determination including through capacity building to achieve this end in all regions; informed consent, Indigenous Peoples participate effectively and fully in the negotiations of all relevant international agreements that may affect them including multi lateral and bilateral trade and investment agreements and organizations including in the review of existing agreements; and
 14. *Recommend* States establish regional mechanisms to monitor the implementation of the Declaration.

Theme 4: Indigenous Peoples' priorities for Development with free, prior and informed consent

1. *Indigenous Peoples'* priorities for development are predicated on the full, equal and effective recognition of our rights to lands, territories, resources, air, ice, oceans and waters, and, mountains and forests and the connection between customs, belief systems, values, languages, cultures and traditional knowledge. We therefore recommend that rights, culture and spiritual values be integrated into strategies that relate to development including sustainable development goals and the post 2015 UN Development Agenda;

2. *Recommend* States adopt public policies which guarantee the right to food, food sovereignty, food security and safety and the right to water and clean air for Indigenous Peoples. Further, that States cease subsidizing the expansion of industrial, commercial agriculture plantations which promote toxic chemical fertilizers and pesticides as well as genetically modified organisms (GMO's) in Indigenous lands and territories;
3. *Recommend* States support programmes of Indigenous Peoples to strengthen the capacity of Indigenous youth, including on the transmission of traditional knowledge, innovations and practices as well as languages and on the important role of Indigenous Peoples including Elders and women as traditional knowledge holders. Further, that States and UN agencies, programs and funds respect and promote Indigenous Peoples' right to free, prior and informed consent in relation to their traditional knowledge and traditional cultural expressions;
4. *Recommend* States take a rights based and culturally appropriate approach to public safety and access to justice guided by Indigenous Peoples' legal orders and traditional justice systems and by standardised and disaggregated data collection focused on prevention and restorative justice as well as protection and rehabilitation;
5. *Recommend* States cease State sponsored population transfers and demographic engineering of Indigenous Peoples that inter alia result in the minoritization of Indigenous Peoples;
6. *Recommend* States with the full, equal and effective participation of Indigenous Peoples provide adequate resources that enable the empowerment of Indigenous Peoples to deliver and have access to high quality and culturally based education, health including mental health and housing to improve the wellbeing of Indigenous Peoples; and that Indigenous individuals are provided with appropriate health care on an equal basis;
7. *Recommend* States take urgent action to adopt strategies that enable Indigenous Peoples to exercise their right to education particularly youth and children and their sovereign rights to establish their own educational system affirming the scholarship of their knowledge systems, sciences, technologies, intellectual property and cultural manifestations;
8. *Recommend* States ensure meaningful and effective participation and the free, prior and informed consent of Indigenous Peoples in accordance with

their protocols in order to reform languages and knowledge of the Indigenous Peoples to whom it is being delivered; and

9. *Call on States to reaffirm the rights of Indigenous Peoples to their economic, social and cultural development with due regard to their freedom and identity and the recognition that the right to sustainable development is both procedural and substantive. We further call upon States to ensure the full, equal and effective participation of Indigenous Peoples in the development of mechanisms to ensure that ecosystem based sustainable development is equitable, non-discriminatory, participatory, accountable, and transparent, with equality, consent and decolonization as important overarching themes that protect, recognize and respect the rights of Indigenous Peoples and that are in harmony with the sacredness of Mother Earth.* ○

WORLD CONFERENCE OF INDIGENOUS WOMEN

Building the future we want

From 28 to 30 October 2013, indigenous women from 50 countries of the seven geocultural regions of the world met in Lima to reach agreements and establish advocacy strategies related to the meetings and assessments of Cairo+20, Beijing+20, the Post-2015 Development Agenda and the forthcoming World Conference on Indigenous Peoples.

Over the last 20 years, the international human rights agenda has become increasingly clear with regard to rights-holders. Indigenous peoples, and particularly indigenous women, however, still remain largely absent from this scenario.

It is for this reason that the global indigenous women's movement has continued to maintain its participation on the international scene, noting the need to build a global position on controversial issues related to indigenous women's integrity and sovereignty.

It is clear that what are today known as the Cairo and Beijing conferences were, at the time, a turning point in approaches to population and the role of women that enabled the international agenda to be focused on people. However, indigenous women have still not been fully reflected in the successive recommendations and action plans.

The situation was the same for the Millennium Development Goals, the global aspirations of which did not, in the end, focus on those who should have been the direct beneficiaries, not only in their own right, but as actors in societies permeated by social gaps and divides, which were not taken into consideration. The Post-2015 Agenda remains a challenge to be taken up in this regard.

In terms of the World Conference on Indigenous Peoples, this still does not have mechanisms through which indigenous peoples, in particular indigenous women, can express themselves and participate.

The indigenous women from Africa, Asia, the Arctic, Latin America, North America, the Pacific and Russia participating in the Lima meeting thus divided their working agenda into four thematic panels corresponding to the different in-

ternational scenarios raised, as well as panels on communication strategies and specific issues such as self-determination, among others.

Same problems, one voice

The different working groups were agreed on the following points:

1. The extractive industries are being developed primarily on indigenous territories, under the protection of the different states, without any consultation having taken place or consent having been obtained, and this is creating the displacement of peoples, violence of all kinds, environmental degradation and a deterioration in the situation of indigenous women.
2. Although significant progress has been made in recognising human rights as a framework for sustainable development, there has been little movement in terms of recognising and implementing the rights of indigenous peoples and indigenous women.
3. Because they are believed to be cultural, practices still persist which are damaging the integrity and lives of indigenous women. These include female genital mutilation and forced marriage.
4. Following on from the above, sovereignty over the integrity of their bodies is not fully recognised, and indigenous women are subjected to a control that is endorsed by legal and social norms of all kinds.
5. The political and social participation of indigenous women is restricted by cultural and social practices that prevent them from making their voices full heard and their proposals fully known.

Declaration and positioning

As a result of the analyses and discussions, the *Lima Declaration* and a *Political Positioning Document and Action Plan for the World's Indigenous Women* were produced at the end of the World Conference of Indigenous Women, the complete versions of which can be found at www.mujerindigena.com, the conference's official page.

A brief summary of both documents shows the clear position of indigenous women:

1. More and better international mechanisms are needed to ensure that states are implementing the UN Declaration on the Rights of Indigenous Peoples with the full participation of indigenous women and youth.
2. Territorial recognition is fundamental to indigenous peoples; not only does this refer to a geographic space but also to a symbolic and spiritual one, within which the work and role of indigenous women is essential, both spiritually, socially and economically, and this role is neither recognised nor valued, far less quantified.
3. The indigenous women question the extractivist models and economies based on resource exploitation, raising the need to develop economies in which human beings are the focus and receivers of benefits. As women, they highlight the cultural and historic work of caring for and safeguarding a knowledge of sustainable resource management, the continuity of which is being threatened.
4. In accordance with the above, they indicate the urgent need to implement mechanisms for free, prior and informed consultation and to ensure respect for the right to self-determination when exercising their individual and collective rights.
5. They highlight the pressing need for disaggregated data that identifies their social and cultural diversity, and which includes specific information on gender and age, as this will be useful in public policies.
6. They indicate the need to nurture a horizontal dialogue with states and, through a process of dialogue and agreement, to build joint social, economic and political alternatives that will enable the divisions and exclusion so characteristic of the situation of indigenous peoples and women to be overcome.

7. Following on from the above, they highlight the urgent need to develop educational and health systems, among others, that are in accordance with indigenous culture and practices, without denying or restricting access to what global culture, science and technology can offer, including in the projection of indigenous culture itself.
8. To include culture as an essential theme in all processes of constructing national and global policies.

Finally, the need for dialogue with other social movements was noted, and the need to continue to strengthen and increase the visibility of the global movement of indigenous women. ○

UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

The United Nations Permanent Forum on Indigenous Issues (Permanent Forum) provides expert advice to the United Nations Economic and Social Council (ECOSOC) and to United Nations programmes, funds and agencies, raises awareness on indigenous peoples' issues and promotes the integration and coordination of activities relating to indigenous peoples' issues within the United Nations system. The Permanent Forum is one of three United Nations bodies mandated to deal specifically with indigenous peoples' issues. The others are the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples.

Established in 2000, the Permanent Forum is an advisory body to ECOSOC and is composed of 16 independent experts, functioning in their personal capacity, who serve for a term of three years. They may be re-elected or re-appointed for one additional term. Eight of the members are nominated by governments and eight are nominated by indigenous peoples' organizations. The Permanent Forum's key mandated areas include: culture, economic and social development, education, environment, health, and human rights. Following its adoption in September 2007, the Permanent Forum also included promotion and respect for the full application and implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) in its mandate.

A key feature of the Permanent Forum is its two-week session, which is usually held in April or May each year at the United Nations Headquarters in New York. The Permanent Forum alternates annually between being devoted to a thematic area and a review year where further consideration is given to implementation of the Forum's recommendations. The Permanent Forum sessions provide an opportunity for indigenous peoples from around the world to have direct dialogue with members of the Forum, the UN system and the Special Rapporteur on the rights of indigenous peoples, as well as other Human Rights Special Rapporteurs,

other expert bodies and Member States. The outcome of the session is a report containing recommendations for attention and adoption by ECOSOC.

Permanent Forum members serve as independent experts on a voluntary basis. Throughout the year, the members promote indigenous peoples' issues locally, regionally and around the world.

International Expert Group meeting

In 2013, the topic of the Permanent Forum's annual international expert group meeting was "*Indigenous youth: identity, challenges and hope: articles 14, 17, 21 and 25 of the United Nations Declaration on the Rights of Indigenous Peoples*". The meeting was attended by over 50 representatives from indigenous organizations, NGOs, Member States, the UN system and four Members of the Permanent Forum, including Mr. Alvaro Pop, who chaired the meeting. Many of the participants were indigenous youth themselves, including all seven regional experts, who made presentations on the state of indigenous youth across the globe. They also prepared the report of the meeting in cooperation with the four Forum Members. The discussions at the event delved into issues on indigenous youth and language; culture and identity; education and employment; and participation in decision-making.

The meeting resulted in a number of recommendations to the UN system as well as to Member States, indigenous peoples and the Permanent Forum. The recommendations covered a range of issues, including on improved and appropriate education for indigenous youth, strengthening of indigenous languages, cultures and educational institutions, addressing youth suicide and ensuring the participation of indigenous youth in decision-making that affects their well-being.¹

The Pre-Sessional Meeting of the Permanent Forum

In preparation for its 12th session, the Permanent Forum Members and its Secretariat met in Brazzaville, Republic of Congo, from 11 to 15 March 2013. Hosted by the Government of the Republic of the Congo, the Pre-Sessional Meeting was the

first ever held in Africa and provided an opportunity for Permanent Forum Members to meet with parliamentarians, the UN Country Team and indigenous peoples in the country.

In addition to the preparations for the upcoming session, the Forum Members highlighted the World Conference on Indigenous Peoples (September 2014) as an opportunity to define a global action plan to implement the UN Declaration on the Rights of Indigenous Peoples. They encouraged the Republic of the Congo to be engaged in this process.

During their consultations with indigenous peoples, Forum Members were informed on continuing problems of discrimination and marginalization. Indigenous peoples described the problems they face in accessing schools and finding employment. Indigenous women spoke of the lack of maternal and childcare, and difficulties encountered while giving birth in forests.

At meetings with parliamentarians, and with government officials, including the Minister of Forests, the Forum Members offered different suggestions on how to overcome the persistent challenges faced by indigenous peoples in the region regarding issues related to the recognition and protection of their fundamental rights. The members also met with UN agencies and other partners who provided information on various projects and programmes developed within the framework of the national action plan to improve the quality of life of indigenous peoples.

The 12th session of the Permanent Forum on Indigenous Issues

In 2013, the session was a **review year, focusing on culture, education and health**, three of the six mandated areas of the Forum. In its report of the 12th session, the Forum states that the health gap between indigenous and non-indigenous peoples is evidence of the discriminatory structures that are in conflict with human rights, and indigenous peoples' rights in particular. It demonstrates the need for governments and UN entities to refocus and redouble their efforts in fulfilling their obligations towards indigenous peoples. In the area of education, the Forum noted that indigenous peoples often receive the poorest quality of education. Access to quality education, including the need to ensure the full and effective participation of indigenous peoples in the development of legislative, regulatory and administrative measures, will better ensure the knowledge and skills necessary to improve the well-being of indigenous peoples. Culture has been

recognized by indigenous peoples as the fourth pillar of sustainable development. This is because it encompasses profound cultural and spiritual teachings and traditions that acknowledge humanity's relationship with – and responsibilities for – our earth and for our collective future. As such, indigenous peoples continue to press to have this pillar recognized and accepted in the UN system.

The Permanent Forum held **in-depth dialogues with international financial institutions**, including the World Bank, the International Finance Corporation, the Asian Development Bank, the Inter-American Development Bank and the African Development Bank. The Permanent Forum made 18 recommendations to the international financial institutions. Based on the discussions during this dialogue, the Permanent Forum recommendations included the following: international financial institutions must adopt and incorporate free, prior and informed consent into all their safeguard policies and project-related instruments; they must unequivocally acknowledge the collective rights of indigenous peoples to their lands, territories and resources in the banks' safeguard policies and in all development projects contexts – and not merely in exceptional circumstances.

On **human rights**, the Permanent Forum held a constructive dialogue with the Chair of the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the rights of indigenous peoples and others on the implementation of the Declaration on the Rights of Indigenous Peoples. In this vein, 14 recommendations were made covering issues related to, inter alia, the situation of indigenous persons with disabilities, violence against human rights defenders, and States taking steps to establish truth commissions in situations of human rights violations against indigenous peoples.

This year, the **regional focus was on Africa**, with Forum Members and the African Commission on Human and Peoples' Rights describing the situation of hunter-gatherers, pastoralist and other indigenous peoples with nomadic lifestyles. The situation of indigenous women in the region continues to be a major concern as they have low literacy rates and are subjected to many forms of violence. The government representative from the Republic of the Congo highlighted some progress in the region, with the passing of Law No. 5-2011 in 2011, which recognizes the rights of indigenous peoples in that country. It was also noted that constitutional progress had been made in the Republic of Kenya and quotas have been set aside for the Batwa people in the parliaments of Burundi and Rwanda.

During the 12th session, the Forum deliberated on two important ongoing processes. Firstly, the **Post-2015 Development Agenda**: the Forum highlighted the

need to incorporate indigenous peoples' issues in the process. Among the issues covered were the need for the UN system to conduct a separate consultation with indigenous peoples at the regional and global levels as an integral and critical part of the process, and that indicators and monitoring tools must be developed relating to indigenous peoples in the sustainable development goals and post-2015 development process. Secondly, the **World Conference on Indigenous Issues (2014)**: an inter-active discussion during the session provided an opportunity for the Permanent Forum to listen carefully to statements and recommendations on the upcoming World Conference from Member States, the seven socio-cultural regions, including indigenous women and youth caucuses, UN agencies and inter-governmental organizations as well as NGOs. Based on these discussions, the Permanent Forum prepared 24 recommendations on the World Conference. These cover issues such as the preparatory process leading to the conference and participation of indigenous peoples in the entire process and in the conference itself. A number of themes have emerged as **priority issues** of concern to all: the right of indigenous peoples to self-determination; the right of indigenous peoples to lands, territories, and resources; extractive industries and the related right to free, prior, and informed consent; the economic, social, and cultural rights of indigenous peoples; and strengthening of indigenous peoples' participation in, and the mechanism of, the UN; the need for immediate, effective and comprehensive implementation of the UNDRIP by Member States and the UN system, with the full participation of indigenous peoples. The Forum is mindful that dialogue will continue among and between indigenous peoples and Member States in preparation for the WCIP.

Permanent Forum members appointed for the period 2014-2016

Indigenous members, nominated and appointed by the President of ECOSOC: Ms Mariam Wallet Aboubakrine (Africa), Ms Dalee Sambo Dorough (Arctic), Ms Joan Carling (Asia); Mr Raja Devasish Roy (Asia), Ms Kara-Kys Arakchaa (Eastern Europe/Russian Federation), Ms Maria Eugenia Choque Quispe (Latin America & the Caribbean), Mr Edward John (North America) and Ms Valmaine Toki (Pacific).

Government members, nominated and elected by ECOSOC: Mr Joseph Goko Mutangah, Ms Gervais Nzoa, Mr Mohammad Hassani Nejad Pirkouhi, Mr Oliver Loode, Ms Aisa Mukabenova, Mr Alvaro Esteban Pop Ac and Ms Megan Davis.

Consideration of the Permanent Forum's report by ECOSOC

During ECOSOC's annual meeting in July 2013, the decision to take note of the 12th session report of the Permanent Forum was deferred. A resumed session took place in November 2013 where ECOSOC adopted the draft decisions on the topic of the UNPFII expert group meeting on sexual health and reproductive rights, the venue and dates for the 13th session of the Permanent Forum, and the provisional agenda for the 13th session of the Permanent Forum.

With regard to draft decision on changing the name of the Permanent Forum on Indigenous Issues to the 'Permanent Forum on the Rights of Indigenous Peoples', ECOSOC decided to "request the Permanent Forum to continue the consideration (...) and to inform the Council of the outcome".

The Inter-Agency Support Group on Indigenous Issues (IASG)

In 2013, the IASG held its annual meeting on 22 and 23 October 2013 at UNICEF Headquarters in New York. Chaired by UNICEF, the meeting was attended by SPFII members – Chair, Mr Kanyinke Sena, Ms Mirna Cunningham and Mr Alvaro Pop – and focal points on indigenous peoples from the UN system, as well as the Permanent Representative of Mexico and representatives from the Global Coordinating Group for the World Conference (GCG), and the Sámi Parliament of Norway.

The meeting covered issues such as the IASG preparations for the World Conference and its strategic linkages with the post-2015 development agenda; discussions of thematic IASG papers to provide substantive contributions to the WCIP 2014; and follow-up to the 12th session of the Permanent Forum - with a particular focus on Africa and updates on inter-agency initiatives.

The IASG will prepare thematic papers on violence, governance, education, health, indigenous persons with disabilities, reproductive health, land rights and

environment as contribution to the World Conference and the Post-2015 Development Agenda. ○

Notes and references

- 1 The recommendations are contained in the report of the meeting, which was an official document of the 12th session of the Permanent Forum. The report is available in all six official UN languages at: www.un.org/Docs/journal/asp/ws.asp?m=E/C.19/2013/3
- 2 The article is based on the information provided in the UNPFII newsletter "Message stick". More information is available at: <http://undesadspd.org/IndigenousPeoples/Newsletter.aspx>

Lola Garcia-Alix is the Executive Director of IWGIA. She is a Spanish sociologist and responsible for IWGIAs International Human Rights Advocacy Programme.

UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

According to United Nations Human Rights Council resolutions 24/9 and 15/14, the Special Rapporteur on the rights of indigenous peoples has a mandate: to gather information and communications from all relevant sources – including governments and indigenous peoples and their communities and organizations – on alleged violations of the human rights of indigenous peoples; to formulate recommendations and proposals on measures and activities to prevent and remedy violations of the rights of indigenous peoples; and to work in coordination with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies and regional human rights organizations.¹

In 2008, the Human Rights Council appointed Professor James Anaya as Special Rapporteur for a three-year period and renewed his mandate in 2010 for another three-year period ending in April 2014. Throughout his sixth year as Special Rapporteur, Professor Anaya continued his work in four principle areas in accordance with his mandate: promoting good practices, responding to cases of alleged human rights violations; country assessments; and conducting thematic studies.² In 2013, the Special Rapporteur issued an index on reports he has developed throughout his mandate, divided by geographical region and theme, including among others: consultation; free, prior and informed consent; corporate responsibility; culture; access to justice; lands, territories and natural resources; extractive industries; and the United Nations Declaration on the Rights of Indigenous Peoples, in order to serve as a resource for those working in the area of indigenous peoples' rights (A/HRC/24/41/Add.5).

Promotion of good practices

The Special Rapporteur has continued to engage in activities to advance legal, administrative and programmatic reforms at the international and national levels, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments. Over the past year, the Special Rapporteur's efforts to promote good practices have included the following:

- In March 2013, the Special Rapporteur participated in meetings hosted by the World Bank in Manila, Philippines, within the context of the World Bank's review of its environmental and social safeguard policies, including its Operational Policy 4.10 on indigenous peoples;
- In April 2013, the Special Rapporteur gave a keynote speech on consultation with indigenous peoples at a meeting in Lima, Peru, of ombudsmen and heads of national human rights institutions throughout Latin America as well as indigenous leaders and government officials from Peru;
- In April 2013, the Special Rapporteur provided comments on a draft protocol developed by the Mexican Supreme Court of Justice for use by members of the Mexican judiciary in cases involving indigenous individuals and communities;
- In May 2013, the Special Rapporteur traveled to Darwin, Australia, where he delivered the keynote address at the inaugural conference of the World Indigenous Network, during which he discussed the advancements and ongoing challenges for implementation of indigenous peoples' rights worldwide, especially in the context of land and natural resource conservation programs;
- In September 2013, the Special Rapporteur facilitated a workshop hosted by the African Commission on Human and Peoples' Rights regarding implementation of the report of the African Commission on the Endorois indigenous people in Kenya.

Throughout the second term of his mandate, the Special Rapporteur has paid special attention to extractive industries in or near indigenous lands and territories, and this culminated in his final report on extractive industries and indigenous

peoples, which is discussed below (A/HRC/24/41). In this connection, in May 2013, the Special Rapporteur participated in a roundtable discussion in London, United Kingdom, which brought together representatives of indigenous communities and organizations, business enterprises and non-governmental organizations to discuss issues related to consultation and free, prior and informed consent and the extractive activities. In November 2013, the Special Rapporteur participated in a forum held in Colorado, United States, which was organized by the Harvard Project on Indian Economic Development. The forum focused on economic development on or near indigenous lands, including partnerships and the development of mining and other large-scale projects as well as best practices in corporate – tribal relations.

Specific cases of human rights violations

As in previous years, the Special Rapporteur's examination of specific cases of alleged human rights violations resulted in letters of allegation or urgent appeal letters being issued to governments regarding those situations, as well as follow-up observations and recommendations in some cases. The full text of these communications and replies sent to the governments are available in the joint communications reports periodically released by UN special procedures mandate holders (A/HRC/22/67, A/HRC/23/51 and A/HRC/24/21) and in the separate communications report of the Special Rapporteur (A/HRC/24/41/Add.4).

In 2013, the Special Rapporteur sent communications on situations in Argentina, Bangladesh, Botswana, Brazil, Cameroon, Canada, Chile, Colombia, Costa Rica, Honduras, Ethiopia, Guatemala, India, Israel, Kenya, Nicaragua, Philippines, Suriname, Tanzania, the United States of America and Venezuela. In addition, he sent communications to the IAMGOLD Corporation and the United Nations Educational, Scientific and Cultural Organization (UNESCO) regarding these entities' activities affecting indigenous peoples' human rights. Several of these cases were follow-up letters to communications previously sent. In all of the cases addressed, the Special Rapporteur provided observations with brief recommendations as to how to address the human rights concerns raised (A/HRC/24/41/Add.4). The Special Rapporteur also sent a follow-up letter regarding various issues affecting indigenous peoples in Colombia, as a follow-up to his 2009 report on the situation of indigenous peoples in that country (A/HRC/15/37/Add.3).

On occasion, the Special Rapporteur has also issued public statements about situations of immediate concern. In 2013, these included statements regarding a hunger strike by the Chief of the Attawapiskat First Nation in protest at legislative developments and social and economic conditions affecting indigenous peoples in Canada; the conflictive situation between the Tagaeri-Taromenane and Wao-rani indigenous communities in Ecuador; the presence of illegal settlements within indigenous territories in the Bosawás reserve in Nicaragua; the re-authorization of the Violence Against Women Act (VAWA) and the situation of an indigenous child in a custody dispute in the United States of America.

Country and regional assessments

In March 2013, the Special Rapporteur participated in a consultation meeting in Kuala Lumpur, Malaysia, dealing with the situation of indigenous peoples in Asia. Representatives of indigenous peoples from Bangladesh, Cambodia, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, Philippines, Thailand and Viet Nam participated in the consultation, together with members of the legislative bodies and national human rights institutions of the Philippines, Malaysia and Thailand. Subsequently, in July 2013, the Special Rapporteur made public his report, which provides an overview of the main issues raised during the consultation and through information received, including concerns related to lands, territories and resources and extractive activities; conflict, peace and physical security in indigenous territories; and other human rights issues affecting Asia's indigenous peoples (A/HRC/24/41/Add.3).

In 2013, the Special Rapporteur released two reports based on visits conducted in 2012. In June 2013, the Special Rapporteur made public his report on the situation of the indigenous peoples in El Salvador (A/HRC/24/41/Add.2), following his country visit in August 2012. Among other issues, the report discusses the loss of many important aspects of indigenous identity and culture in El Salvador and recent steps by the government to accord recognition to indigenous peoples and to promote respect for their rights. Also in June 2013, the Special Rapporteur made public his report on the situation of indigenous peoples in Namibia (A/HRC/24/41/Add.1), following his official visit to that country in September 2012. The report discusses, among other topics, the need to include indigenous peoples in decision-making at all levels, provide opportunities for indigenous peo-

ples to set their own priorities for development and to regain or strengthen rights over lands and natural resources. In this report, the Special Rapporteur also takes note of recent government initiatives and policies to address areas of concern. These reports were also presented via video-conference, during which government representatives, indigenous representatives and members of the public had the opportunity to ask questions of the Special Rapporteur.

Also in 2013, the Special Rapporteur conducted official visits to Panama (19 – 26 July), Canada (7-15 October) and Peru (6 -13 December) and his reports on these visits are forthcoming. In his press statement upon concluding his visit to Panama, the Special Rapporteur noted that indigenous peoples in the country were calling for greater recognition and protection of their territories and natural resources. In this connection, he noted concerns regarding the advancement of large-scale development projects that are allegedly affecting indigenous peoples' rights in Panama, including hydroelectric and mining projects. In his press statement upon concluding his visit to Canada, the Special Rapporteur noted the principal issues faced by aboriginal peoples in the country, including dire socio-economic problems, unresolved treaty claims, and high levels of distrust among indigenous peoples towards government at both federal and provincial level. Finally, in his press statement at the end of his visit to Peru, the Special Rapporteur noted important developments in recent years regarding regulation of the duty to consult with indigenous peoples as well as ongoing concerns and issues faced by indigenous peoples, including indigenous peoples in voluntary isolation and initial contact, in the context of extractive industry operations.

Thematic issues

In September 2013, the Special Rapporteur presented his final report to the Human Rights Council, which builds upon previous reports that addressed indigenous peoples' human rights concerns in relation to the extractive industries (A/HRC/24/41). In the report, the Special Rapporteur sets out a series of observations and recommendations regarding models of natural resource development; the obligations of states and the responsibilities of companies; consultation processes and the principle of free, prior and informed consent; and conditions for achieving and maintaining agreements regarding natural resource extraction affecting indigenous peoples. The Special Rapporteur's report draws on informa-

tion gathered over several years through country visits, seminars, written submissions from various sources and independent research.

In his final annual report to the General Assembly, the Special Rapporteur provided an overview of his activities since commencing his mandate, in addition to identifying working methods and lessons learned, as well as both positive experiences and challenges in his work (A/68/317). The report also addressed the factors that are debilitating a commitment to and action by states and other actors in terms of implementing the United Nations Declaration on the Rights of Indigenous Peoples. In his report, the Special Rapporteur also drew on his experience over the past years to advance thinking that can help overcome these debilitating factors in favor of concrete implementing measures.

Coordination with the United Nations' other human rights mechanisms

The Special Rapporteur has continued to collaborate with other UN mechanisms dealing with indigenous peoples – the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. In 2013, the Special Rapporteur also participated in the annual sessions of the Permanent Forum and the Expert Mechanism, during which he continued his practice of holding parallel meetings with representatives of indigenous peoples, state officials and UN agencies to discuss issues relevant to his mandate. He also participated in the annual coordination meeting of these mechanisms in order to discuss and exchange information on their respective agendas and activities.

Throughout the year, the Special Rapporteur also participated in several activities in collaboration with other human rights bodies and mechanisms, including the Inter-American Commission on Human Rights, the ASEAN Inter-Governmental Commission on Human Rights, the African Commission on Human and Peoples' Rights, the World Intellectual Property Organization and the UN Working Group on Business and Human Rights. He also participated, along with members of UN and regional human rights organizations, in the preparatory conference held in June 2013 in Alta, Norway to discuss preparations for the World Conference on Indigenous Peoples, which will be a high-level plenary meeting of the General Assembly to be held in September 2014. ○

Notes and references

- 1 All reports of the Special Rapporteur are available at: www.unsr.jamesanaya.org
- 2 For more information on specific activities undertaken within these areas in the past year, see the Special Rapporteur's 2013 annual report to the Human Rights Council (A/HRC/24/41) and to the General Assembly (A/68/317).

Submission by the Support Project for the United Nations Special Rapporteur on Indigenous Peoples at the University of Arizona James E. Rogers College of Law in Tucson, Arizona.

UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

In December 2007, the UN Human Rights Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples. The Expert Mechanism reports directly to the Human Rights Council (the main inter-governmental human rights body of the UN). Its mandate is to assist the Council in the implementation of its mandate by providing thematic expertise on the rights of indigenous peoples and making related proposals to the Human Rights Council for its consideration and approval. The Expert Mechanism consists of five independent experts. They are appointed by the Human Rights Council for terms of three years, as from 2011, and may be re-elected for one additional period. The Expert Mechanism meets in a plenary session once a year for up to five days and these sessions are open to representatives of indigenous peoples, States, NGOs, UN bodies and agencies etc. The sessions of the Expert Mechanism provide a unique space for focused multilateral discussions on the scope and content of the rights affirmed to indigenous peoples under international law, and how the implementation of these rights can be advanced.

New membership

In March 2013, the Human Rights Council appointed two new experts: Mr Albert Deterville (Santa Lucia) and Mr Alexey Tsykarev (Russian Federation), replacing outgoing members Mr Jose Carlos Morales (Costa Rica) and Ms Anastasia Chukhman (Russian Federation).

International Expert Seminar

From 27 February to 1 March 2013, Colombia University hosted an “International Expert Seminar on Access to Justice for Indigenous Peoples, including

truth and reconciliation processes” with the aim of contributing to the Expert Mechanism’s study on this topic.

The event was organized by the Institute for the Study of Human Rights at Columbia University, the Office of the High Commissioner for Human Rights and the International Centre for Transitional Justice, in cooperation with EM-RIP. Panellists and participants devoted time to considering issues of access to justice, truth and reconciliation for indigenous peoples and recommended themes and topics for the Study of the Expert Mechanism on the matter. Columbia University will prepare a publication which will include the presentations of the participants.

6th session of the Expert Mechanism

The annual session of the Expert Mechanism took place in Geneva from 8 to 12 July 2013. In addition to members of the Expert Mechanism, the participants in the session included representatives of States, indigenous peoples, United Nations bodies and specialized agencies, non-governmental organizations, national human rights institutions and academics.

The Expert Mechanism held a half-day session to discuss the World Conference on Indigenous Peoples and then went on to discuss the follow-up to thematic studies and advice.

The Expert Mechanism’s study on access to justice in the promotion and protection of the rights of indigenous peoples was considered. This included examining the impact of truth and reconciliation processes. Discussions on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) were also held, including a panel discussion and interactive dialogue on the role of international, regional and national mechanisms in advancing the rights of indigenous peoples as contained in the Declaration.¹

Recommendations

At its 6th session, the Expert Mechanism proposed that the Human Rights Council should, *inter alia*:

Regarding the continuation of the access to justice study

- Authorize the Expert Mechanism to continue its study on access to justice in the promotion and protection of the rights of indigenous peoples.

Regarding the World Conference on Indigenous Peoples

- Consider the themes identified in the Alta Outcome Document² as the themes adopted for the World Conference;
- Support the consideration of the Alta Outcome Document in the drafting of the final outcome document of the World Conference;
- Recommend to the President of the 68th session of the General Assembly that the practice of appointing a State representative and an indigenous peoples' representative to conduct informal consultations be continued;
- Support increased financial, technical and political support for the participation of indigenous peoples in the World Conference.

Regarding the implementation of the UNDRIP

- Urge States and indigenous peoples to report on the measures taken to implement the rights enshrined in the UNDRIP, through the continuation of the Expert Mechanism's questionnaire survey;
- Request that States establish, with the full and effective participation of indigenous peoples, independent mechanisms to oversee and promote the implementation of the rights contained in the Declaration.

Regarding the Post-2015 Development Agenda

- Support the Expert Mechanism and representatives of indigenous peoples in their efforts to ensure that the rights of indigenous peoples are firmly incorporated in the Post-2015 Development Agenda, including the participation of the Expert Mechanism in related activities.

Regarding the Universal Periodic Reviews

- Draw increasingly on the UNDRIP and the thematic work of the Expert Mechanism in the Universal Periodic Review (UPR). The Expert Mechanism also proposed that, in future UPR cycles, the UNDRIP be explicitly included in the list of standards on which the UPR process is based.

During its 6th session, the Expert Mechanism also adopted the study and advice on access to justice in the promotion and protection of the rights of indigenous peoples and the report on the summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the UNDRIP.

24th session of the Human Rights Council

The Expert Mechanism conducted its interactive dialogue with the Human Rights Council during its September session,³ together with the Special Rapporteur on the rights of indigenous peoples. The work of the Expert Mechanism was presented by its Chairperson, Chief Wilton Littlechild. He presented the report on access to justice, summarized its content and informed the Council of the developments of the 6th session. He also commented on the Expert Mechanism's concerns regarding the selection of topics for its work, in view of the lack of a suitable process by which to agree these, as evidenced in the negotiation of the resolution on Indigenous Peoples during the session.

The interactive dialogue on indigenous peoples' rights was followed by a three-hour panel devoted to the World Conference on Indigenous Peoples. This panel was chaired by the Vice President of the Human Rights Council and moderated by the Permanent Representative of Mexico. The Chairperson of the Expert Mechanism (Chief Wilton Littlechild) and the Special Rapporteur on the rights of indigenous peoples (Prof. James Anaya) were keynote speakers at this event. ○

Notes and references

- 1 The report of the EMRIP's 6th session is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/160/65/PDF/G1316065.pdf?OpenElement>
- 2 The Alta Outcome Document is available at: <http://wcip2014.org/1530>
- 3 See more information on the 24th session of the HRC in the article on the HRC in this volume.

Lola Garcia-Alix is the Executive Director of IWGIA. She is a Spanish sociologist who has worked with IWGIA since 1990. She is responsible for IWGIAs International Human Rights Advocacy Programme.

UN HUMAN RIGHTS COUNCIL

The Human Rights Council was created by the General Assembly in 2006 as the principal human rights political body of the United Nations. The Council is composed of 47 elected member states that must. Its mandate is to promote universal respect for the protection of all human rights and fundamental freedoms for all, to address situations of human rights violations and to promote the effective coordination and mainstreaming of human rights within the United Nations system. The current mechanisms under the HRC that are specifically mandated to deal with the promotion and the protection of indigenous peoples' rights are the UN Special Rapporteur on indigenous peoples' rights (Special Procedures) and the Expert Mechanism on Rights of Indigenous Peoples (Advisory body). However, human rights mechanisms and bodies such as the Universal Periodic Review (UPR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR) and others are also relevant for indigenous peoples. The Human Rights Council meets three times a year for three weeks in Geneva.

24th session of the Human Rights Council

On 17 and 18 September 2013, the United Nations Human Rights Council (HRC) considered the reports on indigenous peoples' rights and held an interactive panel on the forthcoming World Conference on Indigenous Peoples, due to take place in 2014.

Panel on the World Conference

This panel took place in the context of the General Assembly's decision to hold a day and a half's high-level plenary session on indigenous peoples in September

2014. This plenary session will be entitled the “World Conference on Indigenous Peoples”. In preparation for the Conference, the indigenous organisations implemented a process that concluded with the Global Preparatory Indigenous Conference, held in Alta, on Sami territory, in June 2013,¹ and at which the Alta document² was adopted by consensus among the indigenous organisations from all regions present.

The Panel that took place during the Council session was chaired by the Vice President of the Human Rights Council and moderated by the Permanent Representative of Mexico. The first part of the panel focused on questions of format and procedure and the participants emphasised the importance of ensuring indigenous peoples’ full and effective participation throughout the whole process, including in the production of the final Conference document. Participants from indigenous organisations insisted that the indigenous preparatory processes had to be taken into account, as indicated in the resolution on Conference modalities. The second part of the panel related to possible themes and content, and a number of panellists voiced the opinion that the themes identified at Alta should be the main themes for consideration at the Conference.

In the interactive dialogue, the intervening states expressed their support for the World Conference and for full indigenous participation in this. There was a more uneven response to the proposal that the Alta document should form the basis for negotiating the final Conference document but the general tone of the interventions was positive.

Presentation of reports

On 18 September, the Council considered the presentation of reports and subsequent interactive dialogue with the Special Rapporteur (SR) on the rights of indigenous peoples (Prof. James Anaya) and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples (Chief Wilton Littlechild).

The Special Rapporteur explained the work undertaken in fulfilment of his mandate since his last presentation to the Council in 2012.³ He referred to his visits to Namibia and El Salvador, and indicated that he had also visited Panama (report forthcoming) and that he would visit Canada and Peru before the end of the year. The Rapporteur expanded upon the main issue of his last report to the Council on extractive industries and indigenous peoples.⁴ He indicated that, in the

case of natural resource extraction, the situation most aligned with internationally-recognised indigenous rights would be that such extraction should take place, if they wanted it to, under the responsibility of the indigenous peoples themselves. He also summarised the other substantive conclusions of his report, including the recommendations of states and companies in this regard.

Chief Littlechild presented the EMRIP's report on access to justice⁵ and summarised its content and the meetings of the 6th session of the Mechanism. He also noted the EMRIP's concern regarding the way in which the themes of its work were chosen, given the lack of an appropriate process for agreeing these. This was something that had become clear when negotiating the Resolution on indigenous peoples during the session. Lastly, Legborsi Saro Pyagbara, a member of the UN Voluntary Fund for Indigenous Peoples, presented a report on the work and situation of the Fund.

The presentation of reports was followed by an interactive dialogue. Namibia and El Salvador intervened first, as countries concerned by the SR's report. Numerous government delegations then spoke to note their recognition of the SR's work, highlighting the importance of the issue of extractive industries with regard to indigenous peoples' rights, stating their support for the report's recommendations and asking a number of questions in this regard.

Most of the delegates were in favour of continuing the mandates of both the SR and the EMRIP. One notable aspect was the positive reception, on the part of a number of Asian countries, of the SR's report on the consultation conducted in Malaysia on indigenous rights in the region, which could pave the way for a more constructive dialogue in the future given that many states in the region still question the existence of indigenous peoples.

Numerous indigenous organisations took the floor when it was the turn of observers to speak.

Parallel events

A parallel event also took place on 18 September, organised by the Office of the High Commissioner with the aim of facilitating a dialogue with the Special Rapporteur and considering the conclusions and recommendations of his report to the HRC on indigenous peoples' rights and extractive industries in more depth.

Resolutions of the Human Rights Council

At this session, the Council adopted two resolutions related to indigenous issues. Both were negotiated and presented during this session of the Human Rights Council. As in previous years, these two resolutions were sponsored by Mexico and Guatemala.

The first was a decision to renew the mandate of the Special Rapporteur on the rights of indigenous peoples. In this resolution, the Council repeated the importance and mandate of this position: most of the countries stated their support for its continuation. With regard to this issue, the OHCHR noted that Professor Anaya would complete his term in April 2014 and that a process had already been initiated to appoint his replacement. The second resolution on human rights and indigenous peoples necessitated various negotiations and gave rise to numerous debates. These debates revolved around the following issues:

The theme of the EMRIP's next thematic study

At its 6th session, held in July 2013, bearing in mind the proposals and comments made during the sessions, the EMRIP proposed further consideration of the issue of access to justice and indigenous peoples as its future area of study, given that it had not been possible to analyse a number of important aspects in the first report, for example, indigenous legal systems, reparations, etc.

To the surprise of the EMRIP members themselves, the indigenous representatives present and even many states, the text of the resolution presented by Mexico and Guatemala proposed that the EMRIP's next study should focus on the issue of the *promotion and protection of the rights of indigenous peoples in natural disaster risk reduction*. The EMRIP chair and the indigenous caucus held a number of meetings with the two sponsor states to express their disagreement with the procedure for choosing the theme of the study, given that the theme proposed by Mexico and Guatemala had been neither discussed nor agreed during the 6th session of the EMRIP. They also stated their serious concern regarding the issue of states deciding the theme of the study without taking the EMRIP's recommendations into account. They further noted their doubts as to the interest in the theme proposed and its connection with the substantive rights of indige-

nous peoples. Despite the objections made by EMRIP members and the representatives of the indigenous organisations that participated in the consultations on this resolution, Mexico and Guatemala maintained their proposed theme for EMRIP's study and for the Panel the next year in Council but agreed that the EMRIP should produce a second study on access to justice. The EMRIP and the indigenous representatives raised doubts as to whether they could produce two substantive reports with the available resources.

The way in which EMRIP's thematic studies are chosen is an extremely important topic that needs serious consideration on the part of EMRIP members and states. If the proposals made by the EMRIP are not taken into account by the states when choosing the thematic studies then the EMRIP will have serious difficulties in implementing its mandate as an advisory body to the Human Rights Council on indigenous peoples' rights.

The World Conference and the Alta Document

Regarding the future World Conference on Indigenous Peoples, the resolution refers specifically to the final Alta document, recommending that it be taken into account "alongside other contributions from the indigenous organisations" and that the themes identified in it should be considered as themes for the round tables and interactive panel that will form part of the World Conference. Some states tried to prevent the resolution from including a reference to the Alta document, while indigenous representatives who are members of the Global Coordinating Group stated that the Alta document should form the basis of the final Conference document itself.

Other issues

Apart from these issues, the resolution refers to the report that the Working Group on Business and Human Rights has produced regarding indigenous rights in this context, the Secretary General's report on indigenous participation in the United Nations, the change of name of the Voluntary Fund and consideration of the rights of indigenous peoples in the "post-2015 process" and in the elaboration of the Sustainable Development Objectives. ○

Notes and references

- 1 See article on the World Conference process in this publication.
- 2 The Alta document can be found at: <http://wqip2014.org/world-prep-comm-june-2013>
- 3 All the Special Rapporteur's reports can be found at <http://unsr.jamesanaya.org>
- 4 The SR's report on this is available at: <http://unsr.jamesanaya.org/docs/annual/2013-hrc-annual-report-en.pdf>
- 5 The EMRIP's report can be found at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-49_en.pdf

Lola Garcia-Alix is the Executive Director of IWGIA. She is a sociologist and responsible for IWGIA's International Human Rights Advocacy Programme.

UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty created at the Earth Summit in Rio in 1992 to tackle the growing problem of global warming and related harmful effects of a changing climate, such as more frequent droughts, storms and hurricanes, melting of ice, rising sea levels, flooding, forest fires, etc. The UNFCCC entered into force in 1994, and has near universal membership, with 195 countries as ratifying parties. In 1997, the Convention established its Kyoto Protocol, ratified by 184 parties, by which a number of industrialized countries have committed to reducing their greenhouse gas emissions in line with legally binding targets.¹

In 2007, the Convention's governing body, the Conference of the Parties (COP), adopted the Bali Action Plan. The elements of the Bali Action Plan (a shared vision, mitigation, adaptation, technology development and transfer, provision of financial resources and investments)² were negotiated in the Ad-Hoc Working Group on Long-Term Cooperative Action (AWG-LCA). Apart from the Kyoto Protocol's working group (AWG-KP) and the AWG-LCA, the Convention has two permanent subsidiary bodies, namely the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI).³ In December 2012, during the COP18 in Doha, the Ad-Hoc working group AWG-LCA concluded its work and most discussions were terminated or moved to the SBSTA and SBI. The COP18 adopted the Durban Platform for Enhanced Action (ADP) that will lead the COP discussions towards an overall binding agreement on emissions reductions in 2015.

Indigenous peoples are organized in the International Indigenous Peoples Forum on Climate Change (IIPFCC), which serves as a mechanism to develop the united positions/statements of indigenous peoples and continue effective lobbying and advocacy work in the UNFCCC meetings/sessions. Indigenous rights and issues cut across almost all areas of negotiation but have been highlighted most significantly within the REDD+

(Reducing Emissions from Deforestation and Forest Degradation), one of the mitigation measures negotiated under the AWG-LCA.

COP19

In November 2013, the UNFCCC COP19 took place in Warsaw, Poland. The two main outcomes of this COP were a “Warsaw international mechanism on loss and damage” and the “Warsaw Framework for REDD+”, which is a series of seven decisions on the implementation modalities for the REDD+ mechanism (see further below).

In its preparations, this COP was projected as a “finance COP”, as many hoped that the parties would come to an agreement on outstanding issues of how climate change mitigation and adaptation measures will be financed in the coming years. However, ultimately it was also called the “forest COP”, due to the decisions achieved under the REDD+ negotiations.

Indigenous peoples’ representatives in this COP were not as many as in previous years, partly due to the limited quotas assigned to observer organizations. However, they maintained their advocacy and lobbying work and, ultimately, gained a number of achievements.

Loss and damage

The “Warsaw international mechanism for loss and damage associated with climate change impacts” was adopted during COP19 after heated discussions between developed and developing countries; this was one of the key outcomes of the climate talks in Warsaw. This new mechanism on loss and damage is intended to promote approaches aimed at addressing the loss and damage associated with the adverse effects of climate change such as typhoons, floods, drought and so on in a comprehensive, integrated and coherent manner. Some countries continued to assert that the mechanism should be established as a third pillar of the Convention, after adaptation and mitigation, and not as a part of either mitigation or adaptation. However, many parties agreed that, while adaptation contributes to addressing loss and damage, in some cases more than adaptation is

needed, as loss and damage can go beyond the possibility of adapting to climate disasters. Furthermore, the mechanism will enhance our knowledge and understanding of comprehensive risk management in order to address the loss and damage associated with adverse climate change effects and strengthen coordination, synergies and dialogue among relevant stakeholders.

As stressed in *The Indigenous World 2013*, indigenous peoples' full and effective participation in this new mechanism is crucial. They are often living in marginalized, vulnerable and isolated areas with particularly fragile ecosystems and can hence be particularly impacted by extreme climate events, while at the same time having the least access to relief measures. The situation of the indigenous communities in the Philippines, which suffered considerably from the impact of typhoon Haiyan in the Philippines in 2013, clearly demonstrates the particular vulnerability that has to be taken into consideration by this mechanism. This event has pushed States to find a solution for the negotiations on loss and damage.

REDD+

Indigenous peoples have been strongly asserting that all REDD+ policies, strategies and actions need to respect their collective rights to forests, lands, territories and resources, in line with their customary systems of forest governance and management systems, cosmovisions, and in accordance with international standards and instruments such as the UNDRIP and ILO Convention 169. The remaining forests of the world, which are home to more than 400 million indigenous peoples, cannot be sustainably managed, conserved and effectively protected without protecting the collective rights of indigenous communities.

A major outcome of the COP was seven decisions relating to REDD+.

Indigenous livelihoods are not the problem but part of the solution

Indigenous peoples' representatives made interventions asserting their collective rights to land, territories and natural resources and gained some success in the discussion on drivers of deforestation in the COP report.

The issue of contention for indigenous peoples was the ambiguous language adopted by the SBSTA in June 2013. The text reads:

Noting that livelihoods may be dependent on activities relating to drivers of deforestation and forest degradation and that addressing these drivers may have an economic cost and implications for domestic resources.

Through IIPFCC, indigenous peoples suggested rephrasing the ambiguous language and making it clear that the traditional livelihoods of indigenous peoples, based on natural resources, are not drivers of deforestation. Indigenous livelihoods are not the problem but part of the solution to climate change (intervention at the opening of SBSTA). The text adopted by SBSTA in June 2013 had been sent to the COP for decision. Parties argued that opening up that text would further delay the negotiation process and, in the end, a compromise was reached by which an explanation was put in the COP report clarifying that the text does not mean to blame or accuse the traditional livelihoods of indigenous peoples. Countries such as Norway, the Philippines, Colombia, the US and Mexico acknowledged indigenous peoples' concerns and supported the inclusion of an interpretation note regarding indigenous livelihoods. The interpretation note in the COP19 report is the verbatim text provided by indigenous peoples' representatives. The COP adopted decision 15/CP.19 with the following understanding:

The third preambular paragraph in this decision should not be interpreted to imply that traditional livelihoods of indigenous peoples, based on natural resources, are drivers of deforestation. The livelihoods of indigenous peoples should not be negatively affected when addressing the drivers of deforestation and forest degradation.

This is a positive achievement for indigenous peoples. The real challenge now relates to how this will be translated at the national level by governments. Most of the REDD+ countries in Asia, for example, have policies on land use that consider forest-related traditional livelihoods, particularly shifting cultivation, as drivers of deforestation. These policies have resulted in food insecurity, loss of biodiversity and traditional knowledge. Unless the policies that criminalize indigenous peoples' livelihoods are reviewed through dialogue with indigenous peoples, and laws and policies to strengthen land tenure and forest governance are put in place, it will be very difficult to address deforestation and forest degradation.

Safeguard assessments for result-based finance

Another important decision in COP 19 was on results-based finance, which is closely related to the safeguards of the Cancún Agreement. The decision explicitly mentions that the submission of the most recent summary of information on how all of the safeguards have been addressed and respected is necessary before the parties can receive results-based finance. Parties are required to submit a summary of information on how the safeguards have been addressed and respected throughout the implementation of REDD+ activities. However, this decision does not provide clarity on how effectively and to what extent these safeguards will be addressed. It is not clear how participatory the process of developing Safeguard Information Systems (SIS) will be. It also lacks information on ways to redress the potential violation of indigenous peoples' rights resulting from REDD+ activities. Observers and parties have been invited to submit their proposals as to the type of information to be included in SIS. To gain the confidence of indigenous peoples, SIS should be anchored to the highest international standards on human rights and indigenous peoples' rights, such as those contained in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). It is crucial that SIS contain information on actions taken to avoid harm to indigenous peoples' rights, including the measure to respect the right to Free, Prior and Informed Consent (FPIC). It should also include information on how the full and effective participation of indigenous peoples is ensured throughout the process of gathering, analysing and producing information for the SIS. SIS reporting is necessary for, and should be integrated in all phases of, REDD+.

Non-carbon benefits of forest conservation

The COP 19 also recognized the importance of incentivizing non-carbon benefits for the long-term sustainability of REDD+ activities. In this context, COP 19 invited the parties and observers to make submissions on methodological issues related to non-carbon benefits resulting from the implementation of REDD+ activities by 26 March 2014. Through the IIPFCC, indigenous peoples and their respective organizations value forests as more than just carbon sink and storage and have always advocated for multiple forest functions, including social, cultural, spiritual, environmental and economic values, which are integral to their territorial governance and livelihood systems.

For indigenous peoples, the non-carbon benefits of forests include: sustainable livelihoods of indigenous peoples such as shifting cultivation, which also provides non-timber forest products and, ultimately, the food sufficiency and security of the communities; sustainable resource management for food production and enhancement of biodiversity (flora and fauna); spiritual identity, traditional knowledge and practices of indigenous peoples; source of medicinal plants and animals; and ecosystems services such as watershed, water supply, etc., among others. These tangible and intangible benefits are inter-linked and integral to the overall cohesion, governance, identity, cultural heritage and wellbeing of indigenous peoples who have forest landscapes as part of their territories. Furthermore, these non-carbon benefits are more valuable and critical for indigenous peoples' continued survival and development, including their present and future generations, as their identities, livelihoods and cultural heritage are historically rooted in their forests that are a part of their traditional territories. It is thus necessary and imperative to ensure recognition of the collective rights of indigenous peoples, especially to their forest, land, territories and resources, as part of the human rights framework in approaches to non-carbon benefits as well as to the overall design and implementation of REDD+. Likewise, incentivizing non-carbon benefits must take into account the historical roles and contributions of indigenous peoples and, in particular, the roles of indigenous women in forest protection and conservation with a view to providing for their needs and priorities in relation to their overall wellbeing. This will be one of the important discussions during 2014 in the context of REDD+.

Climate change and traditional knowledge of indigenous peoples

Indigenous peoples have had a very close relationship with their land, territories and resources for generations. They are living examples of low carbon dioxide-emitting lifestyles. At the same time, it is because of this close relationship with and dependence on the natural environment that the impacts of climate change are especially severe for indigenous peoples.

The Intergovernmental Panel on Climate Change (IPCC) is the leading inter-governmental body composed of scientists from all over the world tasked to provide scientific assessment of climate change every five to six years. It is recognized as the most authoritative scientific and technical voice on climate change and its assessment influences the negotiations of the UNFCCC.

The fourth Assessment Report (AR4) of the IPCC acknowledged indigenous knowledge as “an invaluable basis for developing adaptation and natural resource management strategies in response to environmental and other forms of change” (IPCC, 2007). The IPCC’s 32nd session (IPCC, 2010a) reaffirmed this recognition. The COP 16 adopted traditional and indigenous knowledge as a guiding principle of the Cancún Adaptation Framework (CAF).

The fifth IPCC Assessment Report will be published in 2014, in which Chapter 12, entitled “Human Security” will include a specific section on indigenous peoples and local and traditional forms of knowledge, stressing that indigenous, local and traditional forms of knowledge are a major resource for adapting to climate change. It will also acknowledge the problem of a neglect of traditional knowledge in policy and research and recommend the mutual recognition and integration of indigenous knowledge with scientific knowledge in order to increase the effectiveness of adaptation.

In Warsaw, many parties emphasized the close relationship between mitigation and adaptation and the importance of National Adaptation Plans (NAPs) in all countries; NAPs are the main vehicle for planning and implementing adaptation measures. Developing countries raised the concern that they would need the sufficient means to be able to implement the NAPs.

Indigenous peoples’ representatives have been calling for recognition of traditional knowledge in climate change since the beginning of their engagement in the UNFCCC. Now, there is a need to implement the guiding principle of the Cancún Adaptation Framework (CAF) and the findings of the IPCC at the national level. This should be done by focusing on indigenous knowledge and ensuring indigenous peoples’ full and effective participation in the planning, decision-making and implementing of national adaptation plans.

Green Climate Fund (GCF)

The Green Climate Fund was established at COP17 in 2011 and will be the main financing mechanism for climate change mitigation and adaptation activities.

In February 2013, indigenous peoples sent a letter to the Board of the Green Climate Fund, reiterating the importance of 1) full and effective participation of indigenous peoples as observers to the GCF; 2) a civil society and indigenous peoples’

advisory board; 3) the need for social and environmental safeguards, anchored in a rights-based approach; and 4) direct access to funding for indigenous peoples.⁴

During 2013, a first draft of the social and environmental safeguard standards was developed by an expert body to the GCF. This includes a section on indigenous peoples that makes reference to the UNDRIP. However, there is still a need to further strengthen the language on FPIC and on customary laws. This work will proceed during 2014 and it is crucial that indigenous peoples fully and effectively participate in the drafting of the safeguards, as projects that will be funded by the GCF will, in many cases, have a direct impact on their rights and livelihoods. ○

Notes and references

- 1 The Kyoto Protocol entered into force in 2005 and, during its first commitment period from 2008-2012, 37 industrialized countries and the European Union committed to reducing their greenhouse gas emissions by an average of 5 per cent by 2012, in relation to 1990 levels.
- 2 The Bali Action Plan can be downloaded from the UNFCCC website: <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3> (accessed on 9 March 2009).
- 3 Sources: UNFCCC's website (<http://unfccc.int/press/items/2794.php>), **International Institute for Environment and Development (IIED)**. 2009. *COP15 for journalists: a guide to the UN climate change summit* (available at: <http://www.iied.org/pubs/display.php?o=17074IIED>).
- 4 Attached to the letter was the official Statement that was adopted by the IIPFCC during COP18 in Doha in 2012. See *The Indigenous World 2013*.

Shree Kumar Maharjan is an indigenous Newar from Nepal. He is a conservation ecologist and the Deputy Secretary-General of the Asia Indigenous Peoples' Pact (AIPP).

Lakpa Nuri Sherpa belongs to the Sherpa indigenous group of Nepal and is currently working for AIPP as Regional Coordinator for the Climate Change Partnership with Indigenous Peoples

Kathrin Wessendorf, is a Swiss anthropologist working for IWGIA as Environment and Climate Program Coordinator.

CONVENTION ON BIOLOGICAL DIVERSITY

The Convention on Biological Diversity (CBD) is an international treaty under the United Nations. The CBD has three objectives: to conserve biodiversity, to promote its sustainable use and to ensure the equitable sharing of the benefits arising from its utilization.

The Convention has developed programs of work on thematic issues (such as marine, agricultural or forest biodiversity) and cross-cutting issues (such as traditional knowledge, access to genetic resources or protected areas). All these programs of work have a direct impact on indigenous peoples' rights and territories. The CBD recognizes the importance of indigenous knowledge and customary sustainable use for the achievement of its objectives (articles 8(j) and 10(c)) and emphasises their vital role in biodiversity. In 2010, COP10 adopted the *Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization*, the Aichi Targets and a new multi-year program of work.¹

The International Indigenous Forum on Biodiversity (IIFB) was established in 1996, during COP3, as the indigenous caucus in the CBD negotiations. Since then, it has worked as a coordination mechanism to facilitate indigenous participation in, and advocacy on, the work of the Convention through preparatory meetings, capacity-building activities and other initiatives. The IIFB has managed to get many of the CBD programs of work to consider traditional knowledge, customary use or the effective participation of indigenous peoples, and has been active in the negotiations regarding access to genetic resources in order to defend the fundamental rights of indigenous peoples that should be included therein.

In October 2013, the Convention on Biological Diversity (CBD) held two meetings in Montreal (Canada): the 8th session of the Working Group on Article 8j and related provisions (WG8J-8) and the 17th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-17).²

Working Group on Article 8(j)

The meeting of the WG8J³ in 2013 (WG8J-8) was co-chaired by an indigenous representative proposed by the International Indigenous Forum on Biodiversity (IIFB). A proposal for a group of Indigenous Friends of the Bureau, with regional representation, was also accepted. The agenda contained some substantive items, including consideration of the pending tasks of the Program of Work (PoW) on Article 8(j). The WG8J-8 decided on activities to move forward on task 15 (repatriation of traditional knowledge) and tasks 7, 10 and 12.⁴ It also adopted a draft plan of action on customary sustainable use, and held an in-depth dialogue on “connecting traditional knowledge systems and science, such as under the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) including gender dimensions”.⁵ The WG8J also considered the issue of *sui generis* systems and the recommendations made by the Permanent Forum on Indigenous Issues (UNPFII), including on the use of the term “indigenous peoples and local communities” instead of “indigenous and local communities”. The WG8J-8 adopted six recommendations.

Plan of action on customary sustainable practices

As mentioned in *The Indigenous World 2012*, at its seventh meeting, the WG8J had previously discussed developing a plan of action for Article 10, as a new component to the PoW on Article 8(j) and related provisions, with a focus on paragraph (c), which calls on Parties to “protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”. The proposed plan of action was submitted to the Eleventh Meeting of the Conference of the Parties (COP11), held in October 2012 in Hyderabad (India) (see *The Indigenous World 2013*). COP 11 gave some guidance to the WG8J with regard to developing the work on this issue further.

WG8J-8 agreed on the first phase of the plan of action to promote and support customary sustainable practices relevant to the conservation and sustainable use of biodiversity. This first phase includes the following three tasks:

To incorporate customary sustainable use practices or policies, with the full and effective participation of indigenous and local communities, into national biodiversity strategies and action plans, as a way of maintaining biocultural values and achieving human well-being, and to feed back on this in national reports.

To promote and strengthen community-based initiatives that support and contribute to the implementation of Article 10(c) and enhance the customary sustainable use of biodiversity, and to collaborate with indigenous and local communities in joint activities to achieve enhanced implementation of Article 10(c).

To identify best practices to:

- Promote the full and effective participation of indigenous and local communities and also their prior and informed consent for or approval of, and involvement in, the establishment, expansion, governance and management of protected areas that may affect them
- Encourage the application of traditional knowledge and customary sustainable use in protected areas
- Promote the use of community protocols in assisting indigenous and local communities to affirm and promote the customary sustainable use of biodiversity in protected areas, in accordance with traditional cultural practices and national legislation

The proposed decision also suggests some specific activities for implementing these tasks.⁶

Fight over terminology

As mentioned before, the WG8J dealt with a terminology issue that has been a contentious issue for indigenous peoples' organizations and representatives for many years. Indigenous representatives have consistently requested the use of the term "indigenous peoples and local communities" instead of the language of the Convention text "indigenous and local communities", given that indigenous peoples were recognized as such, with the same rights for all peoples, with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly in September 2007.

In order to take a decision in this regard, the Secretariat of the CBD requested Parties, indigenous peoples and other interested parties to submit their views.⁷

Based both on the UNDRIP and on the outcome document of the Rio+20 Conference (*The Future We Want*), which consistently uses the term indigenous peoples, a vast majority of the Parties affirmed their support for the change in terminology, on the understanding that it could be used in future COP decisions without changing the text of either the Convention or its Protocols.⁸ A small group of countries expressed some reservations, however, and an informal discussion group, chaired by the United Kingdom and Argentina, was established to reach an agreement. Considerations expressed by Canada, Japan, Indonesia, the UK and Sudan, among others, led to a disappointing compromise solution. The WG could not agree on a recommendation proposing the adoption of the new terminology but proposed that the COP commission a study on the legal and practical implications of the use of the term “peoples” in the Convention. COP12, to be held in Pyeongchang, Republic of Korea, in October 2014, would then make a decision based on the findings of the study. Both indigenous participants and many Parties expressed their disappointment at this result.⁹

Indigenous models for community-based monitoring

In spite of this drawback, the meeting of the WG8J showed once again the potential for indigenous peoples’ participation in international processes. Parties expressed their appreciation of many of the proposals submitted by the IIFB and the work it is doing on issues such as community-based monitoring and information systems (CBMIS).¹⁰ This work is aimed at complementing the information provided by other actors, incorporating indigenous knowledge with the aim of assessing and contributing to the solution of global problems, such as the loss of biodiversity or climate change impacts. The proposals of the Working Group on Indicators of the IIFB have also been recognized and incorporated into the common work to develop adequate indicators to measure progress in the Aichi Targets.

Parties called for a continuation of the WG8J, proposed that the topic for the next in-depth dialogue be either “CEPA: harmonizing traditional knowledge, biodiversity, cultural diversity and well-being (living well in harmony with Mother Earth)” or “Protecting shared traditional knowledge across borders: challenges and opportunities for regional cooperation and the revitalization of traditional knowledge”, and proposed further work on *sui generis* systems.

17th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-17)

SBSTTA-17 considered the following issues: scientific and technical needs related to the implementation of the Biodiversity Strategic Plan 2011-2020 and its Aichi Targets; ways of enhancing its role in assessing the effectiveness of measures taken in accordance with CBD provisions; contributions to the intersessional process of IPBES; and progress reports by the CBD Secretariat on the preparation of the fourth Global Biodiversity Outlook (GBO-4), description of ecologically or biologically significant marine areas (EBSAs) and ecosystem restoration. SBSTTA-17 identified key scientific and technical needs related to the implementation of the Strategic Plan and adopted three recommendations on: scientific and technical needs for implementing the Strategic Plan, new and emerging issues, and the IPBES.

New format impedes full and effective participation

For the SBSTTA-17, the CBD Secretariat experimented with a new format, composed of panel discussions during the first three days, in a plenary setting, without the elaboration of any draft recommendations. These were developed at a later stage in “friends of the chair” evening meetings. The final, general recommendations were discussed during the last two days. Because of this unusual set-up, indigenous peoples’ representatives and local community participants had problems in fully participating in the discussions and providing meaningful input. In its closing statement, the International Indigenous Forum on Biodiversity (IIFB) pointed out that the new format did not allow for its timely, full and effective participation. It reminded the Parties of the importance of such participation to achieve the Aichi Biodiversity Targets and, therefore, the need to improve this new format.¹¹ ○

Notes and references

- 1 <http://www.cbd.int/decisions/cop/?m=cop-10> and <http://www.cbd.int/abs/>
- 2 A summary of both meetings can be found at <http://www.iisd.ca/vol09/enb09611e.html>. Information on the main results and indigenous participation from FPP E-Newsletter, December 2013 (available at forestpeoples.org)

- 3 All the documents for the meeting can be found at <http://www.cbd.int/doc/?meeting=WG8J-08>. Final report of the meeting (UNEP/CBD/COP/12/5) at <http://www.cbd.int/doc/meetings/cop/cop-12/official/cop-12-05-en.pdf>. SBSTTA-17 documents can be found at <http://www.cbd.int/doc/?meeting=SBSTTA-17>, including the final report and outcomes.
- 4 An expert study on the implementation of the these tasks requested by the Secretariat can be found at <http://www.cbd.int/doc/meetings/tk/wg8j-08/information/wg8j-08-inf-05-en.pdf>. Task 12 calls for the WG8J to develop guidelines to assist Parties and Governments in the development of legislation and other mechanisms (such as national actions plans) to implement Article 8(j) and related provisions, stating that these mechanisms could include *sui generis* systems. Task 7 calls on the WG8J to develop guidelines for appropriate initiatives, such as legislation, to ensure (1) indigenous and local communities equitably share in benefits arising from the use of their traditional knowledge; and (2) that institutions interested in such knowledge obtain the “prior informed approval” of indigenous and local communities. Task 10 directs the WG8J to develop standards for reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.
- 5 The final report contains a full summary of the contents of the discussion in Annex II.
- 6 See recommendation 8/2 in the Final report of the meeting. Actors, timeframes and indicators for the implementation of these tasks are also suggested.
- 7 See the submission signed by several organizations and coordinated by FPP at <http://www.forestpeoples.org/sites/fpp/files/publication/2013/05/wg8j-submissionapril-2013english.pdf>
- 8 GRULAC, Togo, Grenada, Benin, Guinea, Gabon, Senegal, Finland, Australia, Spain, Thailand, Norway, Denmark, Brazil and Sweden.
- 9 In the final report, the WG8J
(...) *Affirms* that there is no intention to reopen or change the text of the Convention or its Protocols, while noting that many Parties expressed a willingness to use the terminology “indigenous peoples and local communities” in future decisions and secondary documents under the Convention and some Parties needed further information and analysis on the legal implications of the use of the term “indigenous peoples and local communities” for the Convention and its Protocols in order to take a decision;
4. *Requests* the Executive Secretary to prepare an independent analysis, as referred to in paragraph 3 above, including by obtaining advice from the United Nations Office of Legal Affairs, and to make it available to the Conference of the Parties at least 90 days before its twelfth meeting with the view to facilitating further consideration of the matter;
5. *Recommends* to the Conference of the Parties to:
 - a) Note the recommendations arising from the eleventh and twelfth sessions of the UNPFII and *request* the Executive Secretary to continue to inform the UNPFII on developments of mutual interest; and
 - b) Decide, at its twelfth meeting, based on the results of the analysis and advice, on the appropriate terminology to use in future decisions and secondary documents under the Convention.
- 10 Recommendation 8/1 welcomes “the work carried out under the IIFB Working Group on indicators and particularly community-based monitoring and information systems (CBMIS) approach”
- 11 The closing statement of the IIFB can be found at: <http://www.forestpeoples.org/sites/fpp/files/private/news/2013/11/IIFB-SBSTTA17-Closing-Final.pdf>

Patricia Borraz is a consultant working with Almaciga. Her work involves supporting the participation of indigenous organizations and representatives in multi-lateral negotiations, particularly on human rights, environmental and sustainable development issues, through capacity building, communications and information exchange and funding support for their attendance at meetings.

WORLD HERITAGE CONVENTION

The Convention concerning the Protection of the World Cultural and Natural Heritage (“World Heritage Convention”) is a multilateral treaty adopted by UNESCO’s General Conference in 1972. With 190 States Parties, it is today one of the most widely ratified international instruments. Its main purpose is the identification and collective protection of the world’s cultural and natural heritage of “outstanding universal value”. The Convention embodies the idea that some places are so special and important that their protection is not only the responsibility of the states in which they are located but also a duty of the international community as a whole. The Convention only concerns tangible, immovable heritage, i.e. natural and cultural heritage “sites”.

The implementation of the Convention is governed by the World Heritage Committee (WHC), an intergovernmental committee consisting of 21 States Parties. The WHC keeps a list of sites which it considers as being of outstanding universal value (“World Heritage List”) and ensures that these sites are adequately protected and safeguarded for future generations. Sites can only be listed following a formal nomination by the State Party in whose territory they are situated. Although a large number of World Heritage sites are fully or partially located in indigenous territories, indigenous peoples’ involvement in the work of the WHC has been very limited, as there are no mechanisms in place that allow for their meaningful participation.

The WHC is supported by three advisory bodies. The International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature (IUCN) provide technical evaluations of World Heritage nominations and help in monitoring the state of conservation of World Heritage sites; the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) provides advice and training related to the preservation of cultural sites. An indigenous proposal to establish a “World Heritage Indigenous Peoples Council of Experts” (WHIPCOE) as an additional advisory body to the WHC was rejected by the Committee in 2001.

The adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 has resulted in increasing attention being paid to the fact that the existing mechanisms and operational guidelines for the implementation of the World Heritage Convention are entirely inadequate to ensure respect for the rights of indigenous peoples in the various processes of the Convention. There have been several cases in recent years where indigenous rights were violated in the Convention's processes, not only at the country level in the management of specific World Heritage sites but also at the international level in the practice of the WHC, its Advisory Bodies and the Convention's Secretariat (the UNESCO World Heritage Centre). International bodies and mechanisms concerned with promoting indigenous peoples' rights, including the UN Permanent Forum on Indigenous Issues (UNPFII), the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the African Commission on Human and Peoples' Rights (ACHPR) and the UN Special Rapporteur on the rights of indigenous peoples have repeatedly urged the WHC and UNESCO to take corrective action.¹

In September 2012, the Danish Agency for Culture, the Government of Greenland and IWGIA together organized an International Expert Workshop on the World Heritage Convention and Indigenous Peoples in the context of the Convention's 40th Anniversary, celebrated by UNESCO under the theme of "World Heritage and Sustainable Development: the Role of Local Communities". The workshop was held in Copenhagen and resulted in a Call to Action containing recommendations on how to align the implementation of the World Heritage Convention with the UNDRIP. Workshop participants also produced a set of proposed amendments to the Convention's Operational Guidelines aimed at ensuring respect for indigenous peoples' right to free, prior and informed consent (FPIC) in the context of World Heritage designations.² The results of the expert workshop were presented to UNESCO at the Closing Event of the 40th Anniversary in November 2012 in Kyoto, Japan.

12th session of the UNPFII, New York, May 2013

The 12th session of the Permanent Forum began with a follow-up on the status of implementation of the Forum's previous recommendations in the areas of health, education and culture. The Secretariat prepared a working document for this purpose which underlines the need for the UNPFII to:

*continue to call on the WHC to review and revise its working methods and Operational Guidelines, with a view to ensuring that indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites.*³

UNESCO informed the Permanent Forum that the WHC had encouraged a reflection on World Heritage and indigenous peoples within the framework of the 40th Anniversary and that the State Party of Denmark had offered to hold a workshop under the theme “How to ensure that the implementation of the World Heritage Convention is consistent with the UNDRIP”. The results of the expert workshop in Copenhagen, UNESCO noted, would be reviewed by the WHC at its 37th session in Phnom Penh, Cambodia.⁴ The recommendations of the workshop were also highlighted in several other submissions to the Permanent Forum.⁵ In its report, the UNPFII welcomed the recommendations of the expert workshop and called on UNESCO and the WHC to “implement the [World Heritage] Convention in accordance with the rights enshrined in the UNDRIP, taking an approach based on human rights”. It encouraged the WHC “to consider... revisions to the [Convention’s Operational Guidelines] relating to the human rights of indigenous peoples, including the principle of FPIC”.⁶

The Permanent Forum also heard a joint statement of indigenous organizations from Tanzania denouncing the fact that “indigenous peoples’ lands are nominated as World Heritage sites under UNESCO without recognition of the livelihood and existence of indigenous people”. The statement draws attention to a serious hunger situation affecting the residents of the Ngorongoro Conservation Area (NCA) which, according to the statement, is directly linked to the NCA’s World Heritage status. It can be attributed to a ban on cultivation that the government imposed in 2009 without providing an alternative means of livelihood and food security for the local communities. “UNESCO and IUCN cannot deny culpability in the present hunger situation since they are known to have pressurized the government to re-impose the ban on cultivation owing to a perceived deterioration of the integrity of the NCA as World Heritage Site.”⁷

37th session of the WHC, Phnom Penh, June 2013

Several of the working documents prepared by the World Heritage Centre for the WHC's 37th session made reference to the results and recommendations of the expert workshop in Copenhagen. Most significantly, the workshop's Call to Action and proposed amendments to the Operational Guidelines were mentioned in a working document prepared for the agenda item "Revision of the Operational Guidelines". The World Heritage Centre suggested that the WHC reflect on the recommendations of the expert workshop to consider implications for future revisions of the Operational Guidelines. It recommended that "proposed changes to the *Operational Guidelines* to reflect issues related to human rights and indigenous peoples should be set into the context of the forthcoming UNESCO Policy on Engaging with Indigenous Peoples".⁸

During the session, the WHC established a working group on the Operational Guidelines which, among other things, briefly discussed the recommendations of the Copenhagen expert workshop. The discussions in this working group revealed strong reservations and opposition to including provisions related to indigenous peoples and their rights in the operational guidelines, including from countries that have endorsed the UNDRIP such as India, Algeria and France. In particular, several states expressed strong reservations about the concept, and doubts as to the definition, of "indigenous peoples". No country spoke up to dispel these reservations. Nevertheless, in the end, the WHC decided to "re-examine the recommendations of [the Copenhagen expert] meeting following the results of the discussions to be held by the Executive Board on the UNESCO Policy on indigenous peoples".⁹

As in previous years, the WHC added a number of sites to the World Heritage List that are of spiritual, cultural and/or livelihood importance to indigenous peoples, including Namib Sand Sea (Namibia), El Pinacate and Gran Desierto de Altar Biosphere Reserve (Mexico), Honghe Hani Rice Terraces (China) and Levuka Historical Port Town (Fiji). The nomination of the Mount Hamiguitan Range Wildlife Sanctuary (Philippines) was referred back to the State Party, among other reasons to allow the State Party to "continue the work with the National Commission for Indigenous Peoples (NCIP) to resolve any outstanding land claims to ensure there is broad based support for the nomination of the site and that any future use of the area does not compromise the Outstanding Universal Value of

the site”. Highly significant was the WHC’s decision to defer the nomination of Pimachiowin Aki (Canada), a collaborative effort between five Anishinaabe First Nations and two Canadian Provinces. The main reason for the deferral was the fact that, under the existing criteria, the WHC did not see a way to relate the cultural significance of the First Nations’ relationship with their lands to the World Heritage Convention. The WHC therefore asked the World Heritage Centre to examine options for changes to the criteria. This may be significant for future efforts by indigenous peoples’ to protect their lands under the World Heritage Convention.¹⁰

IUCN, the WHC’s Advisory Body on natural heritage, informed the Committee that it had concluded a review of its World Heritage evaluation processes in relation to questions related to communities and rights, in response to concerns that had been raised at the UNPFII. Based on this review, IUCN has made a number of improvements to its process of evaluating World Heritage nominations. The new measures include a standard screening form for all evaluation missions to identify potential rights issues, additional consultation with networks specialised in this field and the inclusion of an expert advisor on questions related to communities and rights in the membership of the IUCN World Heritage Panel. All of IUCN’s evaluation reports submitted to the WHC now contain a specific section entitled “Communities” to ensure that these questions are consistently addressed.¹¹ IUCN also informed the WHC that its members at the 2012 IUCN World Conservation Congress had adopted a specific resolution on these matters, entitled “Implementation of the UNDRIP in the context of the UNESCO World Heritage Convention”.

IUCN’s increased attention to the rights of indigenous peoples is also reflected in its reports to the WHC on the state of conservation of existing World Heritage sites. In 2013, this resulted in two decisions of the WHC making reference to the rights of indigenous peoples. The decision on the Río Plátano Biosphere Reserve (Honduras) “encourages the State Party to put in place further measures to provide greater tenure and livelihood security for indigenous communities and to ensure respect for their rights”. The decision on Talamanca Range-La Amistad Reserves / La Amistad National Park (Costa Rica /Panama) requests the States Parties to “ensure that any further planned economic development that could potentially negatively affect the property... counts with all elements of due process to achieve Free, Prior and Informed Consent by indigenous

peoples having territorial rights in the affected lands".¹² This is the first time that a decision of the WHC has referred to the FPIC of indigenous peoples.

Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples, Alta, June 2013

In September 2014, the UN General Assembly will hold a two-day high-level plenary meeting, to be known as the World Conference on Indigenous Peoples (WCIP). A global indigenous preparatory conference for the WCIP took place in Alta, Norway in June 2013 in order to develop the collective recommendations of indigenous peoples for inclusion in the final outcome document of the WCIP. One of the recommendations contained in the Alta Outcome Document¹³ is directly related to World Heritage:

We Indigenous Peoples and Nations... Call on the World Heritage Committee, UNESCO and States to revise the World Heritage conventions operational guidelines to ensure the rights and territories of Indigenous Peoples are respected in the nomination, designation, management and monitoring of world heritage sites incorporating or affecting their lands, territories, resources, ice, oceans and waters, and mountains and forests and to ensure that Indigenous Peoples' right to free, prior and informed consent is obtained in world heritage decision making processes.

54th session of the ACHPR, Banjul, October/November 2013

At the end of its 54th session, the African Commission sent a letter¹⁴ to the World Heritage Centre as a follow-up to its Resolution No. 197 of 2011 in which it had expressed concern over the designation of Lake Bogoria as a World Heritage site without the FPIC of the Endorois through their representative institutions.¹⁵ In the letter, the ACHPR "reiterate[d] its concern that Lake Bogoria is one of the numerous World Heritage sites in Africa that have been inscribed without the FPIC of the indigenous peoples in whose territories they are located, and whose management frameworks are not consistent with the principles of the UNDRIP". The ACHPR again called upon the WHC to review and revise its current procedures

to ensure consistency with the UNDRIP and respect for indigenous peoples' rights in the management of World Heritage areas. It further called upon the Committee to collaborate with the Government of Kenya, UNESCO and IUCN to ensure the effective participation of the Endorois in the management and decision-making of the World Heritage area and the full implementation of the African Commission's Endorois Decision.¹⁶

A related letter was sent to UNESCO by the Endorois Welfare Council (EWC) and partner organizations requesting that UNESCO and IUCN raise the Endorois' concerns with the WHC in the form of a State of Conservation (SoC) report.¹⁷ The World Heritage Centre responded to these letters by saying that "efforts continue to be made by the World Heritage Centre, the Advisory Bodies and the WHC to address indigenous peoples' rights, interests and concerns in the implementation of the World Heritage Convention. Regarding the specific issue of the Lake Bogoria and the Endorois... the World Heritage Centre is further discussing with IUCN... on the possibility to address the issue through the SoC processes with the State Party of Kenya." The Centre encouraged the Endorois and the Kenyan national authorities to engage in "dialogue in order to seek resolution to the situation, including strengthened involvement of the Endorois through the Endorois' representative institutions in the management and decision-making processes of the property".¹⁸

37th General Conference of UNESCO, Paris, November 2013

The 37th UNESCO General Conference is notable as it adopted a new *Medium Term Strategy* (2014-2021) for the organization, which states in paragraph 20:

The needs of indigenous peoples will also be addressed by UNESCO's action. They continue to be disproportionately represented among the most marginalized and impoverished segments of society, while being recognized as the stewards of the major part of the world's biological, cultural and linguistic diversity. Responding to the high-level UNGA World Conference on Indigenous Peoples in 2014, the Organization will implement the UNDRIP across all relevant programme areas.

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Notes and references

- 1 For a compilation of the three UN mechanisms' recommendations concerning World Heritage see <http://whc.unesco.org/document/120075>.
- 2 The outcome documents of the expert workshop, as well as the workshop report, are available at <http://whc.unesco.org/en/events/906/>.
- 3 UN Doc. E/C.19/2013/19, para. 58.
- 4 UNESCO's Contribution to the 12th Session of the UNPFII, http://www.un.org/esa/socdev/unpfii/documents/2013/agencies/2013_UNESCO.pdf.
- 5 *Inter alia*, a written submission by the governments of Denmark and Greenland, <http://www.un.org/esa/socdev/unpfii/documents/2013/states/denmark-greenland.pdf>; and a joint statement by IWGIA and others on the implementation of the UNDRIP in the context of the World Heritage Convention, <http://www.docip.org/gsd/collect/cendocdo/index/assoc/HASHd640/80685d5b.dir/PF13lola373.pdf>.
- 6 UN Doc. E/2013/43-E/C.19/2013/25, para. 23.
- 7 <http://www.docip.org/gsd/collect/cendocdo/index/assoc/HASH0127/b9cb2b60.dir/PF13edwardp173.pdf>.
- 8 See Docs. WHC-13/37.COM/5A (Report of the World Heritage Centre), WHC-13/37.COM/12 (Revision of the Operational Guidelines), and WHC-13/37.COM/13 (Draft Policy Guidelines).
- 9 WHC Decision 37 COM 12.II, para. 7. According to the World Heritage Centre, the WHC will examine the recommendations of the Copenhagen workshop again at its 39th session in 2015.
- 10 See Doc. WHC-13/37.COM/20 (Decisions adopted by the World Heritage Committee at its 37th session).
- 11 See Doc. WHC-13/37.COM/INF.8B2 (IUCN World Heritage Evaluations 2013), pp. ii-iii.
- 12 See Doc. WHC-13/37.COM/20.
- 13 Available at <http://wcip2014.org/1530>.
- 14 Letter from Commissioner Soyata Maiga, dated 5 November 2013, addressed to the Director of the World Heritage Centre, Kishore Rao (on file with IWGIA).
- 15 <http://www.achpr.org/sessions/50th/resolutions/197/>.
- 16 *Communication 276/2003 - Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (Decision of the ACHPR, November 2009).
- 17 Letter from EWC, Minority Rights Group International, IWGIA and Forest Peoples Programme, dated 18 November 2013. Available at http://www.iwgia.org/news/search-news?news_id=870.
- 18 Response letters from the Director of the World Heritage Centre to the ACHPR and the EWC, dated 3 December 2013 (both on file with IWGIA).

Stefan Disko is currently co-editing a book on *World Heritage Sites and Indigenous Peoples' Rights* to be co-published by IWGIA, the Forest Peoples Programme and the Gundjeihmi Aboriginal Corporation. He holds an M.A. in ethnology and international law from the University of Munich and an M.A. in World Heritage Studies from the University of Cottbus.

BUSINESS AND HUMAN RIGHTS

In June 2011, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (hereafter: “the UN-GP”). That was the first time a UN intergovernmental body had endorsed a normative document on the very divisive issue of how the human rights responsibility of transnational and other enterprises can be framed in international law. The Council’s endorsement effectively established the Guiding Principles as the authoritative global standard for preventing and addressing adverse impacts on human rights arising from business-related activity.

The Council also decided to establish a Working Group on the issue of human rights and transnational corporations and other business enterprises (the Working Group) with a mandate, inter alia, to promote the effective and comprehensive dissemination and implementation of the Guiding Principles worldwide. At its 18th session in September 2011, the Council appointed five independent experts, of balanced geographical representation, for a period of three years, as members of the Working Group. The Working Group started its work in January 2012. The Working Group meets three times a year in closed sessions, within which it can organise stakeholder consultations. Furthermore, it is responsible for organising a yearly Forum on Business and Human Rights.¹ One of its members is Russian veteran indigenous rights activist Pavel Sulyandziga.

As reported in *The Indigenous World 2013*, the Working Group decided during the first Forum on Business and Human Rights to declare the issue of indigenous peoples a priority in the work of implementing the Guiding Principles and to prepare its first thematic report to the UN General Assembly in 2013 on the topic of indigenous peoples’ human rights and business.

Report to the UN General Assembly on Indigenous Peoples, Business and Human Rights

In its work on the draft report to the UN General Assembly, Working Group member Pavel Sulyandziga met with a number of indigenous representatives and organised side-events during international meetings in order to include an indigenous perspective in his report. Dialogue meetings were held in Salekhard for Russia, in Kuala Lumpur for the Asian region, during the UN Permanent Forum on Indigenous Issues in New York and at the indigenous peoples' preparatory conference to the World Conference on Indigenous Peoples in Alta, Norway. The final report was released on 7 August 2013² and presented during the 68th Session of the UN General Assembly on 28 October 2013.³ It analyses the UNGP in an indigenous context, mainly focusing on the need for businesses and governments to fully embrace indigenous rights, as set out in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as the framework of reference on indigenous peoples and business, as well as on the need to fully acknowledge and consider indigenous peoples' customary law and the principle of Free, Prior and Informed Consent (FPIC).

During the interactive discussion in the Third Committee of the UN General Assembly, South Africa expressed its concern over the UN's continued reliance on voluntary means of addressing the human rights impact of businesses and underlined the need for additional capacity building for judges and courts so that they are able to deal with indigenous peoples' business-related grievances. It also expressed its support for a binding international instrument on business and human rights. The European Union and other European States expressed their strong support for the UNGP but were clearly in favour of a voluntary approach. Switzerland drew a connection with the Voluntary Principles on Security and Human Rights and the need to ensure indigenous peoples' access to non-judicial remedies.

Indigenous peoples, who gathered prior to the 2nd UN Forum on Business and Human Rights (see below), broadly welcomed the report, especially its reaffirmation of their fundamental rights and the principle of Free, Prior and Informed Consent, and underlined the need for the UN system to promote and implement the recommendations contained in the report. However, the Report's shortcomings have also been highlighted from a civil society perspective. According to the NGOs Dejusticia, Conectas and Justicia Global, the report "neglects the fact that

in certain circumstances, international human rights law requires that free, prior informed consent (FPIC) be obtained from indigenous peoples”. Moreover, the Report states that the FPIC does not necessarily require unanimity and does not distinguish clearly enough between consultation and consent. Further, the groups criticize the report for being “unduly sympathetic to the views of States and corporations and is more concerned with listing the difficulties faced by such actors in conducting consultation processes than in exposing the harm caused to indigenous peoples every time their right to free, prior and informed consent and/or consultation is not respected.”⁴

Country visits

The Working Group carried out two country visits during 2013, to Ghana and the United States. A visit to Russia was scheduled for late 2013 but postponed, officially due to visa complications. It is unlikely to take place before the current mandate expires at the end of 2014.

During its country visit to the United States, the WG visited the Navajo Nation in West Virginia and looked at the conflicting issue of surface coal mining in the region. The Working Group heard allegations from the Navajo Nation on human rights impacts in the context of the environment, land and water, as well as with regard to the cultural and religious significance of this. In its statement at the end of the visit, the Working Group concluded: “The Working Group suggests that the UNGPs and the *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* offer concrete guidance to the Government and Congress on how to address remaining gaps”.⁵ The Working Group also noted that, in the context of indigenous peoples, companies often have a poor understanding of a human rights framework and recommended that: “There should be more awareness and training of businesses on relevant national and international standards, and peer-exchange with companies that have experience in implementing the UNGPs and UNDRIP”.⁶

Regional forum in Medellín

The Working Group held its first Regional Forum on Business and Human Rights in Latin America and the Caribbean from 28-30 August in Medellín, Colombia.

According to the Working Group, the Forum was intended to be a space in which multiple actors could create a constructive dialogue on how governments and companies are addressing the impacts of business activities on human rights in the region. More than 400 people from 27 countries attended this regional Forum. The expectations of civil society and indigenous organisations from the region, however, were frustrated. According to them, of the 47 people who participated in panels, only 10% came from communities affected by business activities or human rights NGOs working with such communities, in contrast to 43% who represented companies or consulting firms, and 26% who represented governments.⁷ Funding was not available to enable the participation of civil society and indigenous peoples. Moreover, panels were guided by strict rules which prevented civil society and indigenous peoples from raising questions before the group. Finally, as civil society organisations expressed after the Forum, despite requests from victims' organisations and NGOs to move forward on effective standards and practices aimed at remedying violations of human rights caused by businesses, the Working Group upheld a narrow interpretation of their mandate, concentrating exclusively on the dissemination of the UN Guiding Principles on Business and Human Rights and best practices. By contrast, civil society organisations have maintained that the UN Human Rights Council's resolution establishing the Working Group's mandate leaves room for more active engagement to address and mitigate ongoing human rights violations.⁸

The 2nd UN Forum on Business and Human Rights

The second UN Forum on B&HR took place from 3-4 December 2013. While these dates were set aside for the official meeting, a pre-Forum meeting day was also organised by the Working Group, with the purpose of providing information on the UN Guiding Principles, as well as allowing stakeholders to organise their pre-forum meetings in order to discuss issues in advance of the meeting. In this context, indigenous peoples were identified as a separate stakeholder group from civil society organisations and hence organised their own meeting. Indigenous peoples also decided to organise a Caucus meeting, which was to be completely independent of the UN Forum and the WG, which took place on 1 December and included around 30 indigenous representatives and support organisations. During this Caucus meeting, indigenous representatives received an introduction to

the UNGP, and were informed about the WG's report to the UN General Assembly. They also discussed their strategy for the Forum meeting and developed a set of recommendations.

During the Stakeholder pre-Forum session, which was organised by the Asia Indigenous Peoples Pact (AIPP) and the Andean Coordinating Body of Indigenous Organisations (CAOI), presentations were made by the UN Special Rapporteur on the Right of Indigenous Peoples, the chair of the UN Permanent Forum on Indigenous Issues, the secretary to the Expert Mechanism on the Rights of Indigenous Peoples, a representative of the International Council on Mining and Metals (ICMM) and the Norwegian Contact Point of the OECD. Indigenous peoples decided that their stakeholder meeting would be open to everybody in order to encourage a dialogue with those interested in an indigenous position⁹.

Luis Vittor, from CAOI, presented indigenous peoples' issues and recommendations at the opening of the official Forum. Furthermore a 1 hour panel took place on the issue of "Indigenous peoples and business operations: taking steps towards implementing the UN Guiding Principles" with the participation of indigenous, business and state representatives.

It should also be stressed that indigenous representatives were present on a number of other panels that were not strictly dealing with indigenous peoples' rights and so the concerns and issues of indigenous peoples were raised throughout the Forum meeting. However, considering that the total number of participants in the Forum was around 1,500, indigenous peoples were few and there is still a need for further participation by indigenous representatives in order to truly use the potential of the Forum.

Other developments

A number of other developments took place during 2013 that are important in the context of indigenous peoples, business and human rights. The UN Global Compact, a private sector policy initiative within the United Nations, undertook the development of a reference guide to the UN Declaration for business enterprises, which "aims to increase understanding among business of the rights of indigenous peoples and to provide practical suggestions for respecting and supporting these rights".¹⁰ The guide was developed with input from indigenous peoples and was officially launched during the UN Forum in December 2013.

The British-based NGO, Philippines Indigenous Peoples Link (PIPLinks), launched its first report on indigenous peoples' and business enterprises' perspectives on how to make the principle of Free, Prior and Informed Consent (FPIC) a reality, on the basis of comprehensive research conducted in May 2013.¹¹ The International Council on Mining and Metals, which was part of the project, adopted a position statement on indigenous peoples giving, among other things, limited recognition to the principle of FPIC.¹² ○

Notes and references

- 1 The Working Group's mandate and strategy of work can be found on its website: <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>
- 2 The full report is available for download at <http://undocs.org/A/68/279>
- 3 UN webcast of session at <http://webtv.un.org/meetings-events/general-assembly/main-committees/3rd-committee/watch/third-committee-30th-meeting-68th-general-assembly/2780828312001>, written statement at <https://papersmart.unmeetings.org/media2/703514/statement-by-mr-pavel-sulyandziga-item-69.pdf>
- 4 **Dejusticia, Conectas and Justicia Global, 2014**: Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises: A review of the first two and a half years of work. November 2014, available at http://www.conectas.org/arquivos/editor/files/6_Dej_Con_JG_WG2years_Nov2013.pdf
- 5 Statement at the end of visit to the United States. UN Working Group on Business and Human Rights, Washington D.C., 1 May 2013: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13284&LangID=E>
- 6 Ibid.
- 7 Declaration of Civil Society Organizations that Participated in the First Regional Forum on Business and Human Rights in Latin America and the Caribbean. Available at <http://www.business-humanrights.org/Links/Repository/1022144>. It should be recalled that the WG is a special procedure of the UN Human Rights Council. As such, it should address individual complaints, an activity which has not been prioritized since its creation.
- 8 Ibid.
- 9 Other stakeholders, such as for example Business, were more closed in terms of who could participate in their meetings.
- 10 http://www.unglobalcompact.org/Issues/human_rights/indigenous_peoples_rights.html
- 11 <http://www.piplinks.org/report%3A-making-free-prior-%2526amp%3B-informed-consent-reality-indigenous-peoples-and-extractive-sector>
- 12 <https://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining>

José Aylwin is a lawyer from Chile. He currently acts as Co-Director of Observatorio Ciudadano (Citizens Watch).

Johannes Rohr is a historian and independent consultant working on indigenous peoples' rights. From 2012 on, he has supported UN working group member Pavel Sulyandziga in his efforts to promote indigenous rights in the business context.

Kathrin Wessendorf is a social anthropologist from Switzerland and works on business and human rights issues for IWGIA.

POST-2015 DEVELOPMENT AGENDA AND THE SUSTAINABLE DEVELOPMENT GOALS

In 2000, world leaders made a promise to end poverty by 2015 with a global plan called the Millennium Development Goals (MDGs). Massive efforts and progress have been made but there is still a long way to go to reach the goal and many people have been left behind in the process, including indigenous peoples. The post-2015 development framework refers to the process that will follow the MDGs.¹ In 2012, the Rio+20 UN Conference on Sustainable Development decided to establish an inclusive and transparent intergovernmental process open to all stakeholders with a view to developing global Sustainable Development Goals (SDGs) that will address the challenges and shortcomings of the MDGs.² It is widely agreed that indigenous peoples were not given enough attention in MDG-related processes. They were excluded from the process and are mentioned in neither the goals nor their indicators. Dealing with issues directly related to indigenous peoples, such as ending poverty, ensuring human rights and inclusion for all, ensuring good governance, preventing conflict, ensuring environmental sustainability and protection of biodiversity and climate change, the post-2015 development framework and the SDGs will, over the next decade, set the standards for global sustainability and development aid and will directly influence the lives of millions of indigenous peoples. In the post-2015 development process, indigenous peoples aim to ensure that the SDGs reflect indigenous peoples' rights and their relationship with their lands, territories and natural resources, and take their special vulnerabilities and strengths into consideration.

Processes and reports leading to the SDGs

The Sustainable Development Goals (SDGs) will target the whole world and not only developing countries, as the MDGs did. In accordance with the Rio outcome document, the SDG discussions will include civil society and invite Major Groups and other stakeholders to take part in the deliberations.³

In 2013, indigenous peoples' Major Group (IPMG) engaged in many post-2015-related development processes and contributed to the development of the SDGs which will, however, be drafted in 2014 and not negotiated before 2015.

The Open Working Group

The Rio+20 outcome document "The Future we Want" stipulated the creation of an intergovernmental Open Working Group (OWG)⁴ with a specific mandate to propose actual goals, targets and indicators. The OWG has been commissioned to submit a report to the 68th (2014) session of the UN General Assembly containing a proposal for Sustainable Development Goals, for consideration and appropriate action.⁵

In accordance with the Rio+20 outcome document, the OWG has decided that its working methods, including the development of modalities, should include the full involvement of relevant stakeholders and expertise from civil society, the scientific community and the UN system, in order to provide a diversity of perspectives and experience. In practice, this means that all nine UN Major Groups and other stakeholders have been able to participate and engage in the eight OWG sessions held in 2013.

As a Major Group, indigenous peoples have had access to contribute directly to the OWG discussions during 2013. These discussions have been thematic and have discussed potential goals, targets and indicators for the SDGs. The IPMG has participated in the OWG sessions, intervened in the daily Major Group morning hearings with the co-chairs, nominated and presented IP speakers on relevant topics such as governance, environmental sustainability, human rights and inclusion for all, etc. During the OWG sessions, the IPMG has also lobbied member states and other stakeholders such as the Women's Major Group to include indigenous peoples' rights in the SDGs.

In the beginning of 2014, the co-chairs (from Kenya and Hungary) of the Open Working Group drafted and circulated two documents to be further discussed during the spring of 2014. One is a stocktaking document⁶ that reflects on the previous eight discussions. The other and perhaps the most interesting one is the focus area document,⁷ which highlights 19 focus areas that will serve as the basis for the SDGs in the final report to be completed in June 2014 and presented to the UNGA in September 2014.

Global thematic consultations

During 2013, the United Nations Development Group was mandated by UN member states to initiate an inclusive dialogue on post-2015. They therefore organized⁸ a set of 11 thematic consultations on conflict and fragility; education; environmental sustainability; governance; growth and employment; health; hunger, food and nutrition; inequalities; population dynamics; energy; and water.⁹ Each thematic consultation was led by two or more UN agencies, working closely together with representatives from civil society, the private sector and academia as well as with the co-hosting government. The consultations were aimed at exploring what role each theme could play in the SDG framework, different ways in which they could best be addressed, and the interlinkages between them. The IPMG participated in the consultations on inequality, governance and environmental sustainability.

Other relevant work streams and documents contributing to SDGs

Apart from the OWG, there are several other relevant work streams and documents that will contribute to developing the SDGs. In May 2013, the High-level Panel of Eminent Persons established by the UN Secretary-General to provide guidance and recommendations on the post-2015 development agenda launched its **High-level Panel Report**¹⁰ with a vision and recommendations on a global development agenda beyond 2015. Indigenous peoples participated, among other meetings, in a regional consultation “Realizing the Future We Want in Latin America and the Caribbean: Towards a post-2015 development agenda”.¹¹

Another report that has received attention is the report of the **Sustainable Development Solutions Network (SDSN)** published in June 2103. It presents ten priority challenges for sustainable development.¹² Unfortunately, indigenous peoples were only mentioned once in the report under the heading of achieving gender equality, social inclusion and human rights for all. There are no direct goals, targets or indicators related directly to indigenous peoples. At the beginning of 2014, the SDSN will add a long list of indicators to the report which, for a short period, will be open for comments from the general public.

The UN Secretary-General has also established a **Task Team** to support the process by providing analytical thinking and substantial inputs. For example, the

Task Team published its first report entitled “Realizing the Future We Want for All”¹³ in June 2012. The report outlined the vision of the UN system for the global development agenda beyond 2015. Moreover, the Task Team is currently engaged, as an inter-agency technical support team (TST),¹⁴ in providing technical support to the OWG, including analytical input, background material and expert panelists.

Indigenous peoples’ contribution to developing the SDGs

During 2013, the IPMG actively contributed to the OWG sessions and has also developed targeted inputs to the process in order to push for indigenous peoples’ rights and inclusion. A technical workshop in New York (January 2014), arranged by the IPMG organizing partners (Tebtebba and International Indian Treaty Council) and IWGIA, led to the development of an **indigenous peoples’ position paper** and a matrix defining ideal goals, targets and indicators, which will be widely distributed for further comment and feedback during 2014.

The position paper defines eight focus areas for indigenous peoples: end poverty; ensure human rights and inclusion for all; ensure good governance and effective institutions; prevent conflict and promote peaceful societies; ensure environmental sustainability and protection of biodiversity; climate change, energy and disaster risk reduction; create and maintain global partnerships; and ensure cultural diversity in sustainable development.

In collaboration with indigenous partners and experts, IWGIA has closely followed the SDG process and drafted a number of **informative briefing** notes on specific themes related to the SDG process and indigenous peoples’ rights and situation. The briefing notes are a valuable resource in the work of raising awareness of indigenous rights in the SDG and post-2015 development process. The notes are intended for member states, UN agencies, relevant Major Groups and other stakeholders.

Next steps towards post-2015

There is much work ahead for indigenous peoples if they are to ensure that their concerns and contributions are taken into consideration in the post-2015 development framework and their rights reflected in the SDGs.

Looking beyond 2013, there are new work streams worthy of note. In order to encourage the global community to work towards building a consensus and elaborating concrete actions for the implementation of the Post-2015 Development Agenda, the **President of the UN General Assembly** has decided to host a series of high-level meetings and thematic debates during the course of 2014. The indigenous Major Group intends to participate in these meetings.

Another process that will provide political leadership and recommendations for sustainable development is a universal intergovernmental **High-level Political Forum (HLPF)**. The HLPF is another critical outcome of Rio+20. The forum is something completely new that will ensure that sustainable development remains high on the agenda of world leaders and, ultimately, stimulate timely and effective follow-up to the Rio+20 Conference. The modalities for participation will be agreed between now and the first session, under the auspices of ECOSOC in summer 2014 (June, to be confirmed). ○

Notes and references

- 1 More on the general process of the post-2015 development process here: <http://sustainabledevelopment.un.org/index.php?menu=1561>
- 2 <http://www.unctd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf>
- 3 Read more about the SDGs here: <http://sustainabledevelopment.un.org/index.php?menu=1300>
- 4 <http://sustainabledevelopment.un.org/owg.html>
- 5 The reports and relevant documents resulting from the OWG session can be downloaded from: <http://sustainabledevelopment.un.org/index.php?menu=1549>
- 6 <http://sustainabledevelopment.un.org/content/documents/3238summaryallowg.pdf>
- 7 <http://sustainabledevelopment.un.org/focussdgs.html>
- 8 Apart from the thematic consultations, the United Nations Development Group has initiated consultations at the national and regional level.
- 9 <http://www.worldwewant2015.org/>
- 10 <http://www.post2015hlp.org/featured/high-level-panel-releases-recommendations-for-worlds-next-development-agenda/>
- 11 <http://www.un-ngls.org/spip.php?article4283>
- 12 <http://unsdsn.org/resources/publications/an-action-agenda-for-sustainable-development/>
- 13 http://www.un.org/en/development/desa/policy/untaskteam_undf/report.shtml
- 14 <http://sustainabledevelopment.un.org/index.php?menu=1528>

Ida Peters Ginsborg is a Danish sociologist working for IWGIA, following and supporting indigenous peoples' full and effective participation in the post-2015 development process.

THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

Respect for indigenous peoples' rights is of particular importance for the Inter-American Human Rights System (IHRS) and it has therefore developed relevant jurisprudence that has - through decisions to Member States of the Organisation of American States (OAS) - enabled individual and collective rights to be recognised, victims to be compensated and guidelines to be produced with the aim of preventing or resolving matters of domestic jurisdiction.¹ The Inter-American Commission on Human Rights (IACHR) has, in particular, used its different mechanisms to protect indigenous peoples' rights, and this area of its work is being developed primarily through its Rapporteurship on the Rights of Indigenous Peoples, created in 1990.

IACHR decisions on petitions and cases relating to indigenous peoples

During 2013, the IACHR adopted merits reports in two cases relating to indigenous rights over their ancestral lands and natural resources.

First, the case of the Garífuna community of Punta Piedra and its members vs Honduras was resolved. This referred to the state's international responsibility for violating the right to property as a consequence of failing to fulfil the duty to prevent the invasion of non-indigenous persons onto their ancestral communal lands, recognised by the state with full legal title. This titling was conducted without a process of appropriate regularisation, despite it being common knowledge that parts of the community's lands and territories were occupied by a group of settlers, particularly the Miel River and forest areas.

The case was referred to the Inter-American Court on Human Rights on 1 October 2013 because the Commission considered that the state had not complied with the recommendations contained in its Merits Report on the case. In this report, the IACHR recommended that the state promptly adopt the necessary

measures to make the communal property right and possession of the Garífuna community of Punta Piedra and its members effective with regard to their ancestral territory. In particular, the Commission recommended adopting the necessary legislative, administrative or other measures to achieve and ensure that the lands do not continue to be invaded or occupied by people outside of the Punta Piedra community, in accordance with their customary law, values, habits and customs, and to guarantee that the community members can continue to live their traditional way of life, in accordance with their cultural identity, social structure, economic system, and distinctive customs, beliefs and traditions.²

The IACHR also adopted a Merits Report on the case of the indigenous Kallina and Lokono peoples of the lower Marowijne River vs Suriname, which is of a confidential nature as it is currently at the stage of monitoring of the Commission's recommendations.

During 2013, the IACHR also approved eight admissibility reports on petitions relating to the rights of indigenous peoples, communities and individuals, filed with regard to different countries around the region.³

Country monitoring

In 2013, the IACHR and its Rapporteurship on the Rights of Indigenous Peoples continued to monitor the situation of indigenous peoples on the American continent through different mechanisms such as country visits, hearings, request for information from states and press releases.

Country visits

Four country visits were conducted in 2013 during which information was gathered on the human rights situation of indigenous peoples.

From 23 to 25 January 2013, the IACHR conducted a working visit to **Suriname** to examine the situation of women's and indigenous rights. The delegation comprised Commissioner Dinah Shelton, Rapporteur on the Rights of Indigenous Peoples, Commissioner Tracy Robinson, First Vice-President and Rapporteur on the Rights of Women, and officials from the Executive Secretariat. During the visit, the delegation held meetings with the highest state authorities in Suriname,

and with representatives from civil society organisations involved in defending indigenous peoples' rights. A number of delegation members also travelled to Brokopondo district and Brownsveg village to visit a Maroon community of 8,000 people.⁴

A delegation from the IACHR's Executive Secretariat, including the Rapporteur on the Rights of Indigenous Peoples, also visited **Argentina** from 9 to 13 May 2013. The aim was to assess the country's compliance with the IACHR recommendations contained in Merits Report 2/12 on the case of the indigenous communities of the Lhaka Honhat Association of Argentina, approved on 26 January 2012. On this occasion, the delegation met in Salta with government representatives from Salta Province; they travelled to Santa Victoria del Este municipality to meet with indigenous leaders from Lhaka Honhat Association and to visit the indigenous territory; and they held meetings in Buenos Aires with national government authorities. The parties indicated that the visit had served to open up spaces for dialogue and to promote fulfilment of the recommendations on the part of the Argentine state.

From 6 to 9 August 2013, the IACHR conducted a working visit to **Canada** to consider the disappearance and murder of indigenous women in British Columbia. The delegation comprised Dinah Shelton, Rapporteur on the Rights of Indigenous Peoples, Commissioner Tracy Robinson, First Vice-President and Rapporteur on the Rights of Women, and officials from the Executive Secretariat. The visit commenced in Ottawa and continued on to British Columbia, specifically Vancouver and Prince George. The delegation received information and testimony from the families of indigenous women and girls who have disappeared and been murdered. In Ottawa, the delegation met with the federal government authorities and civil society organisations and representatives, including indigenous organisations and male and female leaders. In British Columbia, the delegation met with the provincial government authorities, representatives of the legislature and civil society organisations and representatives, including indigenous organisations, authorities, male and female leaders.

The Rapporteurship on the Rights of Indigenous Peoples also conducted a working visit to **Guatemala** from 21 to 30 August 2013. The aim of the visit was to gather information on the situation of indigenous peoples in Guatemala, with particular focus on their discrimination and exclusion and on the situation of their lands, territories and natural resources, along with the right to free, prior and informed consultation. The delegation was headed by the Rapporteur on the Rights

of Indigenous Peoples, Commissioner Dinah Shelton. “We noted the persistent racism and discrimination of indigenous peoples in Guatemala but also that the government has initiated a number of new programmes to address the situation. Unfortunately, a disproportionate level of poverty, extreme poverty and child malnutrition exists among the rural indigenous population,” noted the rapporteur, Dinah Shelton. “It is also alarming that all current licences for mineral exploitation and hydroelectric plants have been granted without free, prior and informed consultation, something the state is obliged to conduct by virtue of the international treaties signed by Guatemala,” added the rapporteur.⁵

Hearings before the IACHR

The 147th and 149th ordinary periods of sessions of the IACHR took place in 2013, during which various public hearings took place related to the situation of indigenous peoples and bearing witness to the continuing violation and denial of their rights in different countries around the region, including Brazil, Bolivia, Canada, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico and Peru.⁶

In particular, the IACHR received worrying information about the continuing violation and denial of the territorial rights of indigenous peoples in various countries around the region, despite the existence of Inter-American standards that oblige OAS Member States to ensure respect for and guarantee indigenous peoples’ rights to their ancestral lands and natural resources. This continues to cause situations of violence and territorial dispossession. According to statements made by indigenous leaders and organisations to the IACHR, plans and projects – such as mining concessions, oil drilling, hydroelectric dams, tourism investment, logging or the establishment of protected areas - are being prepared and implemented without any free, prior and informed consultation process. According to the information made known to the Commission, the effects of these projects include serious environmental degradation, destruction of their ancestral territories, the displacement of entire communities, an influx of non-indigenous actors onto the territories, damage to their social organisational structures and, finally, the physical and cultural extinction of the respective peoples.

The IACHR also continued to receive information on the suppression of protest actions and public demonstrations by indigenous leaders, authorities and members in defence of their rights. Thus, for example, during the 147th period of

sessions, information was received on the prosecution of 140 indigenous leaders in Cauca department, Colombia, along with reprisals and threats against male and female indigenous leaders in countries such as Costa Rica and Guatemala. In addition, at the end of its 149th period of sessions, the IACHR observed with concern that, in the hearings, representatives from different indigenous peoples had coincided in denouncing a strategy of persecution, stigmatisation and criminalisation of indigenous leaders, aimed at silencing and intimidating the defence of their rights to land, territory and natural resources. In particular, the IACHR received information on the significant increase in murders or attempted murders of indigenous leaders in Brazil in recent years, in retaliation for their struggle to protect their ancestral territories. Information was also provided on the murders of three leaders from San Francisco de Locomapa community in Honduras by armed guards from a company, along with the displacement of eight indigenous leaders for fear that they would be the victims of similar acts of violence and threats against their lives.

Another situation being monitored by the Commission is that of the indigenous peoples living in voluntary isolation on the continent. In this regard, during the 149th period of sessions, a hearing was held on the situation of these peoples in Peru. Their ancestral territories will be threatened by the granting and implementation of natural resource extraction concessions (primarily hydrocarbons), the implementation of legal and illegal felling and a consequent uncontrolled influx of third parties. Following the hearing, the IACHR expressed its satisfaction that Peru had a specific law aimed at protecting the rights of these peoples, the “Law for the protection of indigenous and native peoples in a situation of isolation or initial contact”. However, it raised concerns that information it had received suggested that this law did not establish a principle of intangibility and no contact, and that there was little effective implementation of protection mechanisms such as control posts, action plans and sanctions against unlawful entry. The IACHR repeated the call made to the Peruvian state to guarantee respect for the human rights of indigenous peoples in voluntary isolation, through concrete and effective measures aimed at ensuring the legal and practical protection of their ancestral territories, and to refrain from implementing actions that violate their rights. ○

Notes and references

- 1 See *inter alia* the “Report on Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources”, which compiles and analyses the norms and jurisprudence of the Inter-American Human Rights System regarding the rights of indigenous and tribal peoples on their territories, lands and natural resources. IACHR. *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources*. OEA/Ser.L/V/II. Doc. 56/09. 30 December 2009. Available at: <https://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>
- 2 For more information on the case, see IACHR. Press Release 76/13, IACHR takes case involving Honduras to the Inter-American Court http://www.oas.org/en/iachr/media_center/PReleases/2013/076.asp, Washington, D.C., 11 October 2013.
- 3 Reports such as: Report No. 5/13, Petition 273-05, indigenous Nam Qom community of the QOM (Toba) people, Argentina; Report No. 29/13, Petition 1288-06, indigenous Aymara community of Chusmiza-Usmagama and its members, Chile; Report No. 50/13, Petition 1491-06, Guzmán Cruz family, Mexico; Report No. 47/13, Petition 1266-06, Ángel Diaz Cruz and others, Mexico; Report No. 46/13, Petition 659-07, Ángel Concepción Pérez Gutiérrez and Francisco Pérez Vásquez, Mexico; Report No. 26/13, Petition 1121-04, Rogelio Jiménez López and others, Mexico; Report No. 9/13, Petition 1621-09, indigenous Kaliña de Maho community, Surinam; Report No. 93/13, Petition 1063-07, Buzo Jesús Flores Satuye from the Garífuna community of Cayos Cochinos, Honduras. The respective reports can be found at <http://www.oas.org/en/iachr/decisions/admissibilities.asp>
- 4 For more information see IACHR. Press Release 09/13. IACHR concludes its working visit to Suriname http://www.oas.org/en/iachr/media_center/PReleases/2013/009.asp 12 February 2013.
- 5 For more information, see IACHR. Press Release 66/13. Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala. http://www.oas.org/en/iachr/media_center/PReleases/2013/066.asp 18 September 2013.
- 6 For more information see IACHR. Press Release 23A/13. Anexo al Comunicado de Prensa 023/13 emitido al culminar el 147 Período de Sesiones. 5 April 2013; and IACHR. Press Release 83A/13. Anexo al Comunicado de Prensa emitido al culminar el 149 Período de Sesiones. 8 November 2013.

This article has been written by IWGIA

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (African Commission) was officially inaugurated on 2 November 1987 and is the main human rights body of the African Union (AU). In 2001, the African Commission established its Working Group on Indigenous Populations / Communities in Africa, which was a remarkable step forward in promoting and protecting the human rights of indigenous peoples in Africa. The Working Group has produced a thorough report on the rights of indigenous peoples in Africa, and this document has been adopted by the African Commission as its official conceptualisation of the rights of indigenous peoples.

The human rights situation of indigenous peoples has, since 2001, been on the agenda of the African Commission and henceforth has been a topic of debate between the African Commission, states, national human rights institutions, NGOs and other interested parties. Indigenous representatives' participation in the sessions and in the Working Group's continued activities – sensitization seminars, country visits, information activities and research – plays a crucial role in ensuring this vital dialogue.

Facilitating dialogue between civil society and states at the sessions of the African Commission

In 2013, the African Commission held its 53rd and 54th ordinary sessions. Indigenous peoples' representatives from Tanzania, Kenya, Cameroon and the Republic of Congo participated and contributed by making statements on the human rights situation of indigenous peoples in Africa. The African Commission's Working Group on Indigenous Populations / Communities (Working Group) also presented its progress reports. The participation of indigenous representatives, as well as the intervention of the Working Group's chairperson during the sessions, contributed to raising awareness of indigenous peoples' rights.

During each session, the African Commission also examines the periodic reports of African states. For example, the periodic report of Cameroon was presented at the 54th session. IWGIA, Forest Peoples Programme, the *Centre pour l'Environnement et le Développement* (CED), the Mbororo Social and Cultural Development Association (MBOSCUDA) and OKANI contributed with stakeholder reports¹ that provided an alternative source of information and assisted the African Commission in asking substantiated and critical questions on indigenous peoples during the dialogue with the state.

The participation of indigenous peoples' representatives in the African Commission sessions has also facilitated the exchanges with their respective governments and the advancement of the rights of indigenous peoples in their country. For example, the participants from the Endorois Welfare Council in Kenya had the opportunity, during the 53rd session, of holding meetings with the Kenyan government delegation to discuss the status of implementation of the African Commission ruling in favour of the Endorois peoples.² The Kenyan government delegation undertook to develop a roadmap for implementing the decision and present it to the African Commission.

Monitoring the implementation of the African Commission's decisions and recommendations

The African Commission adopted its decision on the Endorois in 2010. In the decision, the Government of Kenya was requested to report on the status of implementation of this within three months of notification, while the African Commission proposed its good offices to assist the parties in its implementation. During the oral hearing held on implementation of the decision at the 53rd Ordinary Session of the African Commission, the Government of Kenya, through its representatives, pledged to submit a roadmap on the implementation process within 90 days. However, it did not keep its promise.

To encourage dialogue between the parties, the Working Group, in collaboration with the Endorois Welfare Council, organized a workshop in Nairobi on 23 September 2013, attended by several stakeholders, in order to consider the status of implementation of the decision and the way forward. The UN Special Rapporteur on the Rights of Indigenous Peoples, Professor James Anaya, and a legal expert from the Inter-American Commission on Human Rights were there to

share their experiences. In total, 45 delegates participated in the workshop deliberations.

Regrettably, the Government of Kenya did not send a representative to the workshop, although seven invitations were sent to it and invitations were handed to affiliated bodies well ahead of the date. As a result, it was not possible to come up with a joint roadmap for implementing the decision, as originally planned. This shows how challenging the whole process is. However, participants had lengthy and fruitful discussions and agreed on some strategies which could be used to ensure the implementation of the decision. Most importantly, the meeting reconfirmed that the Endorois community is still motivated and ready to work hard towards full implementation of this landmark ruling.

Indigenous peoples' rights at university

In September 2013, the Centre for Human Rights of the University of Pretoria in South Africa, for the third year running, conducted a one-week intensive course on indigenous peoples' rights.³ This course was targeted at senior government officials, civil society and academics in Africa. The lecturers were all well-known experts on the topic, including members of the Working Group, the UN Special Rapporteur on the Rights of Indigenous Peoples, and an expert from the Inter-American Commission on Human Rights. The Working Group is now exploring the possibility of duplicating the course in a French-speaking African university.

Working towards influencing the policies of the African Development Bank

In December 2012, the Working Group sent a letter to the African Development Bank (ADB) regarding the development of Integrated Safeguard Standards (ISS). The letter pointed out the fact that the draft ISS do not contain any specific operational requirements to ensure the protection of the rights of indigenous peoples and that, if approved in that form, the ADB would be the only multilateral bank without a specific policy that recognizes and protects the rights of indigenous peoples. It was also emphasized that the draft ISS make no mention of the need to protect the rights of indigenous peoples as per international law (including the

African Charter on Human and Peoples' Rights), in the protection of, inter alia, indigenous peoples' right to natural resources and land, and their right to free, prior and informed consent.

The following recommendations were made to the ADB:

- Extend the process of consultation on establishing the new ISS to allow inputs from experts of the African Commission;
- Establish an open and credible process of consultation with indigenous populations/communities and African civil society organizations, and commit to a time-bound period for review of the ISS, specifically regarding their impact on indigenous populations/communities;
- Adopt a specific safeguard policy on indigenous populations/communities, in line with other multilateral financial institutions;
- Build on the following benchmarks for the elaboration of an effective policy for indigenous populations/communities: a) require the free, prior and informed consent of indigenous populations/communities when the relationship between these communities and their lands and resources may be affected; and b) establish an indigenous populations/communities advisory mechanism for the implementation of measures to protect their interests and rights.

In response to the letter and recommendations, the ADB invited members of the Working Group to a forum organized from 11 to 12 February 2013 in Tunis on development issues for African populations, including indigenous communities. In addition to the Working Group, the forum was attended by several government officials, the Commissioner for Political Affairs of the African Union Commission, the Vice-President and other high ranking officers of the Bank, the World Bank, the Global Environment Facility, UNPFII, IPACC, ActionAid and others.

The Working Group made a presentation on indigenous peoples in Africa in the context of the United Nations Declaration on the Rights of Indigenous Peoples. The presentation was followed by discussions on the definition/criteria for identifying indigenous peoples in Africa. At the end of the forum, participants strongly urged the Bank to adopt a specific policy on indigenous peoples that included the identification criteria set by the Working Group. They also called for sustained collaboration with the Working Group and other stakeholders in developing and executing the policy. As a follow-up, the consultant who had been ap-

pointed by the ADB to draft a study on indigenous peoples in Africa was invited to the Working Group meeting in October 2013 to discuss the findings of the draft study. It was agreed that another meeting should be organized between the Bank, the consultant and the Working Group but, unfortunately, the ADB did not respond to the many requests sent by the Working Group for a meeting. In December 2013, the Bank adopted its new ISS⁴ without further consultation with the Working Group.

Learning from each other's experiences and coordinating the efforts

In April 2013, the Working Group organized an exchange workshop on indigenous peoples' rights between the Inter-American Commission on Human Rights, the ASEAN Inter-Governmental Commission on Human Rights and the African Commission on Human and Peoples' Rights. The workshop brought together experts from the three regions, regional organizations and the United Nations. The UN Special Rapporteur on the Rights of Indigenous Peoples, the UN Independent Expert on Minority Issues and the Office of the UN High Commissioner for Human Rights were also present. The workshop served as a forum for an exchange of experiences and strategies between the three regional organizations and those of the UN. It also provided an opportunity for these bodies to lay the foundations for future collaboration with regard to strengthening their efforts to promote and protect indigenous peoples' rights.

Ongoing sensitization of African states and other stakeholders on indigenous rights

In 2013, the Working Group published the first issue of its electronic newsletter entitled "The Voice of the Indigenous".⁵ This newsletter aims to sensitize and create awareness among all stakeholders as to the situation and rights of indigenous populations/communities in Africa, as well as the mandate and work of the Working Group.

Mindful of the impact of extractive industries on the lives of indigenous peoples in Africa, the Working Group decided to carry out a "Study on Extractive Industries, Land Rights and the Rights of Indigenous Communities/Populations in

East, Central and Southern Africa". The study has already begun and is expected to be finalized by the end of 2014. It was assigned to an expert identified after a consultation process between this Working Group and the one responsible for Extractive Industries.

The United Republic of Tanzania granted the Working Group's request to undertake a Research and Information Visit from 21 January to 6 February 2013. The delegation met and discussed the general situation of indigenous populations with the representatives of various ministerial offices, embassies, UN specialized agencies, international and local NGOs, including indigenous peoples' organizations, and several indigenous communities living in different parts of the country. The report of the visit has now been finalized and should be adopted by the African Commission and published in 2014.

Addressing the violations of indigenous peoples' rights

In July 2013, the Working Group received corroborating allegations from several human rights NGOs to the effect that Mr. Gordon Bennett, the British lawyer of the Basawara people and an expert on indigenous issues, had been prevented from entering Botswana, where he was due to represent the community in a High Court case against the Government of Botswana on Monday 29 July 2013. The Working Group sent an urgent appeal to the President of the Republic of Botswana, reiterating Botswana's obligations under the African Charter and other relevant regional and international instruments to guarantee the right of all Botswana citizens to a fair trial, particularly the right to be represented by a legal counsel of their choice. It also urged the President to kindly indicate measures put in place by the relevant departments to deal with this situation. No response has been received from the Presidency or the government departments.

A *note verbale* was also sent to the Government of the Federal Democratic Republic of Ethiopia requesting that the latter allow the Working Group to undertake a mission to the country in order to be able to verify whether the worrying allegations reported by various sources to the Working Group with regard to the deteriorating situation of pastoralists in Ethiopia were true or not. By *note verbale* dated 13 March 2013, the Government of Ethiopia declined the request, indicating that all Ethiopians, including pastoralists, were indigenous and that all nations, nationalities and peoples of Ethiopia were equal and enjoyed equal legal protec-

tion. In its activity report, the Working Group reiterated its desire to establish constructive dialogue with Ethiopia on the approach to and concept of indigenous peoples with the aim of clearing up any misunderstandings and differences of opinion regarding the concept and identification of national communities raised by Ethiopia.

Focal Points

In order to formalize, strengthen and sustain collaboration between the Working Group and civil society organizations working on the issue of indigenous peoples, the Working Group identified and contacted 31 NGOs based in 21 African countries during 2013 for them to serve as Focal Points. These Focal Points have the following mission:

- To regularly provide the Working Group with information on the situation of indigenous peoples and the organizations and defenders of their rights in the respective countries;
- To report on the status of implementation of the Working Group's recommendations, urgent appeals, decisions, recommendations or resolutions of the Commission pertaining to indigenous peoples' rights;
- To assist and collaborate with the Working Group in organizing promotional activities such as sensitization seminars, training workshops, conferences, etc.;
- To assist in the wide dissemination and distribution of information and publications sent to them by the Working Group, and
- To share all other information and work with the Working Group in all areas of common interest. ○

Notes and References

- 1 <http://www.forestpeoples.org/sites/fpp/files/publication/2014/03/enachpr-reportfinal.pdf>
- 2 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya:
http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf
- 3 For more information about the course, please refer to:

- <http://www1.chr.up.ac.za/index.php/ahrc-2014/ipr-course.html>
- 4 http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf
- 5 http://www.achpr.org/files/special-mechanisms/indigenous-populations/newsletter_wgip_eng.pdf

Geneviève Rose is project coordinator for IWGIA's African Commission on Human and Peoples' Rights Programme. She holds an M.A. in Conflict Resolution and International Studies from the University of Bradford, UK.

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Association of Southeast Asian Nations (ASEAN) is made up of ten member states: Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Cambodia, Lao PDR, Vietnam and Myanmar. The official aims and purposes of ASEAN include the acceleration of economic growth, social progress and cultural development, and the promotion of regional peace and stability through respect for justice and the rule of law in the relationship between countries in the region and adherence to the principles of the UN Charter. The ASEAN Charter was adopted in November 2007 to establish the legal status and institutional framework of the ASEAN. This Charter is a legally binding agreement among the member states.

In 2011, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was mandated to develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights. The ASEAN Human Rights Declaration was adopted in 2012. It makes no reference to indigenous peoples despite the fact that an estimated 100 million people identify as indigenous in Southeast Asia.¹

Work of the AICHR

The widespread criticism that the ASEAN Human Rights Declaration (AHRD) is fatally flawed and falls below international human rights standards (see *The Indigenous World* 2013) has not stopped the AICHR from promoting its use, and the Commission is now planning to come up with legally binding human rights conventions based on the AHRD. The first such convention is a convention on the rights of women but there are doubts as to whether this is appropriate given that the ASEAN Commission on the Rights of Women and Children (ACWC) is also

drafting a declaration on the rights of women. These separate initiatives demonstrate a lack of coordination and mainstreaming of human rights bodies within the ASEAN.

For indigenous peoples, there is still no clear indication that the AICHR, as a human rights body, will start discussing and addressing the human rights situation of indigenous peoples in Southeast Asia in the near future.

In January 2013, the AICHR decided that it would review the body's Terms of Reference in 2014. Some indications have been given that consultations with civil society will take place but many civil society organizations are skeptical, bearing in mind the experience of drafting the AHRD (see *The Indigenous World 2013*). The review provides an opportunity to continue to lobby for a more responsive human rights body, the designation of a focal person for indigenous peoples within the AICHR, and a stronger protection mandate, including mechanisms for receiving and responding to/addressing complaints.

In April 2013, IWGIA and the Asia Indigenous Peoples' Pact (AIPP) facilitated an exchange workshop between the AIHCR, the African Commission on Human and Peoples' Rights (ACHPR) and the Inter-American Commission on Human Rights (IACHR) in Banjul, the Gambia, in which the AIHCR Representative from Indonesia, as well as four indigenous representatives from Asia, participated. The exchange workshop provided an avenue for the AICHR, as well as the Asian indigenous movement, to learn from the experiences of its regional counterparts from Africa and the Americas, along with the UN Special Rapporteur on the Rights of Indigenous Peoples, in dealing with indigenous peoples' issues and concerns, especially the establishment of special procedures within the regional human rights bodies.

Lobbying of the ASEAN by the Indigenous Peoples' Task Force

During 2013, AIPP and members of the Indigenous Peoples' Task Force on the ASEAN (IPTF) continued to engage with the ASEAN, focusing on the AICHR and the ASEAN Social Forestry Network.

AIPP and some members of the IPTF participated in workshops and conferences on the ASEAN human rights mechanisms and civil society organizations' engagement with the ASEAN. These workshops provided an opportunity for the members to reiterate their recommendations to the AICHR, especially regarding

the designation of a focal person within the AICHR to look into the issues, concerns and welfare of the region's indigenous peoples. Despite these efforts, the AICHR has not made any move to accommodate any of these recommendations.

For its part, the IPTF has also suffered a setback, with the engagement of most of its members with the ASEAN and the AICHR lapsing. Much of this can be attributed to the more urgent issues being faced on the home front in terms of defending land, life and resources, issues that the AICHR has consistently failed to address.

Some indigenous peoples are now engaging with other ASEAN bodies that are more directly relevant to their issues and which offer more space for civil society. One of these is the ASEAN Forestry Network, an inter-government-driven network that among other things aims to develop a common social forestry and climate change policy framework and integrate it into the national strategies of each member state. In June 2013, indigenous peoples were able to hold side events and engage directly with the ASEAN Forestry Network during its session. AIPP and its members will maintain their engagement with this network and with civil society organizations in order to make recommendations, especially on the issues of recognition of land rights, traditional knowledge and addressing climate change issues, among other things.

Other AIPP members are following the developments within the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). During 2013, the ACWC worked on a Declaration on the Elimination of Violence against Women and Children. Some indigenous women's organizations joined other women's groups in submitting recommendations to the draft.

Indigenous peoples in the ASEAN member countries will have to wait to see how these bodies address their issues at national level. The lack of reflection of indigenous issues in ASEAN bodies is one of the main reasons why ASEAN engagement generally is of low priority to indigenous peoples. ○

Note

- 1 This figure is not accurate since only a few states in the region recognize indigenous peoples and their rights and, as a result, indigenous peoples are not taken into account when conducting national censuses.

Richard Gadi belongs to the Tawali, Ifugao indigenous peoples in the Cordillera Region, Philippines. He works as Human Rights Advocacy Officer for the Asia Indigenous Peoples Pact (AIPP).

THE INDIGENOUS PEOPLES’ FORUM AT IFAD

The Indigenous Peoples’ Forum at The International Fund for Agricultural Development (IFAD) was established in February 2011 at a workshop in Rome involving 28 representatives of indigenous peoples’ organizations from around the world. It is the culmination of IFAD’s engagement with indigenous peoples,¹ and is meant to provide a voice for indigenous peoples around the world. It is a response to requests by indigenous peoples for a more systematic dialogue with the United Nations agencies.

The Forum builds on IFAD’s Policy on Engagement with Indigenous Peoples (2009),² which in turn was informed by the United Nations Declaration on the Rights of Indigenous Peoples (2007). The Forum also reflects IFAD’s long experience of empowering poor rural communities and its participatory approach to grassroots rural development.

The IFAD Policy on Engagement with Indigenous Peoples envisaged the Forum as a concrete way to institutionalize consultation and dialogue with indigenous peoples aimed at improving IFAD’s accountability to its target groups and its development effectiveness, and to exercise a leadership role among international development institutions.

The Forum will meet every other year, in connection with IFAD’s Governing Council in February. It will bring together indigenous peoples’ representatives, including board members of the IFAD Indigenous Peoples’ Assistance Facility, selected members of the UN mechanisms dealing with indigenous peoples’ rights, representatives of indigenous peoples’ communities involved in IFAD-supported programmes, and representatives of national and regional indigenous peoples’ organizations.

The Forum is governed by a Steering Committee whose membership consists of seven representatives of indigenous peoples’ organizations, one representative of the Indigenous Peoples’ Assistance Facility Board, one representative of the United Nations Permanent Forum on Indigenous Issues, and four IFAD representatives. IFAD serves as the Secretariat of the Steering Committee.

The Indigenous Peoples' Forum at IFAD held its first global meeting on 11-12 February at IFAD headquarters in Rome. It brought together 34 participants representing 27 countries from Asia and the Pacific, Africa, and Latin America and the Caribbean.

Leading up to the Forum, IFAD and its partners in indigenous communities conducted a series of consultations, including regional workshops, which identified two priority areas: increasing the full and effective participation of indigenous peoples in the design and implementation of IFAD-supported projects and building the capacity of indigenous peoples' organizations.

At the first global meeting, indigenous peoples' representatives underscored their commitment to partnering with IFAD in order to work towards the ambitious goal of reducing rural poverty, pointing out that there could be no sustainable rural development without indigenous peoples. They reflected on the challenges remaining, such as the failure of some states to adequately recognize indigenous peoples in national legislation and policies, and the lack of systematic application of IFAD's Policy on Engagement and provisions on free, prior and informed consent.

The indigenous peoples' representatives attending the Forum identified specific actions to be taken by IFAD, governments and indigenous peoples' groups. The representatives called on IFAD to provide more capacity-building support, make more effort to encourage participation by indigenous peoples and ensure more effective implementation of the Policy on Engagement. They called on governments to recognize the rights of indigenous peoples and to build government capacity to address their needs and priorities. They themselves pledged to work with IFAD and governments to develop sustainable development models for their people and to work with governments on policies that promote such development.

Referring especially to the presence of large extraction companies that pose a threat to indigenous peoples' lands, indigenous representatives called for an end to harmful forms of development and welcomed the support and commitment of IFAD, particularly through its financing of projects designed and implemented by indigenous peoples themselves.

Forum participants synthesized their findings and discussions into an action plan and declaration, which they presented on 13 February to IFAD's Governing Council, its highest decision-making body.³ ○

Notes and references

- 1 See more information about IFAD's engagement with indigenous peoples at: <http://www.ifad.org/english/indigenous/index.htm>
- 2 IFAD's Policy on Engagement with Indigenous Peoples is available at: http://www.ifad.org/english/indigenous/documents/ip_policy_e.pdf
- 3 The proceedings of the 1st global meeting of the Indigenous Peoples' Forum at IFAD is available at: <http://www.ifad.org/english/indigenous/forum/proceedings.pdf>

Lola Garcia-Alix is the Executive Director of IWGIA. She is a Spanish sociologist who has worked at IWGIA since 1990. She is responsible for IWGIA's International Human Rights Advocacy Programme.

PART III

GENERAL INFORMATION

ABOUT IWGIA

IWGIA is an independent international membership organization that supports indigenous peoples' right to self-determination. Since its foundation in 1968, IWGIA's secretariat has been based in Copenhagen, Denmark.

IWGIA holds consultative status with the United Nations Economic and Social Council (ECOSOC) and has observer status with the Arctic Council, the African Commission on Human and Peoples Rights (ACHPR) and United Nations Educational, Scientific and Cultural Organization (UNESCO).

Aims and activities

IWGIA supports indigenous peoples' struggles for human rights, self-determination, the right to territory, control of land and resources, cultural integrity, and the right to development on their own terms. In order to fulfil this mission, IWGIA works in a wide range of areas: documentation and publication, human rights advocacy and lobbying, plus direct support to indigenous organisations' programmes of work.

IWGIA works worldwide at local, regional and international level, in close cooperation with indigenous partner organizations.

More information about IWGIA can be found on our website, www.iwgia.org

Become a member of IWGIA

Membership is an important sign of support to our work, politically as well as economically. Members receive IWGIA's Annual Report and *The Indigenous World*. In addition, members get a 33% reduction on the price of other IWGIA publications when buying from our Web shop.

Read more about IWGIA membership and join us at: <http://www.iwgia.org/iwgia/membership>

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IWGIA, Copenhagen
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